



European
Social
Charter

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

2 April 2024

Case Document No. 1

Unión Federal de Policía v. Spain
Complaint No. 225/2023

COMPLAINT

Registered at the Secretariat on 30 May 2023



**The Federal Police Union of
the Spanish National Police Force**

COLLECTIVE COMPLAINT

lodged under the Additional Protocol of 1995 to the European Social Charter Providing for a
System of Collective Complaints

Federal Police Union

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CLAIMANT

THE KINGDOM OF SPAIN

V.

DEFENDANT

TO:

**The Secretary of the European Committee of Social Rights
Department of the European Social Charter
Directorate General of Human Rights and Rule of Law
Council of Europe**

SUMMARY:

Collective complaint lodged by the Federal Police Union against the Kingdom of Spain for its failure to ensure the satisfactory implementation of Article 6.4 of the European Social Charter, by which it is bound, with regard to the right to strike of the Spanish National Police.

Madrid, 22 May 2023

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19 **TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS**

20

1 **The Federal Police Union**, as the representative trade union of the Spanish National
2 Police, represented in these proceedings by its **Secretary General, Mr Víctor**
3 **Duque**, and assisted by **Mr Cristian Juravle Mates**, member of the Federal Police
4 Union on the National Commission for Police Occupational Safety and Health, part
5 of the Police Council, appears before this Committee and

6 **DECLARES**

7 The Union duly submits a **COLLECTIVE COMPLAINT** formulated in writing
8 against **the KINGDOM OF SPAIN** because it has failed to ensure proper
9 compliance with the Revised European Social Charter, by which it is bound, resulting
10 in the incorrect application of the Revised European Social Charter in its national
11 legal framework, specifically regarding **Article 6.4 of the European Social Charter**
12 regulating the **right to strike, insofar as the national legal system provides for the**
13 **total prohibition** of the right to strike for police officers of the Spanish National
14 Police, as explained and argued below.

15 ---0---

16 This complaint is based on the following

17 **ISSUES OF FORM**

18
19 **First.- Binding nature and Applicability of the Revised European Social**
20 **Charter and the 1995 Additional Protocol to the European Social Charter**
21 **providing for a system of collective complaints**

22
23 The European Social Charter, as defined by the Council of Europe, is an international
24 treaty that guarantees fundamental social and economic rights as a counterpart to the
25 European Convention on Human Rights as a regulatory means of protecting civil and
26 political rights.

27 The European Social Charter is regarded as the Social Constitution of Europe and
28 represents an essential regulatory component for protecting human rights in Europe.

29 The European Social Charter (revised) entered into force generally on 1 July 1999.
30 Spain signed the Charter on 23 October 2000 and subsequently ratified it on
31 29 April 2021, as published in the Official State Gazette, Issue 139, 11 June 2021,
32 pages 71274-71327.

33

1 After examining the preamble, the six sections and the Appendix to the Charter, and
2 after obtaining the approval of the Spanish Parliament [Cortes Generales] under
3 Article 94.1 of the Spanish Constitution, Spain expressed its consent to be bound by
4 this Charter through the following instrument of ratification:
5 ([https://www.boe.es/eli/es/ai/1996/05/03/\(2\)](https://www.boe.es/eli/es/ai/1996/05/03/(2))). It made the following declarations:

6 *'If the European Social Charter (revised) were to be ratified by the*
7 *United Kingdom and extended to Gibraltar, Spain would like to make the*
8 *following declaration:*

9 *1. Gibraltar is a non-autonomous territory whose international relations*
10 *come under the responsibility of the United Kingdom and which is subject to*
11 *a decolonisation process in accordance with the relevant decisions and*
12 *resolutions of the General Assembly of the United Nations.*

13 *2. The authorities of Gibraltar have a local character and exercise*
14 *exclusively internal competences which have their origin and their foundation*
15 *in a distribution and attribution of competences performed by the United*
16 *Kingdom in compliance with its internal legislation, in its capacity as*
17 *sovereign State of which the mentioned non-autonomous territory is*
18 *dependent.*

