



# **Trade union rights in the public services**

Focused summary on military personnel from: Report produced as part of the project "Defending and strengthening trade union rights in public services" (Alexander De Becker and Lissa Nissen, University of Ghent, February 2023).



With the financial support of the European Commission

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## **1. Introduction**

This **internal report** is an extract that focuses on the rights of military personnel as part of a collaborative effort among three European trade union federations representing the public services (EPSU), police officers (EuroCOP), and military personnel (EUROMIL). The two-year project, which was funded by the European Commission and spanned from January 2021 to January 2023, aimed to investigate the implementation of crucial trade union rights within an international and European framework.

Throughout the project's duration, it emerged that an exceptional opportunity had arisen to present a report to the Council of Europe's European Committee of Social Rights (ECSR). Typically, the ECSR annual process involves member state governments submitting reports on specific groups of trade union and social rights. To leverage this opportunity, the three federations, in cooperation with the University of Ghent, decided to shift the main project deliverable from a final report to a special report specifically targeted at the ECSR. On 1 July, the [report](#) was successfully published and submitted to the Committee, creating a foundation for future joint interactions between the federations and the ECSR.

Apart from the special report for the ECSR, the three federations agreed that the final deliverables from the project would include a "[Next Steps](#)" document outlining proposals for future collaboration and this report, which is a more focused analysis than originally envisioned at the beginning of the project.

The primary objective of the report is to explore the key international legal avenues available to trade unions for safeguarding their rights. Additionally, it provides an overview of the current status of the rights to organise, negotiate, and take collective actions specifically - in this version - for military personnel and police officers within the context of the European Union (EU) and its member states, including the five candidate countries at the time of the research.

## **2. Legal avenues for protecting trade union rights**

The main legal avenues for defending trade union rights are afforded by:

- the International Labour Organisation and its Conventions,
- the Council of Europe and its European Committee of Social Rights monitoring the European Social Charter,
- the European Court of Human Rights and the European Convention of Human Rights; and
- the European Union's Charter of Fundamental Rights.

### **a. The International Labour Organisation**

The key Conventions of the International Labour Organisation (ILO) on fundamental trade union rights and for trade union rights in the public services include:

- 87 on freedom of association and protection of the right to organise
- 98 on the right to organise and collective bargaining
- 151 on labour relations in the public service

Among European Union and candidate countries, Convention 151 has not been ratified by: Austria, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Ireland, Lithuania, Malta, Montenegro, Poland, Romania, Serbia. While 154 has not been ratified by: Austria, Bulgaria, Croatia, Denmark, Estonia, France, Germany, Ireland, Italy, Luxembourg, Malta, Montenegro, Poland, Portugal, Serbia, Turkey.

There is no specific convention on the right to take collective action, but it has been recognised by the supervisory bodies of the ILO as an intrinsic corollary to the right to organize, protected by Convention no. 87.

The ILO has a complaint procedure, although its subsequent recommendations are not legally binding, but try to guide the national authorities into respecting the fundamental principles of ILO Conventions. National reports have to be written by countries on the implementation and the application of ILO Conventions and national trade unions can submit remarks with regard to these reports. Based on the deliberations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), a selection of cases is referred to the ILO annual International Labour Conference and in particular the Committee of Application of Standards (CAS) for further deliberation and to decide if action is needed in the form of technical assistance, inquiry procedures, complaints, representations, etc.

There is a specific complaint procedure dealing with Conventions 87 and 98, dealt with by the ILO's Committee on Freedom of Association. The ETUC can assist national trade unions with complaints for violations of these conventions and the Committee sends observations to the member state concerned which carry a moral authority.<sup>1</sup>

## **b. The European Social Charter**

The European Social Charter (Revised - RESC) is an instrument of the Council of Europe and covers important legal principles, such as the right to safe and healthy working conditions (Article 3). Regarding this report, Articles 5 and 6 play a pivotal role. Article 5 grants the right to organize, while Article 6 enshrines the right to engage in collective bargaining, with a clear recognition of the right to strike.

Every four years member states will send a report, containing four thematic groups. One of the groups "Labour Rights" includes reporting on the compliance with Articles 4, 5 and 6 of the European Social Charter. In order to give the national social partners the opportunity to make their remarks on these reports, the member states need to send a draft to them beforehand.

