

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



15 March 2007

**Case document No.1**

**European Council of Police Trade Unions (CESP)  
v. Portugal**  
Complaint No.40/2007

## **COMPLAINT**

Registered at the Secretariat on 7 February 2007



**Object: Complaint lodged by the European Council of Police Trade Unions against Portugal for the wrong application of the articles 6 paragraphs 1 and 2, 21 and 22 of the Part II of the revised European Social Charter.**

The CESP, at the request of its permanent member, the Associação Sindical dos Profissionais da Polícia – ASPP/PSP, is to present charge against the Portuguese State, due to the Violation of the right to the collective negotiation and the right to participate, destined to be appreciated by the European Committee of the Social Rights.

## **I. Admissibility**

### **1. Applicability in Portugal of the revised European Social Charter and of the Protocol of 1995 to the European Social Charter providing for a system of collective complaints.**

Portugal signed the European Social Charter of 1961 on June 1st, 1982 and deposited its instruments of ratification on September 30, 1991; the Charter came into force in Portugal on October 30, 1991. Portugal signed the additional protocol of 1995 to the European Social Charter providing for a system of collective complaints on November 9, 1995 and ratified it on March 20, 1998. This protocol came into force on July 1st, 1998. Portugal signed the revised European Social Charter on May 3, 1996 and ratified it on May 30, 2002.

### **2. Applicability in Portugal of the articles 6 paragraphs 1 and 2, 21 and 22 of the Part II of the revised European Social Charter.**

Upon the terms of the declarations contained in the instrument of ratification of the revised European social Charter of 1996 introduced by Portugal on May 30, 2002, this last one considers itself bound to the articles of the Part II of the revised European Social Charter.

### **3. Respect by the European Council of Police Trade Unions of the criteria of the additional protocol**

#### **3.1 Respect of the article 1(b) of the additional Protocol of 1995**

The European Council of Police Trade Unions<sup>1</sup> is a international non-governmental organization granted with the participatory status with the Council of Europe. It is a member of the joint committee of the INGO. It is registered on the list established by the governmental Committee of the international non-governmental organizations entitled to introduce collective complaints<sup>2</sup>.

#### **3.2 Respect of the article 3 of the additional Protocol of 1995**

The activities of the C.E.S.P. confer it the necessary expertise to the facts that it denounces.

Thus, the statutes<sup>3</sup> of the C.E.S.P. specify in the article 8.

The goals of the C.E.S.P. are:

1. To group police officers of member states into its organization
2. To fight for the full exercise of trade-union rights and against any unjustified limitation of European police officer's fundamental and statutory rights, by strongly opposing to any limitation of these rights
3. To intervene to improve and harmonize the remuneration as well as the working and living conditions of European police officers
4. To defend the moral and material interests of its members and member-organizations before the competent European courts and organizations.

The C.E.S.P. is given itself also for mandate to set in motion all other licit action that will be able to be beneficial in the C.E.S.P. or to its members.

The C.E.S.P. demand to the Governments of its 16 members countries to set in motion the procedures of signature, ratification and application of the revised Social Charter and of its additional protocol.

As such, ***it asks that all European policemen are not victims of discrimination concerning social and human rights.*** (Executive Committee of Lille (France) - November 1998)<sup>4</sup>

The C.E.S.P. participate actively to the works of the INGO of the Council of Europe and is qualified in the domains of action concerning the social Rights and the European Social Charter. It is the instigator of the collective Complaint n° 11/2001.

The C.E.S.P. is also a member of the INGO groupings of: Human Rights, Extreme Poverty and Social Cohesion - Civil society in the new Europe.

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<sup>1</sup> Named C.E.S.P. hereafter

<sup>2</sup> Letter of May 15, 2006 addressed to the President of the European Council of Police Trade Unions by Mr. Régis BRILLAT, Executive Secretary DG II, Secretariat of the European Social Charter (annexed to the complaint)

<sup>3</sup> Statutes of the CESP (annexed to the complaint)

<sup>4</sup> Final resolution (annexed to the complaint)

#### **4. Respect of the article 1 of the rules of procedure relative to the system of the collective complaints**

The article 25 of the Statutes of the C.E.S.P. stipulates that the President is the legal representative of the European Council of Police Trade Unions. As such, he represents the C.E.S.P. before any European or national, public or private institutions and authorities.

