

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



14 September 2007

Case document No. 2

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

**OBSERVATIONS FROM THE EUROPEAN TRADE
UNION CONFEDERATION (ETUC)**

Registered at the Secretariat on 13 September 2007



European Social Charter

Collective Complaint No. 40/2007
by the
European Council of Police Trade Unions (CESP)
against
Portugal

Observations
by the
European Trade Union Confederation
(ETUC)

13 September 2007

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Before submitting its observations, the ETUC would like to express its appreciation to the government of Portugal, for not only ratifying the Revised European Social Charter (hereinafter: RESC) but also the Additional Protocol providing for a system of collective complaints (hereinafter: Additional Protocol). In this way, the Government contributes to re-enforce the Charter and the fundamental social rights in general as well as their specific effectiveness by taking active part in the system of supervision provided for in the Additional Protocol in particular.

Introduction

In this complaint, relating to respectively article 6 §§1 and 2 (the right to bargain collectively), article 21 (the right to information and consultation) and article 22 (the right to take part in the determination and improvement of the working conditions and working environment) of the RESC, the complaint CESP alleges that in Portugal police officers do not enjoy, in practice, the right to bargain collectively, to information and consultation and to take part in the determination and improvement of the working conditions and working environment.

The European Committee of Social Rights (hereinafter: ECSR) declared the complaint admissible on 21 May 2007. The European Trade Union Confederation (hereinafter: ETUC) was asked to submit observations in accordance with article 7 §2 of the Additional Protocol by the 14th of September 2007.

To note is that the observations of the ETUC figuring below are elaborated in cooperation and consultation with its affiliated organisation EUROCOP¹ EUROCOP on its turn, in order to collect relevant comments in relation to this collective complaint, organised a meeting on 25 July 2007 in Lisbon at which the following Portuguese trade unions participated:

Specific Police trade unions:

SINAPOL – *Sindicato Nacional da Polícia*
SPP – *Sindicato dos Profissionais da Polícia*
ASG – *Associação Independente de agentes de Polícia*
SICCP/PSP – *Sindicato Independente da Carreira de Chefes*²

General trade unions confederations:

USI – *União de Sindicatos Independentes*
UGT – *União Geral de trabalhadores* (affiliated to the ETUC)

¹ EUROCOP is affiliated to the ETUC as a so-called European Industry Federation (see www.etuc.org – see section “about us” – “our members”) and also enjoys as INGO participatory status with the Council of Europe and is figuring on the list of INGO’s entitled to file a collective complaint – see:

http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/organisations_entitled/OING_List_en.pdf). For more information on EUROCOP, see: <http://www.eurocop-police.org/>

² To note is that all these unions are legally constituted trade unions which comply with the formalities imposed by the Portuguese Constitution, the Working Code (which regulates the constitution of Trade Unions and Associations in Portugal), and the PSP Trade Union Law.

The remarks are also supported by CGTP-IN (*Confederação geral de Trabalhadores Portugueses* – and also affiliated to the ETUC), which could unfortunately not participate in the meeting.

These ETUC observations are to a very large extent built upon the observations and information collected by them at that meeting of July 2007.

As to national law:

The ETUC and all the abovementioned organisations would first of all like to recall the ECSR of the main principles set in particular by Law 14/2002 of 19 February 2002.

Article 1 states that this law, and no other law, governs trade union activity in the PSP (*Polícia de Segurança Pública* – Public Security Police) and, consequently, the activity of the elected legal representatives of PSP professionals.

Article 2 describes the “*fundamental rights*” recognized as being held by PSP trade unions and union members. Particular attention is drawn to 6 3, which, in short, states that the other rights are also enshrined in the constitution.

Article 3 contains the “*Restrictions on the exercising of trade union freedom*”. It needs to be emphasised that these are the **only restrictions foreseen**, i.e. no others exist or are established by law.

Article 4 describes the “*Guarantees*” held by PSP staff with regards to trade union activity, and thereby establishes legal protection against attacks carried out by third parties on those carrying out union activity.

Article 31 describes the “*Legitimacy*” recognized as being held by legally constituted trade unions and which enables them to participate and intervene in matters of collective participation.

In article 32 are laid down the “*Principles*” which govern collective negotiations, in particular the “principle of good faith” and also, of as much importance the right to request information and to report.

The “*Right to collective negotiation and the negotiation procedures*” are provided for and regulated in article 34.

Article 35 on the other hand enlists the matters which are/can be the “*Subject of collective negotiation*.”

Finally, article 38 foresees in and describes the “*Right of participation*” held by trade union associations.

