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EUROMIL Position Paper on The Right to Strike in the Armed Forces¹

A. About EUROMIL

The European Organisation of Military Associations and Trade Unions (EUROMIL) is an umbrella organisation composed of 32 military associations and trade unions from 21 countries. It is the main Europe-wide forum for cooperation among professional military associations on issues of common concern. EUROMIL strives to secure and advance the human rights, fundamental freedoms and socio-professional interests of military personnel of all ranks in Europe and promotes the concept of "Citizen in Uniform". As such, a soldier is entitled to the same rights and obligations as any other citizen. EUROMIL particularly calls for recognition of the right of servicemen and -women to form and join trade unions and independent associations and for their inclusion in a regular social dialogue by the authorities.

B. Background information

The right to strike is intrinsic to the right of freedom of association and is enshrined in several international human rights instruments.

For a long time, the enjoyment of the right to strike by members of the armed forces was not an issue discussed by military associations. Some of them made clear that they will not use this right, while others declared that they do not need or want the right to strike. Sweden is the only European country where military personnel enjoy the right to strike but never used it. In Denmark, trade unions agreed with the Ministry of Defence that military personnel will abstain from the right to strike and follow similar regulations as other civil servants².

In the face of a standstill in the discussions on granting trade union rights to military personnel in several European countries, some organisations recently called into question the non-use of the right to strike when military personnel have no other way of making their voice heard. Besides, some countries like North Macedonia and Slovenia have recently started regulating the right to strike for military personnel in specific laws and a military trade union in Belgium is advocating for a limited right to strike for members of the armed forces.

C. International standards and legislation

The right to freedom of association is recognised in international standards and legislation. The right to strike is an intrinsic part of the right to freedom of association and is particularly protected at international level in the International

¹ As approved by Presidium Members by written procedure in April 2020.

² In Denmark, soldiers cannot strike or be locked out.



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Covenants on Civil and Political Rights (ICESCR) and in the work of the International Labour Organization (ILO). At European level, it is recognised in the European Convention on Human Rights and more specifically in the European Social Charter as well as in the European Union Charter of Fundamental Rights.

In article 8 of the ICESCR the states parties undertake to ensure "The right to strike, provided that it is exercised in conformity with the laws of the particular country. (...) This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State."³

Article 28 of the Charter of Fundamental Rights of the European Union, stipulates, on the right of collective bargaining and action, that "Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action."⁴

Article 6 of the European Social Charter foresees that "With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake: (...) the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into." The right to strike of certain categories of public officials, such as members of the armed forces, may be restricted. Under Article G, these restrictions should be "(...) prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals."⁵

In 2018 and 2019, the European Committee of Social Rights (ECSR) took clear positions in its decisions on the cases of EUROMIL v. Ireland (112/2014)⁶ and Italian General Confederation of Labour - CGIL v. Italy (140/2016)⁷ on granting the right to bargain collectively and the right to strike to military personnel.

When EUROMIL lodged a complaint at the European Committee of Social Rights (ECSR or hereunder referred to as "the Committee") against Ireland for violating Articles 5 and 6 of the European Social Charter as regards the rights of Irish military personnel to organise and bargain collectively, the main focus of the

³ICESCR, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

⁴ EU Charter of Fundamental Rights, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

⁵ European Social Charter, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf93>

⁶ No. 112/2014 European Organisation of Military Associations (EUROMIL) v. Ireland, www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-112-2014-european-organisation-of-military-associations-euromil-v-ireland?inheritRedirect=false

⁷ No. 140/2016 Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-140-2016-confederazione-generale-italiana-del-lavoro-cgil-v-italy?inheritRedirect=false



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complaint laid on the fact that Irish military personnel could not form nor join trade unions to fully defend their rights as soldiers and workers. In this context, Article 6§4 of the European Social Charter, which deals with the right to strike, was invoked has a component of the right to collective bargaining. However, while the Committee found violations of the Social Charter as regards the rights for Irish defence personnel to organise and to bargain collectively, it did not find a violation of the right to strike in the case. The committee decided that the restriction imposed on the right to strike for military personnel pursues a legitimate aim in that it seeks to maintain public order, national security and the rights and freedoms of others by ensuring that the armed forces remain fully operational and available to respond at all times. It concluded that the statutory provision is proportionate to the legitimate aim pursued and, accordingly, can be regarded as necessary in a democratic society.

