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

7 December 2020

Case Document No. 3

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

**RESPONSE BY ASPP/PSP TO THE GOVERNMENT'S
SUBMISSIONS ON THE MERITS**

Registered at the Secretariat on 13 October 2020



ASPP/PSP

Associação Sindical
dos Profissionais
da Polícia

To the

Executive Secretary of the European Committee of Social Rights

The **Associação Sindical dos Profissionais da Polícia (ASPP/PSP)** [Portuguese police trade union],

Having been invited to **reply** to the submissions presented by the Polícia de Segurança Pública in connection with the Collective Complaint lodged by ourselves,

States as follows:

1

The Applicant deems the Collective Complaint presented thereby to be reproduced in full, as it is completely true and represents its understanding and deep conviction.

2

In its reply the PSP seeks to take refuge behind legal proceedings which have taken and are taking place in the Portuguese administrative courts in relation to the non-renewal of the secondment of Senior Police Officer Paulo Gonçalves.

3

The Collective Complaint addressed to the above Committee (hereinafter the ECSR) does not make reference to these proceedings precisely because *an action before the ECSR may be raised irrespective of any legal proceedings before the national courts*.

4

In addition, decisions handed down in connection with provisional measures and the PSP's grounds of appeal make no reference to the trade union issue, which is in fact the crux of the proceedings being heard by the ECSR.

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The fact remains that the Judgment of the Supremo Tribunal Administrativo (hereinafter the STA), handed down on the provisional measure brought and referred to in the PSP's reply, concludes in a "non liquet", in that it leaves the solution to the question (on whether the non-renewal of the secondment operates "ope legis" or presupposes an "administrative act") to the main action, which has yet to be decided and the outcome of which, it must be repeated, is not relevant to this case.



6

It is also important to emphasise here that, contrary to the claim made in the PSP's reply, in its conclusion XXII the STA stresses that the view held by the courts at first and second instance is one of the possible interpretations, but not the only one granted by the legal framework in question.

7

This means that in the case at issue it is perfectly acceptable *for an administrative act by the competent body to be required in the light of our legal system*.

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The reference to decisions of administrative legal bodies therefore means that it is not possible to determine the judicial effect the PSP's reply intends to give them.

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It must in addition be stressed, on the one hand, that *an action before the ECSR may be raised irrespective of any legal proceedings before the national courts*, and on the other that the administrative decisions have not focused on the matter from a trade union perspective, as the latter is presented in this Collective Complaint. The national court decisions themselves have furthermore yet to address the substance they have been asked to consider, thereby leaving the door open for the success of the argument put forward by Senior Police Officer Paulo Gonçalves.

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It must be noted in the light of the PSP's reply that the wording of Article 73 of the EP/PSP - Decree Law No 299/2009 of 14 October 2009 - (cf. No 13 of the Collective Complaint) is deemed to be reproduced here. Particular attention is drawn to No 3 of that Article, which establishes that the continuity and renewal of secondments is dependent, among other factors, on the successful completion of tests, to be approved by the commander of the UEP.

11

It is alleged and demonstrated that the skills and success of Senior Police Officer Paulo Gonçalves are clearly the best possible and there is no indication that his good repute had been called into question in due time by the commander of the UEP, in fact quite the contrary, as is clearly shown by Nos 32 to 34 of the Collective Complaint, which once again are deemed to be reproduced here in full.

12

In terms of rigid legal interpretation or merely for the sake of argument, it could be argued (as it was in No 19 of the Collective Complaint) that an administrative act is not required for the non-renewal of the secondment when the respective conditions do not exist.



That administrative act, however, is inevitably essential when such conditions do exist, yet despite their existence, the Commander *randomly decided not to renew the secondment*, which thus amounts to an act, albeit a purely arbitrary one.

Since this act is completely arbitrary, it constitutes abusive conduct, a gross violation of the law, the Constitution, trade union law and the Revised European Social Charter.