A similarity with the ILO conventions is that a monitoring system is included in the European Social Charter. It implies a collective complaint procedure in case the European Social Charter is violated. This system has meanwhile been ratified by 16 countries: Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia, Spain, and Sweden. Furthermore, the countries also have to ratify Articles 5 and 6 of the Charter.

Some countries have made an exemption for the application of Article 6 §4 (right to collective action) RESC, with general exemptions in Austria, Luxembourg, and Poland and exemptions specific to military staff in the Netherlands<sup>2</sup> and Serbia<sup>3</sup>. Spain declared that it will interpret and apply Articles 5 and 6 of the European Social Charter, read with Article 31 and the Appendix to the Charter, in such a way that their provisions will be compatible with those of Articles 28, 37, 103(3) and 127 of the Spanish Constitution, which are all Articles dealing with the rights of certain public servants.

National trade unions, associations, EUROMIL and EuroCOP are on the list of international non- governmental organisations which can file a complaint. It is a rather informal, written procedure which focuses on violations of the European Social Charter through legislation or case law. A European trade union confederation as ETUC can assist organisations in the collective complaint procedure. EUROMIL (as well as ETUC) can also assist national trade unions.

With regard to the application of the Articles 5 and 6, the European Committee on Social Rights, which deals with collective complaints, has ruled some important decisions for the studied group, i.e. military staff and police officers.

The major case with regard to police officers concerns the complaint procedure of EuroCOP against Ireland in 2018. The collective complaint procedure used by EuroCOP led to the conclusion that the police trade union could not join national employees' unions and that an absolute prohibition of the right to strike had to be considered a breach of Article 6 §4 of the European Social Charter. The consequence was an adaptation of Irish regulation which indicates the importance of procedures before the European Committee of Social Rights (ECSR).

EUROMIL set up a similar procedure with regard to the right to join trade unions and the right to collective bargaining for military staff in Ireland. In the past years, a comparable collective complaint has also been submitted by EUROMIL against Portugal and, recently, Spain. In the Irish case, the ECSR decided that there was a breach of Article 5, since the entire military staff was excluded from the right to organise. Similarly, within the case of the *Guardia di Finanza* in Italy, which is a financial police force with a military status, the ECSR decided that exceptions for military staff with regard to the right to organise needed to be proportionate. The staff of the Italian *Guardia di Finanza* needed to be included in collective bargaining procedures. Military staff (as well as police officers) should have the right to bargain collectively over pay issues. Moreover, the ECSR considered a general exclusion of the right to strike for military staff disproportionate.

Even if the reports and decisions of the ECSR often have an important influence on the behaviour of the Member State concerned (e.g., the adaption of the existing regulations), such decisions nor the national reports are legally binding. They do not render any binding legal consequences and therefore have to be considered as a form of soft law.

### **c. The European Convention on Human Rights**

With regard to the application of the European Convention on Human Rights (ECvHR), the importance of the case law concerning the application of Article 11 of the ECvHR cannot be underestimated: it guarantees the freedom of association and freedom of assembly.

The main scope of the European Court of Human Rights (ECHR) is, however, fundamentally different from the collective complaint procedures within the framework of the ILO and the European Social Charter. It concerns individual cases and can only be used after all national procedures have been exhausted. ETUC (but this also potentially includes EUROMIL) can intervene as a third party if it can demonstrate a legitimate interest. With regard to "trade union rights", this can be considered a useful protection. Furthermore, EUROMIL can support the national trade union by representing or assisting it before the European Court of Human Rights where European and comparative aspects can be included in the proceedings.

Since the judgment in the case of *Enerji Yapi Yol Sen vs. Turkey* (21 April 2009), the European Court of Human Rights decided that the right to assembly not only includes the right to organise (ECHR, *Schmidt and Dahlström vs. Sweden*, 6 February 1976), and to bargain collectively (ECHR, *Demir and Baykara*, 12 November 2008), but also the right to strike. Exceptions need to be restrictively interpreted. With regard to EUROMIL, two important cases need to be mentioned: the cases *Matelly and Adefdromil* (both against France) were judged on the 2 October 2014. In both cases, the Court decided that while the freedom of association of military personnel could be subject to legitimate restrictions, a blanket ban on forming or joining a trade union encroached on the very essence of that freedom and was thus a violation of Article 11 of the ECvHR.<sup>4</sup>

The most important legal element is that the case law of the European Court of

Human Rights is legally binding for the member states concerned. Obviously, the jurisprudence of the European Court of Human Rights only renders a decision in the individual pending case, but all Member States have to analyse the consequences of the case law for their own territory. It is therefore of utmost importance that the case law of the European Court of Justice is closely monitored since the evolution in the case law of the European Court of Human Rights may significantly influence the possibilities for collective rights in the near future.

