



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

4 June 2019

Case Document No. 1

Associação Sindical dos Profissionais da Polícia (ASPP/PSP) v. Portugal
Complaint No. 179/2019

COMPLAINT

Registered at the Secretariat on 23 April 2019

To the
Executive Secretary of the European Committee of Social Rights

I – QUESTIONS OF PRINCIPLE, LAW and JURISDICTION

Revised European Social Charter

The Revised European Social Charter (RESC) was signed by Portugal on 3 May 1996, approved for ratification by Resolution of the Assembly of the Republic No 64-A/2001 of 21 September 2001 and submitted to a referendum on 17 October 2001.

– Part I(28) stipulates that:

“Workers’ representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.”

– PART II, Article 5 (The right to organise), stipulates that:

“(…) the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. (…)”

– PART IV, Article D (Collective Complaints) (1), stipulates that:

“The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol.”

The Portuguese State has ratified the Additional Protocol to the European Social Charter, providing for a system of collective complaints, in force since 1 July 1998.

[The commitment expressed in the Community Charter of the Fundamental Social Rights of Workers, adopted in May 1988 by Jaques Delors and Vasso Papandreou in Strasbourg before the Congress of the European Trade Union Confederation, constitutes a recognised principle. Article 11, paragraph 2 of this Charter whose way of thinking – of universal scope – underpins the European Social Charter, provides that “*Every employer and every worker shall have the freedom to join or not to join such [trade union] organisations without any personal or occupational damage being thereby suffered by him*”.]

Constitution of the Portuguese Republic

- Article 55 (Freedom of Association) (6) provides that:

“Workers’ elected representatives enjoy the right to be informed and consulted, as well as to adequate legal protection against any form of subjection to conditions, constraints or limitations on the legitimate exercise of their functions.” (our underlining)

- Article 272, on the nature, organisation and functioning of the Police, is included in Title IX, under the heading “Public Administration”.

Law No 14/2002 of 19 February 2002 on “the exercise of freedom of association, collective bargaining rights and the participation of personnel of the Polícia de Segurança Pública (PSP) [Public Security Police]”

- Article 2 (Fundamental Rights) (1), provides that:

“Freedom of Association, in accordance with the Constitution and pursuant to the special scheme provided for in this Law, shall be guaranteed for PSP law enforcement officials.” (our underlining)

- Article 4 (Guarantees) (2) and (3), provides that:

“(2) – Members of management bodies and trade union representatives, whether candidates or already elected, may not be transferred from their place of work without their express consent and without consultation of the respective trade union association.

“(3) – The provisions of the preceding paragraph shall not apply when a duly justified overriding public interest so requires and while the latter continues.” (our underlining)

- Article 26 (General Principle) (1), provides that:

“The right to engage in trade union activities in service facilities shall be guaranteed.”

The European Committee of Social Rights (ECSR) **has jurisdiction to hear this complaint**, in accordance with Article D(1) of Part IV of the RESC. Indeed:

- Portugal has been a member of the Council of Europe since 1976;
- Portugal signed and ratified the Additional Protocol to the European Social Charter (ESC) of 1991 on 8 March 1993, accepting the European Committee of Social Rights as the monitoring body responsible for ensuring respect of social rights;
- it acceded to the Additional Protocol to the ESC of 1995 on the procedure and processing of collective complaints, which came into force in the Portuguese legal system on 1 July 1998.

II – THE RELEVANT FACTS

1

The **Associação Sindical dos Profissionais da Polícia [police trade union]**, or ASPP/PSP, legal person No 502551720, with national headquarters in Av. Santa Joana Princesa, No 2, 1700-357 - Lisbon, is a professional organisation for personnel working for the Polícia de Segurança Pública [Public Security Police], irrespective of their category or position in the PSP hierarchy whose **Statutes** were published in *Boletim do Trabalho e Emprego No 13, 8 April 2015, following the change made in 2011.*

2

The ASPP/PSP is authorised to represent its members both in and out of court and before other national and international bodies – *Article 30(2)(b) and (c) of the Statutes.*

3

The ASPP/PSP has been a member of the **European Council of Police Trade Unions (CESP)** since 1999.

4

Paulo Jorge Marques Gonçalves joined the trade union movement on 1 February 2002, becoming a member of the ASPP/PSP under No 8924.

5

He joined the **Polícia de Segurança Pública (PSP)** on 11 October 1999 and currently holds the rank of Senior Police Officer, with police identity card No 148836.

