



1 September 2006

Case document No. 1

**Frente Comum de Sindicatos da Administração Pública
v. Portugal**
Collective complaint n° 36/2006

COMPLAINT

registered at the Secretariat on 3 July 2006

Frente Comum de Sindicatos da Administração Pública
(Association of General Government Employees Trade Unions)

Ref. FC/131/2006

Date: 26.06.2006

Secretary General of the Council of Europe
67075 Strasbourg
France

Re.: Withholding by the Portuguese Government of the right of collective bargaining from the *Frente Comum de Sindicatos da Administração Pública*, a member of the General Confederation of Portuguese Workers, FCSAP/CGTP-IN, and refusal of participation by the corresponding workers.

The ***Frente Comum de Sindicatos da Administração Pública (FCSAP/CGTP-IN)***, which comprises 32 trade unions representing over 250 000 trade union members, making it the largest organisation representing general government employees in Portugal, in view of the Government's blunt refusal to continue negotiations on issues covered by the General Government Employees' Statute – despite its ratification of the Revised European Social Charter (under Presidential Decree No. 54-A/2001 of 17.10.2001) and of Convention No. 151 (following on from Convention No. 98) concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, as approved under Law No. 17/80 of 15.7.1980 –**hereby submits a complaint against the Portuguese Government** on the following grounds:

I

1.

In approving and ratifying the Revised European Social Charter the Portuguese State undertook to pursue the policy objective of creating proper conditions for guaranteeing the workers' right to the effective exercise of collective bargaining and "*to take part in the determination and improvement of ... working conditions*", under the terms of paragraphs 6) and 22) of Part I and Articles 21 (b) and 22 of Part II of the Revised Charter.

2.

These rights and principles must not be "subject to any restrictions or limitations", except as stipulated in Article G of Part V.

3.

Furthermore, Article 7 of ILO Convention No. 151 requires the Portuguese Government to "*promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations*".

4.

Moreover, Article 8 of the same Convention stipulates that the Government must seek “*the settlement of disputes arising in connection with the determination of terms and conditions of employment ... through negotiation between the parties or through independent and impartial machinery such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved*” (our emphasis).

5.

Furthermore, it is an indisputable fact that collective bargaining between trade union associations and the government on issues arising out of the General Government Employees' Statute and the monitoring of its implementation is a fundamental right of such employees, as secured under Articles 12, 13, 17, 18, 19, 55, 56 and 266 ff of the Constitution of the Portuguese Republic, as well as under Articles 1 and 5 of Law No. 23/98 (Regulations on collective bargaining and the participation of general government employees) of 26.05.1998.

The facts are as follows:

6.

The FCSAP/CGTP-IN received three documents for negotiation, the first two arriving in its offices on 1 June and the last on 2 June, relating to the following subjects: (1) Government department reorganisation and staff rationalisation procedures; (2) Common regulations on interdepartmental mobility; and (3) Special measures relating to the civil service system. The documents were accompanied by an invitation from the Government (*Ministro de Estado*, Minister for Finance) to the first negotiation meeting on Friday 2 June.

7.

At this first meeting the FCSAP/CGTP-IN pointed out that it had had insufficient time to analyse the documents and that a negotiating timetable would have to be worked out, in accordance with Article 7 of the Convention and Article 7 of Law No. 23/98; however, the Government, which was represented by the Minister for Finance (who only attended this meeting), the State Secretary for the Budget and the State Secretary for Public Administration, refused to reply, and unilaterally scheduled another meeting for 8 June.

8.

The FCSAP/CGTP-IN was able to present an initial analysis of the documents in question at this latter meeting, accompanied by a succinct argumentation, and pointed out that it would table a written opinion on the whole subject at the subsequent meeting, accompanied by a negotiating timetable that would properly facilitate the exercise of the employees' right of negotiation and effective participation, given that the measures proposed would drastically affect their working, family and social lives.

9.

The Government unilaterally scheduled a fresh meeting for 12 June.

10.