In support of this line of reasoning, it is still maintained that Nos 39 to 51 of the Collective Complaint, particularly Nos 42-A, 50 and 51, are clear and substantial in demonstrating that the position of trade union leader and the consequent trade union activity of Senior Police Officer Paulo Gonçalves underlie the non-renewal of his secondment: expressions such as (...) **“in his capacity as trade union leader”**, (...) **“as trade union leader”**, (...) **“in exercising his prerogatives as trade union leader”**, (...) **“his capacity for union mobilisation”** (...) speak for themselves.

The legislature itself, driven by its knowledge of the case of Senior Police Officer Paulo Gonçalves, wished to prohibit arbitrary decisions of this kind, introducing into the wording of Article 73 of the EP/PSP the requirement for grounds whenever a secondment in the Unidade Especial de Polícia ceases or is not renewed (as had to be the case).

Article 73 of the EP/PSP, repealed and replaced by Article 103 of Decree Law No 243/2015 of 19 October 2015 (EP/PSP currently in force), thus now reads as follows: “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 - Police officers shall be posted to the UEP by secondment for an initial period of two years, renewable for periods of one year. 3 - Continuation and renewal of the secondment of UEP operational personnel shall depend on successful completion of annual physical and technical fitness tests, to be certified by the commander of the UEP, and on the assessment of conduct, i.e., disciplinary record, diligence, attendance, composure, dedication in the performance of duties and quality of work carried out. 4 - Cessation or non-renewal of a secondment shall be subject to the approval of the national director, on a reasoned proposal by the commander of the UEP.” (our underlining).



18

Meanwhile, it must be stressed here that no duly justified overriding public interest was ever even claimed (cf. Article 4(3) - Guarantees - of Law No 14/2002 of 19 February 2002) for the non-renewal and consequent transfer of Senior Police Officer Paulo Gonçalves from Faro to Lisbon.

19

The truth of the matter is that only **the trade union motive** remains valid (and the personal whim of a manager whose pride was hurt by the argument addressed to him).

20

Contrary to the assertion in the PSP's reply, Senior Police Officer Paulo Gonçalves suffered a clear personal loss, since he had to reorganise his family life, transfer his household and personal belongings to his new place of work, which was 300 kilometres from the area in which he had been located for almost five years, and in particular to endure the trauma of seeing his professional dedication go unrecognised, despite the efforts he continued to make to achieve such professional competence.

21

The PSP does not seek to convince the ECSR that secondments in the UEP cease or expire naturally by virtue of the passage of time, since some police officers have in fact been in post in the UEP for over three decades, and there have been no known instances of the automatic expiry of secondments since all staff departures from the UEP are usually preceded by an application from police officers themselves, or are based on disciplinary grounds.

22

In its reply the PSP also refers to the existence of specific needs in the UEP, such as the filling of temporary vacancies, though where Senior Police Officer Paulo Gonçalves performed duties (UEP detachment in Faro, Intervention Force Operational Sub-unit), there are and never have been any temporary vacancies, while on the date of the non-renewal of his secondment there was a shortfall of around 20 officers. Any lingering doubts as to the true motive for this non-renewal can easily be allayed by Documents 7 and 15, appended to the Collective Complaint, and which are deemed to be reproduced here in full.

23

It must be repeated that the essence of the question raised in the Collective Complaint addressed to this Committee is the trade union perspective.

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And if, on the one hand, *an action before the ECSR may be raised irrespective of any legal proceedings before the national courts*, on the other, administrative decisions were not taken

from a trade union perspective, as raised in the Collective Complaint lodged with this Committee. Moreover, the internal legal decisions themselves do not make reference to the substantive issues raised and even leave the door open for the success of the argument put forward by Police Officer Paulo Gonçalves.

Therefore,

We maintain and deem the Collective Complaint presented to be reproduced here in

full and conclude as we did in the initial application, **respectfully asking:**

- having considered and analysed this complaint,
- having confirmed the infringement of the following rules:
 - i) Part I(28) and Article 5 of Part 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)