6

The PSP is an administratively autonomous public service security force – *Article 1(1) of Law No 53/2007 of 31 August 2007, which approved the **Lei Orgânica da Polícia de Segurança Pública (LO/PSP) [Public Security Police Institutional Act].***

7

The PSP is part of the organisational structure of the Portuguese State through the Ministério da Administração Interna (MAI) [Ministry of the Interior] – Article 2 of the LO/PSP and Articles 4 and 6 of Decree Law No 126-B/2011 of 29 December 2011, which approved the MAI Institutional Act.

8

On 1 December 2001, Paulo Gonçalves entered the service of the PSP Corpo de Intervenção (CI) [Intervention Force] in Lisbon.

9

On 24 March 2004, in response to a call for volunteers to establish the CI Detachment in Faro, Paulo Gonçalves was transferred to that Detachment.

10

Law No 53/2007 (LO/PSP), which set up the *Unidade Especial de Polícia* (UEP) [Special Operations Unit], incorporated the Corpo de Intervenção (CI) into that unit – Article 41 of the LO/PSP.

11

Consequently on 1 January 2010, Paulo Gonçalves, a member of the CI, entered the service of the UEP, working in the 1st Team of the 1st Subunit of the *UEP Detachment in Faro – Intervention Force Operational Subunit (FD/UEP/FARO – SO/CI)*, on *secondment*.

III - SECONDMENT

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It should be pointed out by way of clarification that, unlike the system existing at the time for recruiting officers to the CI, which was based solely on physical and psychological fitness tests, the CI's incorporation into the UEP meant that recruitment would increasingly be ensured by secondment – pursuant to Article 73 of Decree-Law No 299/2009 of 14 October 2009, which approved the *PSP Staff Regulations* (EP/PSP).

13

Article 73 of the EP/PSP stipulates that: “1 — The system of recruitment, placement and provision of service in the UEP shall be approved by order of the National Director, without prejudice to the provisions of the following paragraphs. 2 — Personnel shall be posted to the UEP by *secondment* for periods of two years, renewable for periods of one year. 3 —

Continuation and renewal of the secondment of UEP operational personnel shall depend, among *other factors*, on successful completion of annual physical and technical fitness tests, to be certified by the commander of the UEP.” (*our italics*)

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In administrative terms, “secondment” is a type of public employment undertaken by an official of proven professional competence, without losing the link with the original post and his or her career prospects. Despite its temporary nature, a secondment may be prolonged and carried out for successive temporary periods.

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While reflecting this public/functional model, the rules set out in Article 73, referred to in point 13 above, are nevertheless rather vague and ill-defined in relation to the legal validity or relevance of such *unnamed and non-defined* “other factors”, which leave *the field open* for random or purely arbitrary grounds for assessing them given that the law does not establish or indicate clear assessment criteria.

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The renewal (or non-renewal) of the secondment is therefore at the discretion of the line manager, regardless of the professional competence of the official concerned; this is contrary to the principle of the rule of law which is undeniably implied by the Revised European Social Charter.

17

To justify this “open field” left by the legislature, some argue that non-renewal of the “secondment” takes effect automatically on its conclusion, without the need for any grounds to be given.

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Such an interpretation, however, can be valid only in the case of a secondment *with a precise duration or without prior legally established qualifying conditions*, but not when the secondment, **as in this case**, is also subject to “other factors” which, precisely because they are unnamed, **require clarification before the institution concerned and before the interested party – in compliance with the stipulation in Article 268(3) of the Constitution of the Portuguese Republic which sets out the general principle of transparency of action of the public administration in a democratic state governed by the rule of law.**

19

Accepting, however, merely for the sake of argument, that it is not mandatory to state the grounds (for not renewing the secondment), a sound legal interpretation based on the distinction between the formal and the material requires such *lack of grounds* to be evaluated *not by its absence* (formal aspect) but by the **evidence constituted by the undisclosed** underlying facts (material aspect),

19-A

in the same way that the facts appearing in recordings *continue to exist in material terms*, when in procedural terms they are declared to be non-existent as they had been obtained without judicial authorisation.

19-B

This interpretation is all the more compelling when a given action stems from a blatant violation of a social right enshrined in the Revised European Social Charter – such as the right to organise and its various facets.

IV – THE REALITY OF THE FACTS:

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In December 2001, as stated, having passed the appropriate physical and technical tests, Paulo Gonçalves joined the PSP Corpo de Intervenção (CI) [Intervention Force] in Lisbon.

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In 2004, in response to a call for volunteers to establish the CI Detachment in Faro, Paulo Gonçalves was transferred to the Detachment based in that city.

22

On 23 September 2004, he was elected “representative of the appraised officers” for a three-year term to the Officers’ Joint Committee, a police consultative body responsible for examining complaints regarding police officer appraisal procedures. The electorate consisted of police officers holding the rank of Police Officer and Senior Police Officer, which at that time amounted to some 750 officers in the Faro District Command.