At this meeting, before broaching the analysis of our proposals on the second document (on mobility), the Government peremptorily declared that there was no time to proceed with the analysis and presented the trade unions with an incredible proposal, without circulating the written document containing it: the Government was prepared to hold three more meeting by the end of June if the unions agreed to waive the additional bargaining period provided for in Article 9 of Law No. 23/98.

11.

Responsible trade unions obviously cannot waive a right which has been established for cases of disagreement, especially where the Government's proposals and practice would, precisely, indicate that agreement will be difficult to achieve.

12.

Faced with this obvious response, the Government attempted to blackmail the unions by stating that if they refused to waive the right to additional bargaining time the Government would break off negotiations altogether.

13.

The trade unions maintained their position, submitted a negotiating timetable extending up to the beginning of the annual general negotiation (which, in pursuance of Article 7 (1) of Law No. 13/98, *must begin on 1 September*) and demanded the right to continue to participate in the negotiations in accordance with the law (and in compliance with the European Social Charter and ILO Convention No. 151). The Government rejected this proposal and maintained its untenable and unlawful position.

14.

At the same time, as the Government had already affirmed that it had taken a year to draw up this documents, it was now in the incongruous position of having to ask the trade unions to analyse them, discuss them with the employees and engage in negotiations, all within thirty days.

15.

The Government maintained its high-handed and intransigent position and closed the meeting, though not before the *Frente Comum de Sindicatos da Administração Pública* had made clear that in objective terms the negotiation period was not finished, and that it considered the collective bargaining on the matter as continuing, stating forcefully that it wished to carry on negotiating; it also submitted the written document mentioned in paragraphs 8 and 10 comprising the proposed timetable for negotiations; see Appendix 1.

16.

It should be noted that the Government continued to negotiate with two other trade union organisations involved in this procedure, which removes any remaining doubts about the fact that the negotiations were not over and that the Government had acted illegally and infringed both the Revised European Social Charter and the aforementioned ILO Convention.

II

17.

Above and beyond the ethical and political problems raised by the Government's attempted blackmail and its position on this matter, three further questions remain unanswered:

a. Firstly, the fact that the negotiation procedure was not completed – any process of negotiations between the Government and any of its negotiating “partners” cannot end until negotiations have been held with all these partners (especially as no agreement had been reached with some of them); furthermore, the Government itself broke off the 12 June meeting just as a specific document which had never been examined was about to be discussed.

Therefore, the Government blatantly refused and violated the right of FCASP/CGTP-IN to engage in collective bargaining as enshrined in the provisions of the Revised European Social Charter quoted in paragraphs 1 and 2 of this complaint, as well as in Articles 7 and 8 of ILO Convention No. 151, the Constitution of the Portuguese Republic and the above-mentioned Law No. 23/98 of 26.5.1998;

b. Secondly, the fact that the Government committed an intolerable act of discrimination against a trade union, thus violating the constitutional principle of freedom to organise and non-discrimination for union membership and also infringing Article E, Part V of the Charter and, most manifestly, Articles 1 and 4 (2b) of the Convention; in fact, the Government cannot fail to infringe these provisions if it selects which trade unions it wishes to negotiate with, or decides to negotiate only with unions that accept its proposals (whether or not the latter amount to blackmail);

c. Thirdly, the fact that the government has acted with manifest and unmistakeable ill-will.

18.

The Government sent FCAP/CGTP-IN a letter (see Appendix 2) brazenly confirming that it refused the *Frente Comum de Sindicatos da Administração Pública* the right to collective bargaining *de facto*.

We must therefore ask the Council of Europe to find against the Portuguese Government in order to ensure its compliance with the rights and principles set out in the Revised European Social Charter, ILO Convention No. 151 and Portuguese national legislation, which the said Government has most blatantly violated, and also to ensure the enforcement of the right to collective bargaining appertaining to the *Frente Comum de Sindicatos da Administração Pública/CGTP-IN*.

Appendices: two documents (6 pages)

(awaiting approval)

The co-ordinator

(signature)