As importantly to note is that NO article of this law refers to and provides for punitive measures to be applied to those who do not comply with this Law.

Apart from this Law, other legal texts are of relevance as well and copies of these texts (or its relevant parts) can be submitted to the ECSR if found appropriate and necessary. It concerns in particular:

- The Constitution of the Portuguese Republic – 6th - 2004
- PSP Disciplinary Regulation – Law 7/90 of 20 February 1990
- PSP Organic Law – Law 5/99 of 27 January 1999
- Working Code – Law 99/2003 of 27 August 2003

As to the practice:

The abovementioned organisations submitted the following information indicating that despite the legal framework might be available, practice is turning out otherwise. Indeed, this complaint is already the second complaint against Portugal on this matter. Indeed, in a first one, i.e. Collective Complaint n°11/2000), the ECSR concluded that the provisions laid down in Act 14/2002 concur with Art. 5 and 6 of the Social Charter. Given the current and persisting situation in Portugal on this matter, the complaint – but in this regard supported by the abovementioned organisations, considered it all the more to focus on the current and as said persisting practice rather than on the pure legal situation. So, the abovementioned organisations in support of the complaint submitted by the CESP, would like to highlight the following.

Despite what is stated in the article 1, the National Leadership of the PSP and the Government aberrantly use another law, known as the PSP Disciplinary Regulation, through which they use disciplinary procedures to govern union activity and enforce silence on union members and even blackmail them by stating that if they adopt positions which are contrary to those of the National Leadership or Government, disciplinary measures and actions are taken and which only end when union members conform to the directives of the controlling body.

Article 2 of the Law 14/2002, which directly builds on the Constitution of the Portuguese Republic, establishes and reinforces through its articles 55 and 56 the legal protection which elected workers' representatives possess in the performance of their union duties, and ensures that while these duties are being carried out they can not be hindered professionally in the exercising of union activity. Nevertheless, this fact does not prevent the National Leadership of the PSP and the Government from imposing penalties resulting from convictions in disciplinary processes established in response to union activity, and which thus equates to the professional hindering of union members.

Despite what is stated in article 3 of the same law, and although trade union members/officials have never violated the restrictions contained in it, members are continuously subjected to disciplinary processes as a result

of the simple fact of their exercising and fulfilling their union duties in accordance with what is ethically required of them. This often requires action to be taken against the PSP and the Government, which, in a democratic country, would be respected as an integral part of union activity, but which in Portugal is evidently not. For these disciplinary actions, the Government and the Police Leadership use over and over again the Disciplinary Regulation.

Important to note hereby is that the PSP Disciplinary Regulation is a Law dating from 1990 and was created in a period in which the government at that time made every effort to prevent associative and union movements within the PSP with all the legal measures at its disposal. Only in 2002, a new Law, the PSP Trade Union Law, was created for the PSP.

It is in the mean time however a well recognised legal principle in Portuguese law, that according to the hierarchy of Portuguese laws, whenever an older law in any way contradicts a more recent law, it is the more recent law which takes precedence, thereby opposing and annulling the contradictions which might be contained in the older law. Nevertheless, PSP union members are still hindered in their actions and denied crucial trade union rights via actions by police leadership and government based on this Disciplinary Regulation!

Despite what is stated in article 4 of that law, and which details the legal protection afforded to union members in exercising their trade union duties, union members are continually being hindered in the trade union activity which they carry out. Several cases can be reported whereby trade union leaders and delegates have been transferred from their workplaces without a hearing being granted to either them or the unions. The PSP leadership thereby almost each time (abusively) invokes in actions against such members the argument of “Public Interest”. It does however not fall within the competences of the PSP to invoke this argument, only the Government can do so. Nevertheless the PSP continues to apply this argument and decides in actions against trade union members on the basis of reasons of “public interest”.

Despite what is stated on “principles” in article 32, several cases can be reported whereby it is clear that the principle of “good faith” apparently only exists and is applied on the trade union side but not on the side of the Police Leadership or the Government.

Despite the fact that article 34 guarantees the right to collective negotiation and provides for negotiations procedures, this right has consequently been denied. Moreover, and despite the matters for negotiation listed in article 35, the following matters have never been negotiated with the unions:

- The structure of the pay and index scale;
- The system of pay supplements;
- The social action contributions and specific complementary social action contributions;
- The principles governing the creation, modification and termination of employment;
- Careers, including respective salary scales;
- Working hours and timetables;
- Holidays, absences and leave;
- Hygiene, health and safety conditions at work;
- Professional training and development;
- The principles of the disciplinary statute;
- The principles relating to mobility;
- The principles governing the recruitment and selection process;
- The service classification process.