23

On 24 November 2005, Paulo Gonçalves was elected trade union delegate in the CI Detachment in Faro by 55 out of a total of 80 police officers, for a three-year term.

24

On 8 February 2006, Paulo Gonçalves was elected Vice-President of the Faro District Office of the ASPP/PSP in an election involving associates and staff of all departments of the Faro PSP Command.

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On 22 February 2008, Paulo Gonçalves was again elected “representative of the appraised officers” on the Officers’ Joint Committee referred to in point 22. This election involved police officers holding the rank of Police Officer and Senior Police Officer, amounting to some 750 officers in the Faro District Command at the time.

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Between 2007 and 2008, Paulo Gonçalves continued to act as National Head of the ASPP/PSP, while on 23 February 2012, i.e., **still in Faro**, he was elected to the position of Secretary of the National Board of the ASPP/PSP for the 2012-2015 three-year period.

27

The performance of duties by Paulo Gonçalves as trade union leader was not always untroubled, since he had to intervene on a number of occasions to address and resolve work-related issues involving disputes between local superior officers and PSP personnel as a whole, including ASPP/PSP members.

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This disquiet was marked, among other things, by a *petition* dated 23/03/2005 which was signed by 33 CI officers, objecting to what were regarded as unacceptable repeated acts by the Commander of the 1st Subunit of the Faro CI Detachment (Assistant Commissioner Eduardo Afonso). This was met if not by indifference then at least by total inertia on the part of the line manager and Detachment Commander (Commissioner Fausto Cabrita). This document, addressed to the Commander of the Lisbon CI (since these units were not autonomous at the time, though they became autonomous subsequently when the UEP was created), merely sought to make the hierarchy aware of the abuse that was undermining not only the efficiency of CI services but also the dignity of the personnel and their working conditions. (**Cf. Doc. 1 - Petition, 23/03/2005**)

Meanwhile, Law No 53/2007 of 31 August 2007 approving the structure of the PSP, was published and, as stated above, created the *Unidade Especial de Polícia* (UEP) [Special Operations Group] – cf. Article 19(1)(a) as one of its subunits (the others being the Special Operations Group, the Personal Security Corps, the Bomb Disposal and Underground Security Centre and the Dog Section), defined the Intervention Force as a reserve force under the National Director and established secondment as the means of assignment – cf. Articles 41, 42 and 56 of Law No 53/2007 of 31 August 2007.

Under the terms of Part II of PSP National Directorate Administrative Order No 70 of 23 April 2010, the organisation of the UEP Detachment in Faro, SO/Intervention Force, consisted of an operational intervention force subdivided into two subunits – staffed by 1 Commissioner, 2 Assistant Commissioners, 2 Senior Police Chiefs, 6 Police Chiefs and 80 Senior Officers or Officers.

However, at the time of the circumstances leading to this COMPLAINT, i.e. **31 December 2014** corresponding to **the non-renewal of the secondment of Paulo Gonçalves**– the staffing of the UEP Detachment in Faro - SO/Intervention Force, was: 0 Commissioners, 2 Assistant Commissioners, 0 Senior Police Chiefs, 4 Police Chiefs and 61 Senior Officers or Officers.

Nevertheless, and in accordance with Law No 53/2007 of 31 August 2007, Article 73 of Decree-Law No 299/2009 of 14 October 2009 and Articles 12 and 13 of the “Scheme of recruitment, placement and service provision in the PSP Special Operations Group”, published in PSP National Directorate Service Order No 70 – Part II, of 23/04/2010, the secondment of Paulo Gonçalves had been successively renewed until 31 December 2014.

On 11 October 2007, the Commander of the Faro Detachment of the CI, Commissioner Fausto Manuel Pereira Cabrita, produced a draft commendation for Paulo Gonçalves reading as follows:

“For his professionalism and sense of duty shown in the three and a half years in which he has served in the 9th Intervention Force Operations Group seconded to this PSP Command, and because he has always sought to strike a balance between the hierarchy, on the one hand, and well-founded but hard-line positions on the other, and having the foresight to recognise the difference between intransigent

trade union demands and the higher interests and responsibilities of the CI Special Unit and consequently of the PSP, I propose the following commendation:

I COMMEND OFFICER No 919/148836, PAULO JORGE MARQUES GONÇALVES, for his commitment, dedication to service and professional competence since the formation of the Faro Detachment of the CI.