19 *3. As a result, any participation of the Gibraltarian authorities in the*
20 *application of this Charter will be understood as carried out exclusively as*
21 *part of the internal competences of Gibraltar and cannot be considered to*
22 *modify in any way what was established in the two previous paragraphs.*

23 *4. The procedure foreseen in the Arrangements relating to Gibraltar*
24 *authorities in the context of certain international treaties which were adopted*
25 *by Spain and the United Kingdom on 19 December 2007, as well as the*
26 *"Agreed Arrangements relating to Gibraltar authorities in the context of EU*
27 *and EC instruments and related treaties", dated 19 April 2000, apply to this*
28 *Charter.*

29 *5. The application of the Charter to Gibraltar should not be interpreted*
30 *as an acknowledgment of any right or any situation regarding areas not*
31 *covered by Article X of the Treaty of Utrecht of 13 July 1713, concluded*
32 *between the Crowns of Spain and of the United Kingdom.'*

33
34 *'In relation to Article D, paragraph 2, of Part IV of the European Social*
35 *Charter (revised), Spain declares that it accepts the supervision of its*

1 *obligations under this Charter following the procedure provided for in the*
2 *Additional Protocol to the European Social Charter providing for a system of*
3 *collective complaints, done in Strasbourg on 9 November 1995.’*

4
5 Therefore, Spain accepted the text in its entirety, and it entered into force in national
6 law on 1 July 2021.

7
8 On 4 February 2021 Spain also signed the Additional Protocol to the European Social
9 Charter, adopted in Strasbourg on 9 November 1995, establishing a collective
10 complaints procedure. This was ratified on 6 October 2022 and entered into force on
11 1 December 2022.

12 After examining the preamble, the sixteen articles of the Protocol, and after obtaining
13 the approval of the Spanish Parliament under Article 94.1 of the Spanish
14 Constitution, Spain expressed its consent to be bound by this Protocol through the
15 instrument of ratification below, published in the Official State Gazette, Issue 263,
16 2 November 2022, pages 149443-149445
17 ([https://www.boe.es/eli/es/ai/1995/11/09/\(2\)](https://www.boe.es/eli/es/ai/1995/11/09/(2))). Spain made the following declaration:

18
19 *‘The Kingdom of Spain declares itself bound by the Appendix to the Revised*
20 *European Social Charter “Scope of the Revised European Social Charter in*
21 *terms of persons protected” in accordance with its literal wording, without the*
22 *enjoyment of the rights referred to being able to be understood as extending to*
23 *foreigners who are not in a lawful situation, except with the prior and express*
24 *authorisation of the Spanish authorities specifying the scope of this protection*
25 *and the manner in which it must be guaranteed.’*

26
27 [https://www.coe.int/en/web/conventions/full-list?module=treaty-](https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=158)
28 [detail&treaty-num=158](https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=158)

29
30
31 The European Committee of Social Rights ruled on the applicability of the collective
32 complaints procedure laid down in the said Additional Protocol in its Decision on the
33 Admissibility of Complaint No. 207/2022:

34 *‘3. The Committee observes that Spain accepted the collective complaints*
35 *procedure by a declaration made at the time of ratification of the Revised*
36 *Charter on 19 May 2021 and that this procedure entered into force in respect*
37 *of Spain on 1 July 2021 (...) Spain has been bound by this provision since the*
38 *entry into force of the treaty in its respect on 1 July 2021 The Committee*
39 *observes that Spain accepted the collective complaints procedure by a*
40 *declaration issued at the time of ratification of the Revised Charter on*
41 *19 May 2021 and that this procedure entered into force in Spain on*

1 *1 July 2021. (...) Spain has been bound by this provision since the treaty*
2 *entered into force in its territory on 1 July 2021.'*
3