#### **d. The EU Charter of Fundamental Rights**

The EU Charter of Fundamental Rights also stipulates two important liberties which play a fundamental role in guaranteeing the right to organise, the right to bargain collectively and the right to strike. Article 12 of the EU Charter of Fundamental Rights recognises the freedom of association, while Article 28 of the same Charter grants the right to negotiate and to conclude collective agreements as well as the right to take collective action. Article 27 stipulates the workers' right to information and consultation within the undertaking in good time, in line with EU, national laws and practices.

The recognition of the abovementioned rights in the framework of the EU Charter of Fundamental Rights is the result of important preparatory work.<sup>5</sup>

Nevertheless, the EU Charter of Fundamental Rights lacks direct effect as its provisions are not legally binding. For the different EU Member States to establish a legal basis, they must enact Regulations or Directives.

### **3. Three fundamental rights**

This section provides a summary of some of the main elements of a more detailed [report](#) that was submitted to the Council of Europe's European Committee of Social Rights.

#### **1) The right to organise**

While police officers in Turkey do not have a right to establish or to join a trade union, civilian and unarmed personnel working in auxiliary services in the police may be trade union members.<sup>6</sup> In this context, two labour unions were established, however, the number of members and rate of representation are very low.

In a judgement of 13 June 2018, the Italian Constitutional Court concluded it was unconstitutional to prohibit military personnel from exercising their right to organize, allowing them to establish and join associations with a trade union character. While the existing legislation was not adapted yet, several associations of Italian soldiers have been recognised in the meantime by the defence minister as "associations with a trade union character". Recently, the Act of 28<sup>th</sup> April 2022 changed the code of military order, allowing military personnel to form and join an association with a trade union character. However, the reform's effectiveness is significantly undermined by the continued requirement for prior consent from the Minister of Defense for registration.

## 1.1. Military staff

In the current position of the Committee, Article 5 RESC allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to entirely suppress the right to organise, such as the blanket prohibition of professional associations of a trade union nature and of the affiliation of such associations to national federations/confederations.<sup>6</sup>

In several of the researched countries, it is still legally forbidden for military staff to form and/or to join *a trade union*: Croatia, Cyprus, Czech Republic (including the Security and Intelligence Service),<sup>7</sup> Estonia, France, Ireland, Latvia (including state security institutions), Lithuania, Poland, Romania, Spain, and Turkey.

In Ireland, for the purpose of representing members in relation to matters affecting remuneration and such other matters as the Minister may specify in regulation, an association can be established. Such an association cannot be affiliated to any trade union. The associations, even if they are not trade unions, have joined the ICTU but under certain conditions. In determining whether these professional associations are compatible with Article 5, the Committee already noted that it is not bound by the categorisation adopted by the national authorities of a representative body, or its official name (whether a “trade union” or a “professional association”), when determining whether the requirements of Article 5 have been fulfilled. Each time it is necessary to examine whether, in the concrete situation, the representative body has the basic trade union rights (the right to express demands with regards to working conditions and pay, the right of access to the working place, as well as the right of assembly and speech - ECSR decision 2<sup>nd</sup> December 2013, Complaint No. 83/2012, EuroCOP v. Ireland, §76-80).<sup>8</sup>

In the case of Portugal,<sup>13</sup> EUROMIL has launched a complaint with the ECSR under the European Social Charter framework. For Portuguese military staff, the current Defence Act grants military personnel the right to form and join professional military associations, but it prohibits them from forming full trade unions.

## 1.2. Police officers

In general, it can again be stated that police officers enjoy the right to organise. However, limitations to the exercise of this right can be set up within the limitations of Article 5 ESC and Article 11 ECvHR, which means when they are prescribed by law, necessary in a democratic society and are proportionate to achieve this legitimate aim. Some countries however have enacted legislation that goes a lot further.

Turkey still has an absolute prohibition on police officers exercising any trade union rights. They are not allowed to establish or join a trade union. Related to this, they do not have a right to collective bargaining and no right to strike.