He began his activity in the 9th PSP CI Operations Group in Faro in April 2004, following his transfer from the Central Unit in Lisbon. He is a member of the 1st Team of the 1st Subunit and is aware of the demands arising from membership of a Special Unit. Since he has been posted in Faro he has become a staunch defender of the ideals and principles of the Intervention Force.

With respect to his operational performance as co-ordinator of the sub-team or when replacing the head of the operational team, Officer Paulo Gonçalves has shown himself to be a conscientious, disciplined, trustworthy and honest professional, qualities which, coupled with wide-ranging technical and professional expertise, have won him the esteem of his peers and superiors.

This Officer, who has a remarkable spirit of enterprise, discipline and prudent judgement, is highly respected by his peers and is outstanding among them. He has always sought to strike a balance between the hierarchy, on the one hand, and well-founded but hard-line positions on the other, always having the foresight to present the problems arising to his superiors, proposing solutions to allay the legitimate concerns of his peers and understanding the need to reconcile the expectations of personnel and the higher interests and responsibilities of the CI Special Unit and consequently of the PSP.

His unflinching willingness to serve and strong sense of duty have contributed to the prestige of the police as a whole and of the Intervention Force, are worthy of public commendation and should be highlighted as an example to follow.” (Cf. Doc. 2 – Proposed Commendation, 11 October 2007)

34

This proposal led to a Commendation Award, signed by the District Commander of the Faro PSP – Superintendent Victor Manuel Torres Rodrigues – and published on 13 December 2007 by means of Administrative Order No 50/2007, Faro District Police Command. The content of the draft commendation was reproduced in full in the award.

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The text of the draft commendation shows how much emphasis was laid on the professionalism of Paulo Gonçalves, by the *same superior officer* who would subsequently propose not to renew his secondment.

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This proposal, in fact, referring to the professional profile of Paulo Gonçalves from the time he joined the CI in Lisbon to his transfer to Faro in April 2004, is particularly relevant in that it clearly praises his conduct while he was carrying out trade union activities, highlighting his ability as a person specifically responsible for defending the interests of the class of professionals he represented – i.e. as trade union representative – while also ensuring the functional status of the CI and the institutional prestige of the PSP.

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If this was the situation between 2004 and 2007, and the secondment of Paulo Gonçalves was renewed several times, it is perfectly legitimate to ask what changed in 2014 for his secondment not to be renewed.

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To answer this question and return to our line of reasoning, it is necessary to go back in time a little. It is our understanding that nothing changed in this particular respect.

39

The major problem facing the hierarchy of the CI was to find a means *to control* a trade union activist who was held in high esteem among his peers and who was at the same time “presented as an example to follow”.

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The award of the commendation, irrespective of the fact that Paulo Gonçalves genuinely deserved it, was part of a *strategy* which sought to take maximum advantage of him as a prestigious trade union leader in order, in its author’s view, to find a compromise and therefore calm the increasing discontent among CI officers regarding the abuse committed.

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The aim was to find a way to remove Paulo Gonçalves in the future, when in certain circumstances his trade union activities would require him to oppose the hierarchy more vigorously, as in the case of the “petition”, criticising the indifference and total inertia of the author of the draft commendation regarding the abuse committed and the widespread discontent of personnel.

42

At this point and for the intended purpose, any discussion to ascertain whether or not the non-renewal of the secondment took place “*ope legis*”, or whether or not it requires a prior administrative act, is secondary to the real issue in this case.

42-A

This is because the major question to be resolved is *whether there had or had not been a violation of the rule according to which no one can be adversely affected for engaging in trade union functions and activity*. This is the question.

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The secondment of Paulo Gonçalves was renewed several times.

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While his reputation as a trade unionist, the evaluations of his expertise, his performance appraisal ratings and excellent marks in physical, technical and shooting tests undoubtedly contributed to the successive automatic renewals, *the latter were particularly useful to the strategy to nullify any trade union action regarded as excessive or abusive*, as will be seen more clearly below.

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Matters are never perfect anywhere – not even in the kingdom of Babylon, which was founded on a stable disequilibrium. The work situation was deteriorating on a daily basis, and so Paulo Gonçalves was having meeting after meeting with the hierarchy, represented by Commissioner Fausto Cabrita (who meanwhile had been promoted to Assistant Superintendent and therefore having responsibility for the entire UEP Detachment in Faro), appealing to his common sense to resolve the problems arising. Among other requests for meetings, one sent to Assistant Superintendent Fausto Cabrita on 16 June 2014 was particularly significant because of the seriousness of the problems it raised. *(Cf. Doc. 3 – Request for Meeting, 16/06/2014)*

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In view of the hierarchy’s reluctance to respond to the efforts made by Paulo Gonçalves, the latter was faced with constant requests from his colleagues to take a stronger line to defend them and adopt new forms of protest allowed by Trade Union Law and by PSP Staff Regulations.