4 **Second.- Standing of the FEDERAL POLICE UNION to bring this**
5 **collective complaint. Representativeness of the Federal Police Union trade union**
6

7 **Article 1 (c)** of the 1995 Additional Protocol to the European Social Charter states
8 that these organisations have standing to submit collective complaints:

9 *'representative national organisations of employers and trade unions within the*
10 *jurisdiction of the Contracting Party against which they have lodged a complaint.'*
11

12 **Locus standi**
13

14 The Federal Police Union is a trade union composed of police officers of the National
15 Police Force of Spain, registered in the Special Records of the Police Directorate
16 General, under Number 39, as attested by a copy of the Articles of Association of the
17 organisation, attached as **Annex I**.

18
19 *A copy of the Federal Police Union Statutes is attached as*
20 *Annex I.*
21

22 **Representativeness**
23

24 The representativeness of the National Police Force trade unions is expressly
25 provided for in **Article 89 of Organic Law 9/2015 of 28 July on the Staff**
26 **Regulations of the National Police**, published in the Official State Gazette,
27 Issue 180, of 29 July 2015, which entered into force on 18 August 2015.
28 (<https://www.boe.es/eli/es/lo/2015/07/28/9/con>). It provides:
29

30 *'Article 89. Representative trade unions.*

31 *1. Those trade unions of the National Police which in the last elections*
32 *to the Police Council obtained at least one representative on the Police*
33 *Council, or, in two of the ranks, at least 10% of the votes cast in each, shall*
34 *be considered representative trade unions, and as such shall have, in*
35 *addition to the powers recognised under Article 90, the power:*

36 *a) To participate as interlocutors in determining the conditions of*
37 *service of officials following the procedures established for that purpose.*

1 election to this position at the **XI Congress of the Federal Police Union**, held in
2 Benidorm on 1, 2 and 3 July 2020, as certified by notary public on 22 July 2020.
3 Those minutes are attached as **ANNEX II**. Mr Duque de León is assisted for the
4 purposes of this procedure by the member of the Occupational Health and Safety
5 Committee of the National Police Council, **Mr Cristian Juravle Mates**, holder of
6 identity card No. 09065912-W.

7
8

A copy of the minutes of the election to the position of
9 *Secretary General is attached as **Annex 2**.*

10
11 The Member State against which this collective complaint is lodged is identified as
12 the **Kingdom of Spain**, as is also indicated in the heading of this document.

13
14 This Complaint meets the requirement in Article 4 of the 1995 Additional Protocol,
15 as it is submitted in writing. It addresses the failure by Spain to ensure the correct
16 application of **Article 6.4 of the Revised European Social Charter**, in relation to
17 **Article G** and related provisions, insofar as Spain has not ensured the correct
18 application thereof, as argued in the following sections.

19 **SUBSTANTIVE ISSUES**

20 21 **First.- Right to strike: definition and characteristics**

22
23 As highlighted by doctrine and numerous studies on the subject, the **right to strike**
24 is the *primary and fundamental legitimate means available to workers and their trade*
25 *unions to promote and defend their economic and social interests.*

26
27 The first “strike action”, as documented in the “Strike Papyrus” from the reign of
28 Ramses III, preserved in Turin, dates back to 1170 BC according to the available
29 historical data. Driven by hunger due to continuous delays in the payment of their
30 wages, workers took to the streets in protest over their economic conditions until they
31 achieved their objectives. Historically, though, the colloquial term ‘strike’ was not
32 recorded until 1768, when it was used to describe the labour protests staged by sailors
33 in England.

1 Following their legalisation as a fundamental measure and instrument for workers to
2 exert pressure on employers to achieve collective labour demands and social
3 progress, strikes come in various forms, depending on how they are exercised:

4 √ **While occupying the workplace**: a strike staged without leaving the workplace.

