

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

18 January 2023

**Case Document No. 2**

***Federação Nacional dos Professores (FENPROF) v. Portugal***  
Complaint No. 216/2022

**OBSERVATIONS BY THE GOVERNMENT  
ON ADMISSIBILITY**

**Registered at the Secretariat on 19 December 2022**

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**

**FEDERAÇÃO NACIONAL DOS PROFESSORES (FENPROF)**  
**(COMPLAINANT)**

**V.**

**PORTUGAL**  
**(RESPONDENT)**

**COMPLAINT N. ° 216/2022**

**OBSERVATIONS ON ADMISSIBILITY**

**16 DECEMBER 2022**

## **I. INTRODUCTION**

1. On October 24<sup>th</sup>, 2022, the *Federação Nacional dos Professores* («Complainant») lodged a complaint against Portugal («Respondent») with respect to the application of Article 3 of the Revised European Social Charter («RESC») on the safety and health of Portuguese teaching staff.

In summary, the Complainant claims that:

- (i) The Respondent has contravened Article 3 of the RESC because it decided to revoke Dispatch n. ° 9004-A/2016, of July 13<sup>th</sup>, which consolidated a regime of mobility by reason of disease for teaching staff and their families;
  - (ii) Said Dispatch allowed teaching staff to be placed in postings near the location of their (or their family member's) healthcare provider;
  - (iii) That by revoking said dispatch, the Respondent has contravened Article 3 of the RESC by failing to protect the teaching staff's rights to health and work safety.
2. The Respondent shall address the admissibility of the aforementioned claims, as follows:

## **II. PRELIMINARY OBJECTIONS TO THE ADMISSIBILITY OF THE COMPLAINT**

1. The Respondent notes that, while the Additional Protocol to the RESC does not require the exhaustion of local remedies for the purpose of establishing an alleged violation of the provisions of the RESC and for the European Committee of Social Rights to be seized of the matter, the Complainant must, nonetheless, demonstrate that the State did not provide for a “satisfactory application” of the allegedly breached provisions of the RESC, pursuant to Article 4 of its Additional Protocol.
2. In this vein, it is also worth noting that no legal action has been brought before the Portuguese judicial system against the Respondent which could eventually entail the review of the constitutionality or the revoking of the mentioned Dispatch n. ° 9004-A/2016, of July 13<sup>th</sup>.
3. Pursuant to Article 8 of the Constitution of the Portuguese Republic («CRP»), the legal norms and principles of international law are part of the Portuguese internal legal order, which means that the Portuguese legal system is the primary “caretaker” in charge of ensuring compliance with the rule of law, including the legal framework of the RESC.

4. In fact, as generally noted by the International Court of Justice in the *Interhandel* case, the exhaustion of local remedies ensures that “*the State where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic system*” (*Interhandel*, International Court of Justice, Switzerland v. United States of America, Judgement on Preliminary Objections, 1959, p. 27).
5. The legal rule of exhaustion of local remedies is widely recognized in transversal branches of international law: It reflects customary international law in the field of diplomatic protection (*Interhandel*, *ibidem*; *Elettronica Sicula S.p.A. (ELSI)*, International Court of Justice, United States of America v. Italy, Judgement, 1989, par. 50), enshrined in the 2006 Draft Articles on Diplomatic Protection, adopted by the International Law Commission, and constitutes a cardinal principle of international law established both in Article 35(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 41(1)(c) of the International Covenant on Civil and Political Rights – the latter instrument being invoked by the Claimant to establish its claim (p. 5 of the complaint).
6. For the purpose of establishing a systematically accurate interpretation of the meaning of “satisfactory application” of the provision contained in Article 4 of the Additional Protocol to the RESC, the Respondent contends, in line with international State practice and *opinio juris*, that said expression withholds a minimal threshold of burden of proof, which requires the Claimant to demonstrate, to the very least, an attempt to review the object of the complaint before the judicial system of the concerned State, or otherwise be burdened with the proof of an effective denial of justice.
7. As noted *supra* in II.1. and 2, the fact that no legal action has been brought before the Portuguese judicial system against the Portuguese government for the contravention of Article 3 of the RESC should, therefore, preclude the ascertainment of a “satisfactory application” of said provisions, rendering the present complaint inadmissible.
8. In addition, the clear delimitation of the concrete norms allegedly violated and its scope is an essential condition for the admissibility of the complaint. In the current case, the Complainant limits itself to a general reference to article 3 of the RESC (in paragraphs 8 and 9 of the Complaint; page 3): “pursuing the analysis of the Community conventions, and in the specific case of labour jurisdiction, the RESC defines fundamental social rights of workers that the member states must guarantee, namely, the right of workers to fair working conditions, to safety and hygiene at work, the right to benefit from all measures enabling them to enjoy the best state of health they can attain

and to participate in determining and improving working conditions and the working environment at the workplace. It is stipulated in article 3, Part I, (...)"

9. This mere reference to that article does not convey that the alleged failure to observe or alleged violation of the rights set out therein are attributed to that article. There is not a sufficient delimitation of the norms at stake. In addition to the norms, the complaint also needs to specify the extent to which they establish a causal link to the facts.
10. The Complainants clearly did not meet the above requirements in the present complaint. Moreover, the Respondent's complaint raises a number of different and interconnected questions, including on occupational safety and health, that could be subsumed under different articles of the RESC.

### **III. CONCLUSION**

For the reasons set out above, the Respondent respectfully asks the Committee to declare the complaint inadmissible.