This is the context in which Paulo Gonçalves, on the proposal of a majority of CI personnel in Faro, organised a “Protest Lunch” that took place on 17 July 2014 in “O Campina”, a restaurant in the city of Faro, not far from the premises of the UEP Detachment. This lunch was preceded by a trade union meeting in the premises of the Faro Branch of the ASPP/PSP, following which a document was drafted to make the Chair of the ASPP/PSP aware of the reasons for arranging the “Protest Lunch”. **(Cf. Doc. 4 - Official Communication from the Faro District Branch of the ASPP/PSP, sent to the Chair of the ASPP/PSP on 17 July 2014)**

The overwhelming majority of CI personnel in Faro attended this lunch, which was widely reported in the media, including “Correio da Manhã” and “Notícias ao Minuto”, 11/07/2014, “Jornal i”, 13/07/2014, “Correio da Manhã”, 16/07/2014, “Diário Online”, 17/07/2014 and “Correio da Manhã”, 18/07/2014. **(Cf. Doc. 5 – Printouts of the six news articles referred to here).**

On 22 December 2014, without notice, PSP National Directorate Service Order No 195 Part II of the same date announced, to widespread surprise and inexplicably, that the secondment of Paulo Gonçalves to the UEP was not being renewed, and that he was to report to the Lisbon Metropolitan Command with effect from 1 January 2015.

This Service Order was based on a “Report to Superiors” dated 15 November 2014, signed by the Commander of the 1st Subunit of the CI in Faro – Assistant Commissioner *Joaquim Luís Cabecinha Godinho*, which among other items stressed in paragraph 6 that, “*At the end of May, in his capacity as trade union leader, Paulo Gonçalves encouraged and persuaded 18 officers (including himself), to ask for a transfer to the 2nd Subunit in order to put pressure on the hierarchy to resolve various issues that were never identified. (...) the aim being to reach out to the hierarchy of the Command to highlight his ability/promote himself as trade union leader before his peers (...);*” (our underlining)

In response to this information, the Commander of the FD/UEP/Faro, Assistant Superintendent Fausto Manuel Pereira Cabrita, sent the following note on 21 November 2014: “*It follows from paragraph 6 that Officer Paulo Gonçalves encouraged the ASPP to disseminate news items (...) that were false (...) in exercising his prerogatives as trade union leader (...) [which] he knew were highly detrimental to the honour (...) of the signatory (...) and the prestige of the institution (...). (...) in partnership with another ASPP leader, also a member of the UEP/SO/CI, they sought to*

draw attention (...) taking advantage of his capacity for union mobilisation to that end (...).” (our underlining) (Cf. Doc. 6 - “Report to Superiors”, 15/11/2014, and “Opinion”, 21/11/2014)

52

Irrespective of the harshness and antipathy towards the activity of the trade union leader shown by the authors of the report and despite their hierarchical authority, the claim by the two superior officers that there was no discontent among officers of the Detachment cannot be substantiated merely by a denial of the existence of such. Rather it requires evidence to be produced that the Detachment was operating in harmony and that officers were satisfied with their working conditions, which would refute the facts attested to by the documents. The two superior officers, however, fail to provide any supporting evidence in that respect. (Cf. Doc. 7 - Petition, 26/12/2014, and Doc. 8 - Printouts of 17 articles)

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If the reason given by the two superior officers for not renewing the secondment of Paulo Gonçalves was their loss of confidence in him, that would purely and simply be their merely personal, or indeed biased, view of him due to his trade union activities, (which, while legally viable, pointed to abuse and wrongdoing against personnel), but in no case to a wrongful act, professional misconduct or lack of competence.

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Assistant Commissioner Joaquim Godinho, second appraiser of Paulo Gonçalves, approved the performance appraisal forms between 2009 and 2014, the content of which is set out below.