5 √ **Partial strike**: a strike involving only partial work stoppage in a particular
6 department.

7 √ **Rotating strike**: a strike in which a specific group of workers alternates work
8 stoppage by department or position.

9 √ **Intermittent strike**: a strike held at various times throughout the daily schedule or
10 over longer cyclical periods.

11

12 **Second.- The European Social Charter**

13

14 The European Social Charter, in our humble opinion, should be regarded as the most
15 significant European Convention when it comes to protecting social human rights,
16 because, as understood by doctrine, it is *‘the international instrument containing the*
17 *most comprehensive catalogue of social rights, also defined as the “Social*
18 *Constitution of Europe”*.

19

20 Although today we must obviously move on from this understanding, it was
21 historically considered secondary to the Convention for the Protection of Human
22 Rights and Fundamental Freedoms (ECHR), and the social rights it covered were
23 deemed secondary to the civil and political rights provided for in the ECHR.

24

25 It follows that the European Social Charter must be regarded as the most important
26 regulatory text with regard to social rights, to which it grants the same degree of legal
27 protection as the European Convention on Human Rights grants to political and civil
28 rights. This is because social rights have the same status as basic human rights
29 because they are inherent in the welfare state. That is why they are considered, like
30 political and civil rights, to be a basic pillar of democracy and social welfare.

1 **Third.- Provisions governing the right to strike in the European Social**
2 **Charter**

3
4 **Article 5. The right to organise**

5
6 *With a view to ensuring or promoting the freedom of workers and*
7 *employers to form local, national or international organisations for the*
8 *protection of their economic and social interests and to join those*
9 *organisations, the Parties undertake that national law shall not be such as*
10 *to impair, nor shall it be so applied as to impair, this freedom. The extent*
11 *to which the guarantees provided for in this Article shall apply to the*
12 *police shall be determined by national laws or regulations. The principle*
13 *governing the application to the members of the armed forces of these*
14 *guarantees and the extent to which they shall apply to persons in this*
15 *category shall equally be determined by national laws or regulations.*

16
17 **Article 6. The Right to bargain collectively**

18
19 With a view to ensuring the effective exercise of the right to bargain
20 collectively, the Parties undertake:

21
22 *1. to promote joint consultation between workers and employers;*

23
24 *2. to promote, where necessary and appropriate, machinery for voluntary*
25 *negotiations between employers or employers' organisations and workers'*
26 *organisations, with a view to the regulation of terms and conditions of*
27 *employment by means of collective agreements;*

28
29 *3. to promote the establishment and use of appropriate machinery for*
30 *conciliation and voluntary arbitration for the settlement of labour disputes;*
31 *and recognise:*

32
33 *4. the right of workers and employers to collective action in cases of*
34 *conflicts of interest, **including the right to strike**, subject to obligations that*
35 *might arise out of collective agreements previously entered into.*

1
2 The **Appendix** to the **European Social Charter** (Revised), which determines the
3 **Scope of the Revised European Social Charter in terms of persons protected**, in
4 relation to **Article 6, paragraph 4**, states:

5
6 *'It is understood that each Party may, insofar as it is concerned, regulate*
7 *the exercise of the right to strike by law, provided that any further restriction*
8 *that this might place on the right can be justified under the terms of*
9 *Article G.'*

10
11 **Article G** of **Part V**, on restrictions, provides:

- 12
13 **1. The rights and principles set forth in Part I** when effectively realised, and
14 **their effective exercise as provided for in Part II, shall not be subject to**
15 **any restrictions or limitations not specified in those parts, except such as**
16 **are prescribed by law and are necessary in a democratic society for the**
17 **protection of the rights and freedoms of others or for the protection of**
18 **public interest, national security, public health, or morals.**
- 19
20 **2. The restrictions permitted under this Charter to the rights and obligations**
21 **set forth herein shall not be applied for any purpose other than that for**
22 **which they have been prescribed.**