The Act on State Police in Albania prescribes the monopoly of one existing trade union: the State Police Union. Members of the Greek police force have the right to become a member of a trade union but can only be member of the primary trade



union organization of the Police Directorate or of the district where they serve. Although police officers in Cyprus are free to join a trade union, the number of trade unions allowed is limited to two: one for the senior offices and one for the other ranks.

In Hungary, in addition to the existence of trade unions of police officers, another entity was created by law that plays an important role for the right to consultation: the faculty of law enforcement staff. The same reasoning as for civil servants above can be repeated.

In its decision of 2 December 2013 following the Complaint No. 83/2012 (EuroCOP v. Ireland) the ECSR considered that the prohibition in Irish legislation against police representative associations from joining national employees' organisations was a violation of Article 5, because it had the factual effect of depriving them of the ability to negotiate on pay, pensions and service conditions as represented by national organisations. In its 3<sup>rd</sup> assessment of the follow-up the ECSR found that the regulations had been amended and that the police associations now can take part in national public service pay negotiations.

EuroCOP confirmed that Irish police officers lack the possibility to join and form a real trade union, since they are only allowed to join a representative association. However, the affiliates indicated that, as of 2019, the Irish police have access to the industrial relations mechanism of the Industrial Relations Act, which grants them a limited ability to participate (indirectly) in collective bargaining, and the opportunity to go to court. Furthermore, the affiliates indicated that since 2020 a new dispute resolution procedure exists, which grants the opportunity for internal conciliation with management.<sup>9</sup> However, the major issue of not being allowed to form and join a real trade union remains.

A difficult *locus standi* also currently exists in Malta. The Malta Police Association has been transformed to the Malta Police Union. The Maltese affiliate indicated that the possibility to become a member of a registered trade union of their choice is, in practice, impossible.<sup>10</sup>

## 2) The right to collective bargaining

The right to collective bargaining has been judged as a part of the freedom of association as guaranteed by Article 11 ECvHR (ECHR, *Demir and Baykara*, 12 November 2008, nr. 169). The impact of this case law may not be underestimated.

### 2.1. Military staff

In several of the countries studied, such as Lithuania, Poland, and Turkey, military personnel do not possess the right to unionize. As a direct consequence of this limitation, they are also deprived of the right to engage in collective bargaining.

The situation in Ireland is peculiar, as there still exists a real right to collective bargaining. However, the associations have limited influence over decisions made by Irish authorities. They can submit claims through the Conciliation and Arbitration Scheme and consult with management, but the centralization of pay and allowances determination lies with the Public Services Committee (PSC) within the Irish Congress of Trade Unions (ICTU). Notably, the military associations PDFORRA and RACO are specifically excluded from ICTU membership, leaving trade unions with no say in matters related to military staff's pay and allowances.

Currently, in 2022, PDFORRA and RACO hold temporary "associate membership" in ICTU without voting rights. Their only avenue to impact negotiations is by providing input to the PSC, which is now empowered to advocate on behalf of military staff during national pay talks. This situation indicates that the influence of military associations remains limited, albeit it has improved compared to the past.<sup>11</sup>

In Portugal, military staff has the right to form and join professional associations. However, their trade union rights are limited by law, as it prohibits trade union activities and denies them the right to engage in collective bargaining. Despite the provision for professional military associations to be heard, these associations are rarely consulted in practice. The 2001 Act recognizes the freedom of association but prohibits trade union activities and hinders full collective bargaining rights.

Although military professional associations have the right to be heard in theory, the reality is that they are seldom consulted by the Portuguese government. The government creates significant obstacles for these associations to submit comments on proposals effectively. As a result, EUROMIL has lodged complaint no. 199/2021, which is currently pending at the ECSR, due to the lack of meaningful dialogue or negotiation opportunities for Portuguese military staff. In essence, the affiliate characterizes the current situation as mere window-dressing by the Portuguese government.<sup>12</sup>

## 2.2. Police officers

Due to the absence of the right to unionize, police officers in Turkey are also deprived of the right to engage in collective bargaining.

While the Hungarian Constitution enshrines the right to collective bargaining, it is not possible for civil servants (including police officers and military staff) to enter into collective bargaining negotiations.