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In his 2009 performance appraisal, Paulo Gonçalves was awarded the highest possible rating of “Very Good”, the second appraiser making the following comment in the respective file: “I agree with the appraisal, taking into consideration all appraisees having the same duties.” (our underlining). The first appraiser made the following comment: “The appraisee is an excellent policeman who is ideally suited to the duties he performs within the Public Order Team, both on and off duty. He has key personal and technical qualities which foster great camaraderie and co-operation within the team. He has the ability and necessary skills to carry out duties of greater responsibility.” (Cf. Doc. 9 – 2009 performance appraisal file of Paulo Gonçalves)

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In his 2010 performance appraisal, Paulo Gonçalves was awarded the highest possible rating of “Very Good”, the second appraiser making the following comment in the respective file: “I agree with the appraisal and rating given by the first appraiser, taking into consideration all appraisees

having the same duties and position. I believe the appraisal was carried out fairly and impartially.” (our underlining) The first appraiser made the following comment: “The appraisee is ideally suited to the duties he performs within the Public Order Team. He carries out the orders he is given when on duty, is very diligent in performing his tasks and demonstrates a strong sense of duty and goodwill. He is very willing to help the hierarchy where necessary and always shows great initiative and effectiveness. He is, in addition, an agreeable colleague and encourages goodwill, group cohesion, camaraderie and strong team spirit. He has the ability to carry out duties of greater responsibility.” (Cf. Doc. 10 – 2010 performance appraisal file of Paulo Gonçalves)

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In his 2011 performance appraisal, Paulo Gonçalves was awarded the highest possible rating of “Very Good”, the second appraiser making the following comment in the respective file: “I agree with the appraisal and rating given by the first appraiser.” (our underlining) The first appraiser made the following comment: “Among the personnel as a whole subject to appraisal, the appraisee is ideally suited to the duties he performs within the Public Order Team, carries out the orders he is given when on duty and is very diligent in performing his tasks. He fosters and encourages camaraderie, is always good-natured, is friendly with his colleagues and respects the hierarchy. He is always up-to-date and is an asset to the team leader when on duty. He has the ability to carry out duties of greater responsibility.” (Cf. Doc. 11 – 2011 performance appraisal file of Paulo Gonçalves)

58

In his 2012 performance appraisal, Paulo Gonçalves was awarded the highest possible rating of “Very Good”, the second appraiser making the following comment in the respective file: “I agree with the assessment given by the first assessor. I believe that the rating and appraisal, taking into account all appraisees with the same duties and position, was carried out independently, fairly and impartially.” (our underlining) The first appraiser made the following comment: “The appraisee is ideally suited to the duties he performs with other officers with the same position and category and carries out his tasks within the Public Order Team with ease. He carries out the orders he is given when on duty and fulfils his missions with great dedication and commitment. He fosters camaraderie and encourages companionship and goodwill. He has the ability to accept and carry out duties of greater responsibility.” (Cf. Doc. 12 – 2012 performance appraisal file of Paulo Gonçalves)

59

In his 2013 performance appraisal, Paulo Gonçalves was awarded the highest possible rating of “Very Good”, the second appraiser making the following comment in the respective file: “Taking into consideration all appraisees with the same position and category, I agree with the assessment given by the first appraiser.” (our underlining) The first appraiser made the following comment: “The officer is ideally suited to the duties he performs within the Public Order Team.

He carries out the orders he is given when on duty. He is ideally suited to act as subunit co-ordinator and stand-in for the team leader in the latter's absence. He encourages camaraderie and team spirit among his colleagues. He has the ability to carry out tasks involving greater responsibility." (*Cf. Doc. 13 – 2013 performance appraisal file of Paulo Gonçalves*)

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In his 2014 performance appraisal – **it should be noted that the secondment was not renewed at the end of that year** – Paulo Gonçalves was awarded the highest possible rating of “Very Good”, the second appraiser the following comment in the respective file: “Bearing in mind the first appraiser's assessment, I believe that in 2014 the appraisee should be rated as follows with respect to the criteria: Factor (E) Self-control (8) - The appraisee showed effective self-control, remaining calm in critical situations and managing to control behaviour while remaining composed, considerate and rational. Factor (H) Professional knowledge applied (8) – The appraisee demonstrated sound technical and professional knowledge, applying this efficiently while on duty and demonstrating good analytical skills. Factor (L) Ability to Communicate (8) - The appraisee demonstrated great ease of communication. He passed on the knowledge required to carry out tasks with ease.” (*our underlining*) The first appraiser made the following comment: “Taking into consideration the officers assessed as a whole, the appraisee is ideally suited to the duties he performs within the Public Order Team. He follows the professional orders he is given scrupulously and professionally and fosters companionship and strong team spirit.” (*Cf. Doc. 14 – 2014 performance appraisal file of Paulo Gonçalves*)

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With respect to Assistant Superintendent Fausto Cabrita, it will suffice to state that he is the person who took the initiative to draw up the draft commendation referred to in point 33, which was formulated subsequent to the *petition* referred to in point 28.

62

The rationale underlying the strategy adopted, referred to in point 40 of this complaint, will be set out here.

63

It should be noted that the non-renewal of the secondment, involving the transfer of a trade union leader, required a prior ASPP/PSP hearing which did not in fact take place – in breach of Article 4(2) of Law No 14/2002 of 19 February 2002.