23
24
25 **Fourth.- Governing provisions in the Spanish legal system**

26
27 **The Spanish Constitution**

28
29 **Section 28**

- 30 **1. Everyone has the right to freely join a trade union. The law may place restrictions**
31 **on or exceptions to the exercise of this right in the Armed Forces or Institutes or**
32 **other bodies subject to military discipline, and shall lay down the special**
33 **conditions of its exercise by civil servants. Trade union freedom includes the right**
34 **to set up trade unions and to join the union of one's choice, as well as the right**
35 **of trade unions to form confederations and to found international trade union**

1 *organisations, or to become members thereof. No one may be forced to join a*
2 *trade union.*

- 3
- 4 **2.** *The right of workers to strike in defence of their interests is recognised. The law*
5 *governing the exercise of this right shall lay down the guarantees necessary to*
6 *ensure the continuity of essential public services.*

7

8 **Section 103**

9 **1.** *The Public Administration shall serve the general interest in a spirit of*
10 *objectivity and shall act in accordance with the principles of efficiency,*
11 *hierarchy, decentralisation, deconcentration and co-ordination, and in full*
12 *subordination to the law.*

13

14 **2.** *The organs of State Administration are set up, directed and co-ordinated in*
15 *accordance with the law.*

16

17 **3.** *The law shall contain specific provisions concerning the status of civil servants,*
18 *the entry into the civil service in accordance with the principles of merit and*
19 *ability, the special features of the exercise of their right to union membership,*
20 *incompatibility of office and the guarantees regarding impartiality in the*
21 *discharge of their duties.*

22

23 **Organic Law No 2/1986 of 13 March on State security forces**

24

25 Organic Law 2/1986 of 13 March 1986 on State security forces imposes a total
26 prohibition of the right to strike for the national police [see Article 6.8], as described
27 below. This prohibition is based on the Explanatory Memorandum of that law, in the
28 interests of ensuring the continuity of police services.

29

30 **Article 6.**

31

32 **1.** *Public authorities shall promote the most favourable conditions for the*
33 *appropriate professional, social and human advancement of the members of the*
34 *security forces, in keeping with the principles of objectivity, equal opportunities,*
35 *merit and ability.*

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2. *The training and development of members of the security forces shall follow the principles set out in Article 5 and shall comply with the following criteria:*

a) They shall be of a professional and lasting nature.

b) Studies pursued in the educational institutions under the different Public Administrations may be subject to validation by the Ministry of Education and Science, which shall take into account the qualifications required for admission and the nature and duration of such studies.

c) In order to provide such training and courses, institutional collaboration shall be promoted with the University, the Judiciary, the Public Prosecutor's Office, the Armed Forces and other institutions, centres or establishments of particular interest in the light of the aforementioned educational objectives.

3. *Members of the security forces shall swear or pledge to abide by the Constitution as the fundamental rule of the State.*

4. *They shall be entitled to fair remuneration, taking into account their level of training, rules on incompatibility of office, mobility for reasons of service, dedication and the risk involved in their mission, as well as the specificity of their working hours and their particular structure.*

5. *Their working hours shall be determined by regulations and shall be adapted to the specific features of police work.*

6. *Positions in the different categories shall be filled based on merit, ability and seniority, in accordance with the relevant regulations.*

7. *Membership in the security forces is incompatible with the performance of any other public or private activity, except for those activities exempted from legislation on incompatibility of office.*

1 **8. Members of the security forces may under no circumstances exercise the right**
2 **to strike, or engage in actions intended as a substitute for strike action or co-**
3 **ordinated with the aim of disrupting the normal functioning of services.**

4
5 **9. The disciplinary regime, subject to observance of the relevant legal safeguards,**
6 **shall be inspired by principles consistent with the fundamental mission set out for**
7 **the individuals concerned in the Constitution, and with their hierarchical and**
8 **disciplinary structure and organisation.**

9
10 **Fifth.- Previous decisions of this Committee in an identical case**
11 **concerning the right to strike**

12
13 The Committee has ruled on identical cases of total prohibition of the right to strike
14 for police forces in other countries that have ratified the European Social Charter,
15 such as **European Confederation of Police ‘EUROCOP’ v. Ireland, Complaint**
16 **No. 83/2012.**

17
18 In that collective complaint, the complainant organisation alleged that Ireland had
19 violated Article 6.4 of the European Social Charter by imposing an absolute
20 prohibition on the right to strike for members of the police force.

