



**AN BILLE CAIDRIMH THIONSCAIL (COMHALTAÍ AN
GHARDA SÍOCHÁNA AGUS ÓGLAIGH NA hÉIREANN),
2015**

**INDUSTRIAL RELATIONS (MEMBERS OF THE GARDA
SÍOCHÁNA AND THE DEFENCE FORCES) BILL 2015**

EXPLANATORY MEMORANDUM

Introduction

On 2 December, 2013, the European Committee of Social Rights adopted a decision that Ireland was in breach of its international obligations under the **European Social Charter**, a Council of Europe treaty which guarantees social and economic human rights, following a complaint lodged on 7 June 2012 by the European Confederation of Police (EuroCOP) against Ireland.

The Committee concluded:

- by 10 votes to 1 that there is no breach of Article 5 of the Charter on grounds of the prohibition against the police from establishing trade unions;
- unanimously, that there is a violation of Article 5 of the Charter on the grounds of the prohibition against police representative associations from joining national employees' organisations;
- unanimously, that there is a violation of Article 6§2 of the Charter on grounds of restricted access of police representative associations into pay agreement discussions;
- by 6 votes to 5, that there is a violation of Article 6§4 of the Charter on grounds of the prohibition against the right to strike of members of the police.

In its Resolution CM/ResChS(2014)12, *European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012*, adopted by the Committee of Ministers on 8 October 2014 the Committee noted a commitment by the Irish government to a review of the national situation in law and in practice in the light of the decision of the European Committee of Social Rights.

This Bill seeks to introduce the necessary amendments to primary legislation to bring it into compliance with the Social Charter, as interpreted by the European Committee of Social Rights. There is no change to the prohibition of members of the Garda Síochána from joining trade unions as the European Committee of Social Rights has specifically found that is not required by the Social Charter.

A representative association of members of the Defence Forces has pledged to complain to the European Committee of Social

Rights in order to be permitted to join the Irish Congress of Trade Unions and to fully participate in collective bargaining but has stated that it will not be seeking the right to strike for its members.

The Parliamentary Assembly of the Council of Europe has recalled in its Recommendation 1572 (2002) and Resolution 903 (1988) the right to association for members of the professional staff of the armed forces and called on all member states of the Council of Europe to grant professional members of the armed forces, under normal circumstances, the right to association, but with a prohibition of the right to strike. Therefore, no change is proposed to the prohibition of the right to strike by members of the Defence Forces.

In 2013, the Minister for Justice and Equality stated that there was nothing in the Garda Code, the Discipline Regulations or the Personal Insolvency Act 2012 which would prevent gardaí from availing of the service. Nevertheless, Garda representative bodies have expressed concern that the wording of the Breach of Discipline provisions could operate so as to exclude members of the Gardaí Síochána.

Schedule 5 of section 82 of the Garda Síochána Act 2005, which concerns breaches of discipline, and includes in the definition as Corrupt or improper practice: “failing wilfully and without good and sufficient cause to pay any lawful debt in such circumstances as to be liable to affect his or her ability to discharge the duty of a member or as to be liable to compromise other members“.

Section 2

Associations established under section 18 of the Garda Síochána Act 2005, section 13 of the Garda Síochána Act 1924 or section 2 of the Defence (Amendment) Act, 1990, i.e the GRA, AGSI and Pdorra, are exempted from the requirement to obtain a negotiation licence to carry on negotiations for the fixing of wages or other conditions of employment.

Section 3

The Garda Síochána Act, 2005 is amended to allow Garda representative bodies to join or associate with a national umbrella organisation of employees, such as the Irish Congress of Trade Unions).

Section 4

The Defence (Amendment) Act, 1990 is amended to allow defence forces' representative bodies to join or associate with a national umbrella organisation of employees, such as the Irish Congress of Trade Unions).

Section 5

The Industrial Relations Act, 1990 is amended to allow members of the Garda Síochána to strike.

Section 6

The amendment clarifies that actions by members of the Garda Síochána while on duty shall not be considered assistance to an employer who is a party to the trade dispute for the purpose of frustrating the strike or other industrial action for the purposes of Section 11 of the Industrial Relations Act, 1990.

Section 7

For the purposes of the Section, insolvency arrangement is assigned the same meaning as in the Personal Insolvency Act 2012.

Clarity is provided that there is nothing in the Garda Síochána Act which would prevent members of Garda Síochána from applying for, or availing of, an insolvency arrangement.

Financial Implications

The proposed amendments in the Bill will incur no additional costs for the Exchequer.

*Michael McNamara T.D.,
Feabhra, 2015.*