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The ASPP/PSP was therefore deprived of its only elected leader in the Faro District Command of the PSP; constraints and limits were placed on Paulo Gonçalves and on the legitimate exercise of his duties.

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On 09 December 2014, three police chiefs and 55 CI Officers/Senior Officers in Faro (out of a total of five police chiefs and 61 Officers/Senior Officers) signed a “Motion of Support” for Paulo Gonçalves, who felt that he had been demoted and *dismissed from the Faro CI. (Cf. Doc. 15 - “Motion of Support and Solidarity”, 09 December 2014)*

66

Particular note should be taken of this rather contradictory attitude of Assistant Superintendent Fausto Cabrita – the author of the draft commendation of Paulo Gonçalves, when on previous occasions he had called upon the latter’s support as a trade unionist to seek solutions to appease the discontent of CI officers: *“O tempora, o mores.”*

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This ultimately confirmed the contempt underlying that act, i.e., an alleged manipulation of trade unionism to cover up the abuses committed by the Faro CI and the reservations that had always been harboured in relation to trade unionist Paulo Gonçalves.

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No professional reasons were given for this sudden non-renewal of his secondment and transfer to Lisbon Headquarters, or any public interest, public order or national security grounds or any need, opportunity or exception that would impose or justify non-renewal of the secondment. In fact, on 31 December 2014 the Faro CI Operational Subunit had a deficit of 24 officers (there were only 67 of the full complement of 91).

69

The only thing that was proven was the lack of expediency in maintaining Paulo Gonçalves in the CI Operational Subunit in the Faro UEP Detachment, and the annoyance caused by his intense and continuous industrial/trade union activities, the “Protest Lunch” being “the straw that broke the camel’s back” for the hierarchy.

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Disciplinary proceedings were in fact never brought against Paulo Gonçalves. He had an average of 19.44 in the physical fitness tests he took in 2014 (bars, abdominals, extensions and Cooper tests); for several consecutive years he had acted as “Subunit Co-ordinator” and “Team Leader” – a position reserved for Commissioner-level staff; his conduct had been assessed as “Exemplary” since he joined the PSP – the highest rating out of a scale of five, and he had been awarded three decorations: Exemplary Behaviour Bronze Medal, Exemplary Behaviour Silver Medal and Single Star Dedicated Service Medal.

71

For information purposes only in order to demonstrate that this was a blatantly anti-trade union stance, it should be noted that subsequent to the non-renewal of his secondment and having returned on 16 March 2015 to that position from which he had been removed by a transitional decision given in an application for interim measures, Paulo Gonçalves was awarded the highest possible rating of “Very Good” in his performance appraisal for the period between 16 March 2015 and 17 December 2015, as can be seen from his performance appraisal confirmed on 15 July 2016 by the District Commander of the Faro PSP. (**Cf. Doc. 16** - Performance appraisal file of Paulo Gonçalves for the period from 16 March 2015 to 17 December 2015)

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Because of its significance, the opinion of the appraisers will be reproduced here. The performance appraisal file contains the following assessment by the first appraiser:

“Senior Police Officer Paulo Gonçalves showed that he had the ability to carry out his duties. The appraisee demonstrates a high sense of responsibility in his dedication to and performance of duties, obtaining very good ratings. He pays particular attention to his image and is keen to be perceived within and outside the organisation as a consummate professional. He has considerable foresight, even in unusually complex situations, taking action before being driven or compelled by events. He is very determined and persistent in carrying out his duties. He has great self-control and responds with reflection and very rationally to crises and conflicts. He has very good technical and professional knowledge which he applies extremely effectively and has a high capacity to analyse problems. He has very well-developed oral and written communication skills which he uses efficiently to transmit the necessary know-how to ensure duties are performed correctly. He has the ability to carry out duties of greater responsibility.”

The second appraiser (*Assistant Commissioner Joaquim Godinho, also the author of the “Report to Superiors” referred to in point 50 of this complaint*) made the following assessment in the performance appraisal file: “I agree with the first appraiser’s assessment”.

72-A

For the sake of accuracy and clarity, an explanation must be given as to why reference has been made to this “ex post” assessment. This is because, in response to the non-renewal of his secondment on 31 December 2014, as efforts to persuade the police hierarchy to reverse the situation had come to nothing, Paulo Gonçalves brought an action against the PSP, on conclusion of which it was decided to revoke the non-renewal of his commission – a decision given on 27 February 2015 and confirmed by the Administrative Court in Lisbon. The effects of this decision were maintained until 17 December 2015, when a Supreme Administrative Court judgment revoked the previous decisions and referred the final decision to the court responsible for the *main action*, filed following the application for interim measures and still pending.