21
22 EUROCOP argued in its collective complaint that the imposition of a total
23 prohibition on the right to strike for members of the police force was a violation of
24 Article 6.4 of the European Social Charter. It further argued that in other countries
25 signatory to the European Social Charter the right to strike was recognised for police
26 officers with varying degrees of restrictions, which, it maintained, indisputably
27 proved that the recognition of the right to strike of police officers did not compromise
28 public safety.

29
30 The Irish government recognised the total prohibition of the right to strike for police
31 forces, which it sought to justify under Article G of the European Social Charter. It
32 argued that the total prohibition was predicated upon the fact that the police have
33 functions linked to ‘the rights of others’, national security or public interest, and that
34 the prohibition was justified by the need to ensure that the exercise of the right to
35 strike did not compromise national security. On the other hand, it argued that Ireland

1 did not have multiple police forces allowing it to fall back on other forces to ensure
2 public safety in the event of a strike by a particular police force.

3
4 The Committee issued a decision stating that the right to strike was intrinsically
5 linked to the right to collective bargaining, as it represented the most effective means
6 to achieve a favourable outcome in a bargaining process. Consequently, the
7 Committee established that restrictions on the right to strike could only be admitted
8 under certain conditions.

9
10 **It concluded that under Article G, the right to strike of certain categories of**
11 **public servants could be restricted in strict compliance with the purposes and**
12 **objectives enumerated in that Article, but that a total prohibition of the right to**
13 **strike of public servants was not compatible with the European Social Charter.**
14 **The Committee thus concluded (para. 214) that the Irish Government's**
15 **prohibition of the right to strike for police officers violated Article 6.4 of the**
16 **European Social Charter.**

17
18
19 **Sixth.- Police Organisation in Spain**

20
21 In keeping with the three levels of administrative territorial organisation in Spain
22 (national, regional and local) the security forces are organised institutionally on that
23 basis.

24
25 **Article 1 of Organic Law 2/1986** of 13 March provides that public safety falls under
26 the exclusive jurisdiction of the State and that it is maintained by the different public
27 administrations through the security forces under their authority.

28
29 **Article 2 of Organic Law 2/1986** of 13 March provides:

30
31 *Security forces means:*

32
33 *a) State security forces under the authority of the national government.*

34
35 *b) Police forces under the authority of the Autonomous Communities.*

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c) Police forces under the authority of local government.

The **National Police** and the **Civil Guard** report to the Government.

The **National Police** is an armed institution of a civilian nature under the Ministry of the Interior (like the Civil Guard) which exercises its policing functions in the provincial capitals and municipalities determined by the government.

The **Civil Guard** is also an armed institution under the Ministry of the Interior which also exercises its policing functions throughout the national territory, which is why in recent times the overlapping jurisdiction of the two bodies throughout the country has been the subject of debate.

On the other hand, the development of the Autonomous Communities and the granting of jurisdiction in security matters led to the creation of **Autonomous Police Forces**:

- **Mossos d'Esquadra** (<https://mossos.gencat.cat/ca/inici>)
- **Ertzaintza** (<https://www.ertzaintza.euskadi.eus/lfr/eu/web/ertzaintza>)
- **Policía Foral de Navarra** (<https://www.navarra.es/es/policia-foral>)
- **Policía Canaria**
(<https://www.gobiernodecanarias.org/seguridad/cgpoliciacanaria/>)

Operating in addition to these regional forces are the **Attached Units** [*Unidades Adscritas*], composed of national police officers operating under the authority of the governments of the Autonomous regions. These units operate alongside the other police forces in the autonomous territories.