Irish police officers remain restricted from a full exercise of the right to collective bargaining. They have a limited possibility to bargain collectively because they are just associations and not real trade union. They do not have a status of “associated membership” of a trade union. Irish police officers do not have the right to strike which implies that the *ultimum remedium* cannot be used. Since 2016 the Irish associations have been invited on an *ad hoc* basis to negotiate with the Department of Justice. Before 2019 there was no legal foundation for this habit, but since the Irish police associations gained access to the industrial relations mechanism of the Industrial Relations Act, they have obtained a limited possibility to negotiate and the possibility to start a trial. There is also an internal conciliation procedure with the management of the Irish police based on a dispute resolution procedure since 2020. Even if the situation has only partially been resolved, the complaint of EuroCOP with regard to the legal status of the Irish police officers has led to some important reforms. The complaint<sup>13</sup> n° 83/2012 to the ECSR was considered to be well-founded on 16 January 2014. It initiated the reform which was described above.<sup>14</sup> The Irish affiliates confirmed during the final conference the big impact of this complaint on the Irish legislator.

A major concern for the future is the situation in Malta. Maltese legislation allows police trade unions to be consulted and even to sign binding collective agreements. However, since 2015, the number of collective agreements is very low. It took until 2018 for the first sectoral collective agreement to be signed concerning the reduction of working hours. The trade unions were forced to accept a significant diminution of vacation leave in order to reduce the working hours. The next collective agreement should be signed in 2023 but currently, the Maltese affiliate indicates that no real collective bargaining is taking place. Disputes, concerns, and proposals are very often ignored.<sup>15</sup> The change from the Maltese Police Association to the Maltese Police Union has brought more responsibilities but it has not broadened the impact of the trade unions of police officers in Malta. The Maltese affiliate confirmed during the regional conference the difficulties for the Maltese police officers.

### 3) The right to take collective action

Collective action rights for military personnel are frequently restricted in most of the researched countries. The regulations primarily emphasize the right to strike, with the concept of 'collective action' being largely unknown. Many Member States seem to overlook other potential avenues for collective action rights.

#### 3.1. Military staff

When it comes to members of the armed forces, the ECSR finds that the margin of appreciation for Member States is greater than that in respect of the police. Most of the Member States of the Council of Europe still prohibit members of the armed forces from striking.

In its decision on the collective complaint No. 112/2014, the Committee took into account the specific nature of tasks performed by armed forces members, the presence of a military discipline system, and the risk of potential disruptions to operations that could jeopardize national security.<sup>16</sup> Considering these factors, the Committee found justification for the imposition of an absolute prohibition on the right to strike. However, the ECSR did not accept an absolute prohibition on the right to strike for the *Guardia di Finanza* in the collective complaint No. 140/2016. In this case, the Committee concluded that minimum services are not organised in Italy in the event of a strike in the national defence and public safety sector, unlike in other public sectors, and that a lack of effectiveness of the collective bargaining regarding the *Guardia Di Finanza* existed.<sup>17</sup> With this decision the Committee stated clearly that, although the margin of appreciation is greater than that afforded to states in respect of the police, a general ban on the right to strike cannot simply be put into place.

This was an important step towards a right to take collective action, including a minimal right to strike for military staff. However, as mentioned, the report is not legally binding, which leads to the conclusion that many countries still maintain a total prohibition to strike: Albania, Belgium, Bulgaria (only for active military staff), Croatia (only active military staff), Cyprus, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Serbia, Slovenia (only for military staff), Spain and Turkey.

In the Netherlands, military staff are afforded certain rights to engage in collective action. Although strike law is not generally regulated in statutory law, there is specific legislation for military personnel. Military servants on active duty are not granted the right to strike. However, in principle, they do have the right to participate in other forms of collective action, with the exception that such participation should not likely disturb or disrupt the operational capacity of the armed forces.

In North Macedonia, the right to strike within the Armed Forces can only be exercised under conditions that do not endanger the combat readiness and the life and health of its members. In Denmark, trade unions have an agreement with the Ministry of Defence that military personnel will abstain from the right to strike. On the other hand, in Sweden, military staff has the right to strike, but they have

never exercised this right.

### **3.2. Police officers**

A strike ban for police officers still exists in the following researched countries: Albania, Bulgaria, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Spain and Turkey.