On these matters there has never been a clear willingness to negotiate on either by the Government or, and above all, the Police Leadership. However, this fact has not impeded the Government to unilaterally impose changes. This has always been to the detriment of police professionals!

Despite what is stated in article 38, authorization has never existed or been granted to trade unions to take action regarding:

- The inspection and implementation of measures relating to hygiene, health and safety conditions at work;
- The consultative management of social security institutions for public sector workers and other organizations which aim to satisfy the interests of PSP staff, namely, the social services;
- Changes made to the legal process regarding retirement. In this case, when the retirement process was changed in 2005, the Government asked in a written request that the trade unions would submit their position in a written format, which they. However, at the time of this written request of the Government, the Decree-Law which changed the retirement process had already been approved by the Cabinet.
- The definition of principles regarding the professional training and development policy of the PSP. This led to the situation that the trade union SINAPOL itself has created a body, the Police Techniques Centre, which is dedicated to precisely this area.
- Control over the execution of socio-economic plans;
- Control over improvements in the quality of public services;
- The management audits carried out on public services;
- The drawing up of legislative authorization requests regarding matters subject to negotiation or participation;
- The defining of the service accidents and professional illnesses process;
- The right to present consultative opinion regarding the drawing up of legislation pertaining to PSP areas which are not subject to negotiation.

Important to note is thus that, with respect to paras 8 and 9 of section III of the complaint by CESP, it should be added that the government is not only refusing to negotiate matters referred to in Art 35 and 38 of Act Nr.14/2002 with ASPP, but with all police unions in Portugal that fulfil the criteria established by law!

As mentioned above already, **NO article of the Law 14/2002 refers to and provides for punitive measures to be applied to those who do not comply with this Law.** It is indeed important to make the ECSR aware, in addition to the information submitted by CESP in its complaint, that Police Trade Unions in Portugal indeed have no legal remedies if the consultation rights established by Act Nr.14/2002 are violated. The PSP also lacks detailed secondary regulations on the exercise of these rights. In the absence of a structural framework for negotiations such as joint committees that meet regularly to discuss matters, it is thus all the more easier for the police leadership as well as government representatives to evade consultation.

As a consequence of all this, a social dialogue in the police in Portugal is not taking place currently, contrary to the detailed stipulations laid down especially in Law Nr.14/2002.

So, despite there thus being an appropriate legal framework but given what is happening in practice, the ETUC and the abovementioned trade union organisations wonder in particular about the following:

- For what purpose does the Constitution afford legal protection to union members when it is clear that, where trade unionism in the PSP is concerned, this protection is never applied?
- What is the purpose of a Trade Union Law for unionism in the PSP, albeit with restrictions which have always been observed by the trade unions, when this seems to a mere a legal façade and when the crucial articles and principles regarding the rights of union members and police professionals have not been and are not legally applied by to the current Police Leadership and Government?
- For what purpose is there a Working Code which also governs trade union actions in areas in which the PSP Trade Union Law does not cover, but is also not (properly) applied?
- How is it that the PSP Disciplinary Regulation, a Law dating from 1990, created 12 years before trade unions existed in a period in which the government of the time was fighting to prevent associative and union movements within the PSP with all the legal measures at its disposal, as was the case for this law, can still be used to attack PSP union members and unionism? A new Law, the PSP Trade Union Law, which dates from 2002, was created for the PSP. According to the hierarchy of Portuguese Laws, whenever an older law in any way contradicts a more recent law, it is the more recent law which takes precedence, opposing and annulling the contradictions in the older law.

- How is it that an institution such as the Public Security Police, which, in accordance with what is stated in the 1st article of its Organic Law “*has the duty of defending democratic legality, guaranteeing internal security and the rights of citizens, under the terms laid down in the Constitution and the Law*” fails to do so internally and continues with its actions towards the legally elected leaders of other institutions and organisations, such as trade unions?
- How is it that a Government, which has also been legally elected, can support and also carry out this type of action against trade unions, there were according to their obligations under national and international law they should rather stop and prevent this from happening?

Thus in short, it is wondered what the added value is of there being so much legal protection when it is never in a right way applied in particular by those institutions which have to ensure their application and enforcement?

Conclusion

Given the submitted information by the complainant but in particular that provided by EUROCCOP and the other abovementioned trade union organisations, ETUC indeed also considers that Portugal has not ensured the satisfactory application of articles 6 §§ 1 and 2, 21 and 22 of the RESC and therefore supports the complaint submitted by CESP.

Brussels, 13 September 2007