Finally, in Spain, there are the **local police** forces (*policía local*), composed of police forces that report to the town councils (local government) and which operate alongside the other regional and national police forces, with which they share responsibility for matters of public safety.

1 As shown in **Annex III**, in each municipality where the National Police is present,
2 there are other police forces with which it shares policing powers: **local police**,
3 **regional police** or **state police** (Civil Guard).

4
5
6 *A list of police forces that operate alongside the national*
7 *police is attached as **Annex No. 03**.*
8

9
10 **Seventh.- Internal organisation of the Spanish National Police**

11
12 The internal structure and functions of the Directorate General of the National Police
13 are specified in **Royal Decree 734/2020 of 4 August**, which outlines the basic
14 organisational structure of the Ministry of the Interior
15 (<https://www.boe.es/buscar/doc.php?id=BOE-A-2020-9138>)

16
17 **Article 3 of Royal Decree 734/2020** sets out police functions and powers by area of
18 operational speciality, according to a vertically structured system, in both central and
19 peripheral bodies. These areas of specialisation are:

20
21 **Central Organisation:**

22
23 a) The **General Intelligence Commissariat**, specialising in the gathering, receipt,
24 processing and development of intelligence of interest for public order and security
25 within the scope of the functions of the Directorate General, as well as its exploitation
26 or operational use, especially in anti-terrorist matters, both nationally and
27 internationally.

28
29 b) The **General Commissariat of the Criminal Police**, specialising in the
30 investigation and prosecution of supra-territorial offences, especially crimes related
31 to drugs; organised crime; economic, financial and technological crime and the
32 monitoring of gambling. It is also responsible for directing the services tasked with
33 investigating monetary and currency-related crimes, and collaborating with the
34 corresponding services at Banco de España in these matters.

1 c) The **Office of the Commissioner General for Citizen Security**, specialising in
2 organising and managing matters relating to the prevention, maintenance and, where
3 appropriate, restoration of public order and safety, the office also exercises the
4 competencies conferred on it by legislation on private security; the surveillance of
5 public shows within the State's jurisdiction; and the protection of high-ranking
6 personalities, buildings and facilities that, owing to their interest, require such
7 protection.

8
9 d) The **General Commissariat for Immigration and Borders**, specialised in
10 monitoring the entry and exit of Spaniards and foreign nationals to and from the
11 national territory; preventing, prosecuting and investigating illegal immigration
12 networks, and, in general, the police regime for matters relating to foreigners and
13 asylum and immigration.

14
15 e) The **General Commissariat of the Police Forensics Unit**, specialised in
16 providing forensics, identification, analysis and technical investigation services, as
17 well as preparing the expert and documentary reports entrusted to it.

18
19 f) The **Operations and Digital Transformation Division**, specialised in supporting
20 the Operational Sub-directorate in co-ordinating, managing and supervising police
21 operations, as well as conducting strategic planning in the area of digital
22 transformation.

23
24 **Peripheral organisation:**

25
26 **Article 3.7 of Royal Decree 734/2020** states that the peripheral organisation of the
27 National Police is composed of the main headquarters, the provincial police stations
28 and the zonal, local and district police stations.

29
30 The internal organisation of these peripheral headquarters and police stations follows
31 the same vertical structure as the above-mentioned operational specialisations. Each
32 headquarters or police station comprises:

- 33
34 – The **Provincial or Local Intelligence Squad**, which performs the specialised
35 operational functions of the General Intelligence Commissariat;

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- The **Provincial or Local Criminal Police Squad**, which performs the specialised operational functions of the General Commissariat of the Criminal Police;
- The **Provincial or Local Public Safety Squad**, which performs the specialised operational functions of the Office of the Commissioner General for Citizen Security;
- The **Provincial or Local Immigration and Borders Squad**, which performs the specialised operational functions of the General Commissariat for Immigration and Borders;
- The **Provincial or Local Police Forensics Squad**, which performs the specialised operational functions of the General Commissariat of the Police Forensics Unit.