As mentioned before, the ECSR (within the Council of Europe) has stated multiple times that - regarding police officers - an absolute prohibition on the right to strike can be considered in conformity with Article 6 §4 RESC, but only if there are *compelling reasons* justifying it. An important illustration of this is the decision of the ECSR on the collective complaint no. 83/2012 (EuroCOP v. Ireland). The ECSR observed that the Irish government did not demonstrate the existence of a concrete pressing social need that could justify that the legitimate purpose of maintaining national security could not be achieved by establishing restrictions on the exercise of the right to strike rather than by imposing an absolute prohibition.<sup>18</sup> The situation still is not resolved. Affiliates indicate the only possibility of collective action is to "work to rule".<sup>19</sup>

Malta still does not recognise a right to take collective action for police officers and an absolute prohibition to take collective action of any kind is still in force. The affiliate indicates that there is no negotiation possible on this topic, nor is there any reaction to the request of the implementation of a minimum service. The absence obviously affects the possibility to enforce the existing legal right to negotiate.

It is important to emphasise that the European Court on Human Rights has accepted an absolute prohibition of the right to strike of the police in Spain in the case *ER.N.E. v. Spain* on the grounds that the specific nature of their activities justify a very large margin of appreciation.<sup>20</sup>

Many other countries have put specific restrictions to the right to take collective action for prison officers into place. This includes Croatia, North Macedonia, Slovenia, Belgium, and Montenegro.

## **4. Conclusions**

Fundamental rights, such as the right to form and join a trade union, the right to collective bargaining and the right to take collective actions are recognised at ILO-level, at the level of the Council of Europe (within the European Social Charter and the ECvHR) and at EU-level in the Articles 12, 27 and 28 of the EU Charter of Fundamental Rights.

However, these rights are not absolute. Each of the Conventions allows limitations to be set on the execution of these rights. Limitations within the legal framework are often set up but equally often they are not in conformity with existing international legal framework.

With regard to the right to form and join a trade union **for police officers**, the situation of police officers in Albania, Greece and Cyprus is inferior, since trade unions can be joined legally, but not in practice. For the other countries researched, it becomes clear that most of them actually respect the right to join and form a trade union. More specifically, the report of the European Social Committee has enlarged the possibility to form and join a trade union for police officers in Ireland. The impact of the Decision of 2 December 2013 on the collective complaint from EuroCOP may lead to an improvement of the foundation of the right to join and form a trade union for police officers.

The situation is the worst for **military staff** since many of the researched countries still do not recognise the right to join or form a trade union for military staff. The European Court of Human Rights however decided in 2014 that a total prohibition for military staff to join a trade union was in breach of Article 11 of the European Convention of Human Rights. This caselaw has a direct effect in all the countries studied.

Solutions can be found in directing a complaint before the European Committee of Social Rights within the Council of Europe. Even if this procedure does not grant a legally binding result, it may have an important influence. This has been done for **police officers** in Ireland with a certain degree of success. The situation in Ireland remains blurry as trade unions for police officers sometimes (on an *ad hoc* basis) have the possibility to negotiate with the Department of Justice.

**For military staff**, the situation remains difficult with regard to the right to collective bargaining as many countries do not grant such right, although it has been recognised by the ECHR, based on Article 11 ECvHR. In many countries, military staff still form associations which are not considered to be trade unions to consult or to negotiate with.

The debate gets more difficult when it concerns the right to take collective action, including the right to strike. **Military staff** do not enjoy the right to strike - although it is a fundamental right - and a total ban cannot be accepted according to the European Committee of Social Rights in the *CGIL vs. Italy* case. In North Macedonia armed forces can strike but only in conditions in which the combat readiness of the Armed Forces and the life and health of the members of the Armed Forces are not endangered. The Netherlands does not provide a right to strike for



armed forces, but they have the right to participate in other forms of collective action. Sweden is the only country which grants a full right to strike for their armed forces.

For **police officers**, many of the studied countries know a full prohibition of the right to strike. The European Committee on Social Rights and the European Court of Human Rights have indicated that a prohibition should be based on compelling grounds. Collective complaints could modify this situation.

## 5. Bibliography and sources

### Regulation

ILO-Conventions n° 87, 98 and 151 can be found on the following website:  
<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

The European Social Charter of 1996 can be found on  
<https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=163>

The EU Charter of Fundamental Rights can be found on  
<https://fra.europa.eu/en/eu-charter>

The European Convention of Human Rights can be found on <https://eur-lex.europa.eu/EN/legal-content/glossary/european-convention-on-human-rights-echr.html>

Information on the EU Social Dialogue can be found on  
<https://ec.europa.eu/social/main.jsp?langId=en&catId=329>.