The opinion of the ECSR on the right to strike for armed forces personnel then evolved as the case of the CGIL against Italy shows. In this case the CGIL complained to the ECSR that members of the "Financial Guard", which has military status, do not enjoy trade union rights. The Committee remained of the opinion that trade union rights apply to military personnel. On the specific issue of the right to strike, the Committee found a violation of Article 6§4 in the CGIL v. Italy case. It highlighted that the right to strike is intrinsically linked to the right to collective bargaining and that Restrictions must be prescribed by law, pursue a legitimate aim and necessary in a democratic society. It noted that restrictions should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings. In the case of Italy, the Committee considered that in the absence of an organised minimum service in case of a strike and the lack of an effective collective bargaining process, the absolute prohibition of the right to strike is not proportionate to the legitimate aim pursued and therefore not necessary in a democratic society. This decision thus opens the way for discussions on the right to strike in all European armed forces.

D. EUROMIL recommendations

EUROMIL considers that the collective representation of military personnel is based on three pillars.

Firstly, the right to freedom of association which, as stipulated in the EU Charter of Fundamental Rights (article 12), implies the right of everyone to form and to join trade unions for the protection of his or her interests.

Secondly, social dialogue and the right of collective bargaining. Military trade unions, once established, should be involved in a well-regulated dialogue with the political and military authorities and have the right to negotiate and conclude collective binding agreements at the appropriate levels. Working together, in a spirit of mutual trust and respect, is beneficial for military personnel as well as for the armed forces as such.

Thirdly, the right to strike. Indeed, EUROMIL stresses that the right to strike is a fundamental trade union right. However, the right to strike cannot be perceived



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as a separate right. It must be considered alongside with the right to collective bargaining, as intrinsic to the right to organise, and should only be used as an instrument of last resort to defend workers' rights.

EUROMIL believes that the ECSR decision on the case of CGIL v. Italy (140/2016), recognizing the right to strike to military personnel, as previously described, should be applicable to all European countries.

EUROMIL agrees that the specific nature of the military profession makes it difficult to purely and simply implement the right to strike in the armed forces. However, the organisation is convinced that by adopting the necessary supporting measures, it is achievable. In this regard, identified best practices and experience from other security forces may serve as basis for discussion.⁸ In the case of a sufficiently strong second pillar (dialogue or participation), restrictions on the right to strike, up to a legal exclusion, are acceptable.

EUROMIL therefore calls on states and regional organisations to use the momentum generated by the recent case-law to open discussions on granting the right to strike to military personnel in Europe and to reach a common solution that is acceptable for all. The organisation reiterates that military associations do not call for the right to strike to be opened to military personnel as an objective per se, but urge heads of states and governments to finally entitle armed forces personnel to enjoy full trade union rights in all European countries. In order to ensure an effective protection and promotion of the interests of members of the armed forces, EUROMIL insists that the three pillars of their collective representation should be respected.

EUROMIL thus particularly calls upon states:

- to allow members of the armed forces to establish and join a trade union representing their interests;
- to consult (military) trade unions on issues concerning members of the armed forces and engage with them in a regulated social dialogue. In the anticipation of the implementation of trade union rights, consultation with professional associations should already be organized;
- to grant military personnel the right to bargain collectively, this means to negotiate and conclude collective binding agreements and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action. Rules concerning strike actions should be set up in consultation with trade unions;
- to lift any restriction on the right to freedom of association that is not prescribed by law, necessary, proportionate and non-discriminatory;

⁸ For example, in Belgium, police officers have the right to strike but with some restrictions.



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- to forbid disciplinary actions against members of the armed forces in connection with their participation in activities of lawfully established military associations or unions.