## **II. Legislation and measures relative to the Right of collective negotiation, to information, to the determination and the improvement of the working conditions adopted by Portugal.**

As it has already been mentioned, Portugal is bound by the articles 6, 21 and 22 of the revised European social Charter and according to the effective exercise of the rights and principles according to whom: "All workers and employers have the right to negotiate collectively "and" The workers have the right to take part in the determination and in the improvement of the working conditions... "; "The workers have the right to information and to the consultation within the company"; "The workers have the right to take part in the determination and in the improvement of the working conditions and working place within the company".

## **III. Practical situation of the police officers of the Public Security with regard to the Portuguese legislation and the revised European Social Charter.**

**-1-**

Presentation of the Associação Sindical dos Profissionais da Polícia – ASPP/PSP<sup>5</sup> : it's a professional organization formed by the personnel with police functions in the Polícia de Segurança Pública.

**-2-**

The ASPP/PSP has its legal settlements on the Law nr 14/2002 – 19th February<sup>6</sup>, which, in Portugal, regulates the exercise of the union freedom and the rights to collective negotiation and participation by the personnel of the Polícia de Segurança Pública (PSP).

**-3-**

The Law nr 14/2002 is to be considered special, due to the Act nr 215-B/75 of 30th April<sup>7</sup>, related with the union freedom of all the workers and the Union Law of Public Administration, as seen on the Act nr 84/99 of march 19th<sup>8</sup>.

**-4-**

The special camp of the Law 14/2002 it is explained by the circumstance of the unionism right that was then, by the first time in Portugal, involving a specific regime.

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<sup>5</sup> ASPP/PSP statutes (annexed to the complaint)

<sup>6</sup> Law nr 14/2002 – 19<sup>th</sup> February (annexed to the complaint)

<sup>7</sup> Act nr 215-B/75 of 30<sup>th</sup> April (annexed to the complaint)

<sup>8</sup> Act nr 84/99 of March 19<sup>th</sup> (annexed to the complaint)

-5-

This very specific circumstance is reported, essentially and considering the parts that is due to be considered, as in matter of restriction of the right to be on strike – article 30th d) of the Law nr 14/2002, as the form of registration of those associations – articles 43rd and 45th of the same Law.

-6-

The Law nr 14/2002 previews, though indicating clearly the items that can be discussed, that the collective negotiation should be considered – article 35th of the Law.

-7-

The Law only makes exception to the matters referred in its 40th article – so being the PSP's structure, attributes and competency.

-8-

This peculiar aspect of the ASPP/PSP its constitution and activity, different and non-comparable to the other union structures, signifies that its differences be considered on the regime of collective negotiation and participation.

-9-

The Minister of the Internal Affairs has been refusing, systematically, to negotiate with ASPP/PSP the subjects related to the settlement or changes of the wages structure; of the regime of the wages supplements; of the instalment of the social action and specific social action; of the careers and the working time table, according to article 35 from Law 14/2002.

-10-

This refuse occurs systematically, despite the constant requests sent to the Minister of the Internal Affairs asking for audiences, and the presentation of memorandum and claiming agendas<sup>9</sup>, always presented with specific mention of the items to be considered.

-11-

The same way, the right to participation of ASPP/PSP has been simply ignored, despite paragraph written in the article 38th of Law 14/2002.

-12-

Fundamentally, it is about the right of this union to participate always that are taken measures related to hygiene, safety and health in work (paragraphs a); on the administration, with a consulting role, of social safety institutions of the PSP professionals (paragraph b); in the changes verified in the law regime of retirement (paragraph c); in the definition of the principles policy of the professional formation of PSP (paragraph d); in the control of the implementation of the socio-economical plans (paragraph e); in the issues related with the improvement of the public services (paragraph f); in the elaboration of the requests of law-making on subjects that must be negotiated or participated (paragraph h); in the definition of the regime of working injuries and professional diseases (paragraph i); and in the right to present an analysis when it is being elaborated legislation about the PSP regime that it's not object of negotiation (paragraph j).