### Case law

[ECHR, Schmidt and Dahlström vs. Sweden, 6 February 1976](#) [ECHR, Demir and Baykara vs. Turkey, 12 November 2008](#) [ECHR, Matelly vs. France, 2 October 2014](#)  
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### Some key articles

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## List of interviews – August-September 2022

Irish EUROMIL affiliate Gerard Guinan (23 August), Irish EUROMIL affiliate Derek Priestley (24 August), Hungarian EPSU affiliate Viktoria Szucs (31 August), Irish EuroCOP affiliate John Parker (31 August), Maltese EuroCOP affiliate Neville Mercieca (1 September), Irish EuroCOP affiliate Antoinette Cunningham (2 September), Portuguese EUROMIL affiliate Antonio Coelho (6 September) and Romanian EPSU affiliate Razvan Gae (15 September)

## Notes and references

<sup>1</sup> R. Delarue, “ILO-EU cooperation on employment and social affairs” in J. Wouters, F. Hoffmeiser and T. Ruys (eds.), *The United Nations and the European Union: An Ever Stronger Partnership*, The Hague, TMC Asser, 2006, 93-114.

<sup>2</sup> Exemption for military personnel and civil servants employed by the Ministry of Defence.

<sup>3</sup> Exemption for professional military personnel of the Serbian Army.

<sup>4</sup> ECtHR, *Mattelly vs. France*, 2 October 2014 and *Adefromil vs. France*, 2 October 2014 both at: [https://hudoc.echr.coe.int/fre#{%22tabview%22:\[%22document%22\],\[%22itemid%22:\[%22002-10230%22\]}](https://hudoc.echr.coe.int/fre#{%22tabview%22:[%22document%22],[%22itemid%22:[%22002-10230%22]}) .

<sup>5</sup> Queries arose to what extent the recognition of these fundamental rights did not exceed the powers of the Union, read on this topic: N. Coghlan and M. Steiert (eds), *The Charter of Fundamental Rights: the travaux préparatoires and selected documents: chapter 4*, Florence, EUI 2020, 38 available at <https://hdl.handle.net/1814/68959>.

<sup>6</sup> ECSR 12 September 2017, Decision on the merits, Collective complaint 112/2014, EUROMIL v. Ireland, §47.

<sup>7</sup> The ECSR already concluded in its conclusions XXI-3 (2019) that the Czech Republic was not in conformity with Article 5 RESC because of the prohibition for the Security and Intelligence Service to join a trade union and to form any type of association to protect their economic interests. The same prohibition exists for the civil national security services in Hungary (§333 (1) Act XLII of 2015 on the service relationship of the professional staff of law enforcement organisations).

<sup>8</sup> Interviews with Gerard Guinan and Derek Priestley, respectively on 23 August 2022 and 24 August 2022.

<sup>9</sup> Interview with Antoinette Cunningham on 2 September 2022.

<sup>10</sup> Interview with Neville Mercieca on 1 September 2022.

<sup>11</sup> Interview with Derek Priestley on 24 August 2022.

<sup>12</sup> Interview with Antonio Coelho on 6 September 2022.

<sup>13</sup> [https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset\\_publisher/5GEFkjmH2bYG/content/no-83-2012-european-confederation-of-police-eurocop-v-ireland](https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkjmH2bYG/content/no-83-2012-european-confederation-of-police-eurocop-v-ireland).

<sup>14</sup> Interview with John Parker on 31 August 2022.

<sup>15</sup> Interview with Neville Mercieca on 1 September 2022.

<sup>16</sup> EUROMIL v. Ireland, Complaint No. 112/2014, §115-118.

<sup>17</sup> ECSR 22<sup>nd</sup> January 2019, decision on the merits, Complaint no. 140/2016, CGIL v. Italy, §152.

<sup>18</sup> ECSR 2<sup>nd</sup> December 2013, decision on the merits, collective complaint no. 83/2012, EuroCOP v. Ireland, §209.

<sup>19</sup> Interview with John Parker on 31 August 2022.

<sup>20</sup> ECHR 21<sup>st</sup> April 2015, no. 45892/09, ER.N.E. v. Spain, §39-43.