72-B

It should be noted that the basic issues under discussion in this main action relate on the one hand to the legal issue of whether the non-renewal entails an administrative act or not, and on the other to whether reasons must be stated or not – the matter of a violation of trade union law was not addressed.

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It should be pointed out that on 30 December 2014, the CESP sent letters to the Portuguese *Parliamentary Groups*, objecting to the questionable nature of the removal of Paulo Gonçalves from the Faro UEP and his transfer to the PSP Lisbon Command by not renewing his secondment on blatantly anti-union grounds. (*Cf. Doc. 17 – CESP letter, 30/12/2014*).

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The case of Paulo Gonçalves, however, is not an isolated one, as can be seen from the CESP letter referred to in the preceding point. Another **non-renewal** occurred at the same time for similar reasons, and also involved a police officer who was a member of a trade union who suffered the same fate, i.e. non-renewal of his secondment, on 31 December 2014.

75

This involved PSP Senior Police Officer No 150078 – *João Carlos Palma Mestre* – ASPP/PSP member No 11546, serving in the Faro Detachment of the CI, and who in the four years preceding the *non-renewal of his secondment* obtained the highest possible rating in his performance appraisal, i.e. “Very Good”, and whose only wrong was to assist Paulo Gonçalves in his trade union activities, particularly in connection with organising the “*Protest Lunch*” in July 2014.

A further two cases involving CI officers in Faro must be added, both of which occurred three years later, in 2017: – Pedro Miguel Medeiros Barbosa, Senior Police Officer No 150075 and ASPP/PSP member No 11179, and Cláudio Roberto Sousa Pires, Senior Police Officer No 148027 and member of the Sindicato Independente Livre da Polícia (SILP). These officers were both trade union representatives for their respective unions and were *the only two officers* out of a total of 66 Intervention Force officers in Faro whose secondments were *not renewed* on 31 December 2017, because they had dared to play an active role as trade union members, particularly in connection with *two petitions* that were duly sent to the PSP National Directorate to notify the latter that the dignity of UEP officers in Faro had been violated by the local hierarchy. (**Cf. Doc. 18** - Petition, 24/05/2017, and **Doc. 19** - Petition, 01/06/2017)

The above references demonstrate that the case of Paulo Gonçalves is not an isolated one, since they show that trade union activism in the UEP Detachment in Faro was punished and rendered impossible *after a certain point in time*, with the aim of silencing trade union representatives or activists whenever their activism in defence of their professional interests was inconvenient for the senior hierarchy responsible for abusive practices.

Evidence of the above came to light in 2019, following an ASPP/PSP invitation to its members in the Intervention Force in Faro to elect a Trade Union Delegate in the Faro UEP subunit, when for the first time since its establishment in 2004, no candidates were forthcoming due to the obvious fear of reprisals.

More serious still is the realisation that, in a democratic state governed by the rule of law, which Portugal aspires to be and which has signed the Revised European Social Charter, it is possible for trade union activists to be subjected to targeted persecution and retaliation for defending the legitimate interests of officers and their operational dignity whenever their action hinders the abuses and excesses committed by the police hierarchy.

Returning to the analysis, it is important to point out that for the nine months during which Paulo Gonçalves took up his post again pursuant to a court order – despite its provisional nature – he achieved the highest ratings and the best reports from his appraisers and from the hierarchy.

Therefore, what were the grounds for not renewing his secondment: when there had been no change in the functional structure of the police requiring such a change, bearing in mind his highly respected personal and professional profile, and bearing in mind in particular that the CI was understaffed?

The only ground was his *trade union activities*, which begs the question of whether, in the case of a *conflict between the hierarchy and the trade union in a classic institutional situation (such as this), the former can override the latter*.

The European Committee of Social Rights is requested to intervene to decide this key issue.

In the light of the foregoing we respectfully ask:

- having considered and analysed this complaint,
- having confirmed the infringement of the following rules:
 - Part I(i)(28) and Article 5(II), of the **Revised European Social Charter**, and, by extension,
 - ii) Article 55(6) of the **Constitution of the Portuguese Republic** and
 - iii) Articles 2(1), 4(2) and 26(1), all of **Law No 14/2002 of 19 February 2002**,
- that this complaint be regarded as admissible and well founded, and,
- that the Portuguese State be found to have failed to comply with the provisions referred to herein, with the consequences arising out of that failure to comply.

The Chair of the National Directorate of the ASPP/PSP

(Paulo Jorge Pires Rodrigues)