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<sup>9</sup> various claiming agendas presented during the years (annexed to the complaint)

**-13-**

The ASPP/PSP recognizes the expenses control that is being made by the Portuguese State, aiming to solve an alleged situation of economic difficulty,

**-14-**

Although, this difficulty has not been impeditive for the Government to negotiate collectively with various other socio-professional and unions structures about diverse aspects, as the wages: i.e. public function and private sector.

**-15-**

So, the Government had the responsibility to negotiate collectively with ASPP/PSP, as is demanded by the Article 35th of the Law nr 14/2002, about the items there considered,

**-16-**

Which are the related with the remuneration, the social action, the remuneration structure and the working timetable, the hygiene, safety and health conditions, the professional improvement, as petitioned at the claiming agenda, even if there was no agreement.

**-17-**

The Minister of the Internal Affairs has even legislate about issues of remuneration, social service and working timetable – issues, as it was said, should be negotiated collectively, as it is comprehended in the Article 35th<sup>10</sup> paragraphs a), b), c), and f )of the Law 14/2002, without ever negotiate, dialogue or even inform ASPP/PSP that he was to legislate about this matter.

**-18-**

Although, and besides de Act nr 511/99<sup>11</sup>, of the November 24th, stipulates, on its Article 69th, nr 2, that the timetable of the police professionals has to be defined through a dispatch from the Minister of the Internal Affairs, it has yet been defined.

**-19-**

This is the common proceeding of the Portuguese Government

**-20-**

The Portuguese Parliament, due to the resolution nr 64-1/2001, approved to ratification the European Social Letter Reviewed, signed by the Portuguese Republic on May 3rd 1996.

**-21-**

On which Part II, the 6th Article gives the right to collective negotiation; the 21st Article, the right to information and consult, which embraces the regular information, as well as the right to be consulted about the decision to be taken that may affect the interests of the workers, and the 22nd article, the right to take part in the determination and improvement of the working conditions and the working places.

**-22-**

The rights above cited, which are explicitly recognized in the Articles 35th and 38th of the Law 14/2002 are precisely the ones that the Ministry of the Internal Affairs does not respect and, as a consequence, violates.

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<sup>10</sup> Article 35<sup>th</sup> (annexed to the complaint)

<sup>11</sup> Act nr 511/99 (annexed to the complaint)

A member state of the European Union has the obligation to accomplish not only its national law, but also the international law it ratified, as it's said on the 8th Article of the Portuguese Constitution – on which it's included the European Social Letter.

**The CESP apply to this committee that, in name of the protection of rights, freedoms and guarantees consecrated on the Articles 6th, 21st and 22nd of the European Social Charter, and expressed on the Articles 35th and 38th of the Portuguese Law nr 14/2002:**

- **To be issued a conviction to the Portuguese State for the violation of the rights of collective negotiation and participation, which are consecrated by the legal instruments above cited.**
- **To be issued a clear declaration to make this rights being accomplished.**
- **To be issued a declaration that demand the adequate democratic practise to be taken in the shorter time possible.**



Branko PRAH

Président du CESP



# APPENDIXES

- (1) - Letter of May 15, 2006 addressed to the President of the European Council of Police Trade Unions by Mr. Régis BRILLAT, Executive Secretary DG II, Secretariat of the European Social Charter
- (2) - Statutes of the C.E.S.P.
- (3) - Final resolution
- (4) - ASPP/PSP statutes
- (5) - Law nr 14/2002 – 19th February
- (6) - Act nr 215-B/75 of 30th April
- (7) - Act nr 84/99 of March 19th
- (8) - Various claiming agendas presented during the years
- (9) - Article 35th
- (10)- Act nr 511/99