In conclusion, the National Police conducts its policing functions with a vertically structured administrative organisation broken down by the operational specialisations of its police departments.

Eighth.- Inadmissibility of the total prohibition of the right to strike in Spain

The European Committee of Social Rights (ECSR) held in its **Resolution CM/Res ChS (2014) 12, adopted by the Committee of Ministers on 8 October 2014 (European Confederation of Police ‘EURO COP’ v. Ireland, Complaint No. 83/2012)**, that:

‘The right to strike is intrinsically linked to the right to collective bargaining, as it represents the most effective means [available to workers] to achieve a favourable result from a bargaining process. It is therefore [a right] of specific relevance to trade unions. Consequently, restrictions on this right may be acceptable only under specific conditions.

1 *As held on several occasions, states enjoy a wide margin of appreciation when*
2 *it comes to restricting the right of police personnel to strike. By virtue of*
3 *Article G, the right to strike of certain categories of public servants may be*
4 *restricted, including members of the police and armed forces, judges and*
5 *senior civil servants.*

6
7 ***On the other hand, a denial of the right to strike to public servants as a whole***
8 ***cannot be regarded as compatible with the Charter. Note has also been taken,***
9 ***in the context of the diversity of the legal systems in this area, of the evolution***
10 ***towards the expansion of the right to strike to police officers.***

11
12 *Members of the police force may clearly be considered as public officials*
13 *exercising public authority. Their right to collective action may thus be*
14 *restricted. Such a restriction may nevertheless only be compatible with the*
15 ***Charter if the requirements of Article G are met.***

16
17 Following this legal reasoning, the Committee concluded in its resolution that the
18 Republic of Ireland had violated Article 6.4 of the Charter by including provisions
19 for a total prohibition of the right to strike for Irish police officers in its domestic law.

20
21 It is our view that the above-mentioned legal reasoning of the Committee is fully
22 applicable to this case, since members of the Spanish National Police are also totally
23 prohibited from exercising the right to strike in Spain under Article 6 of Organic Law
24 2/1986 of 13 March on State security forces.

25
26 In short, we consider the Kingdom of Spain to be in violation of Article 6.4 of the
27 European Social Charter on grounds of the total prohibition of the right to strike
28 imposed on officers of the National Police, for the reasons set out below.

29
30 a) **Non-compliance with the Committee's interpretation of Article 6.4 of the**
31 **Social Charter in Resolution CM/ResChS(2014)12 (Complaint No. 83/2012):**

32
33 At the risk of repetition, it must be emphasised that the Committee has established
34 that a total prohibition of the right to strike is contrary to the Social Charter.

1 Since the Kingdom of Spain has committed this very infringement, it is clear that it
2 does not properly guarantee the exercise of Article 6.4 of the European Social Charter
3 in the case of the officers of the National Police.

4
5 **b) Non-compliance with the requirements of Article G of the Social Charter**

6
7 In line with the arguments set out in the previous section, the total prohibition of the
8 right to strike imposed by the Kingdom of Spain is neither compatible nor in
9 conformity with the requirements set out in Article G of the Social Charter.

10
11 **Article G** of the Social Charter provides:

12
13 *1. The rights and principles set forth in Part I when effectively realised, and*
14 *their effective exercise as provided for in Part II, shall not be subject to any*
15 *restrictions or limitations not specified in those parts, except such as are*
16 *prescribed by law **and are necessary in a democratic society for the***
17 ***protection of the rights and freedoms of others or for the protection of public***
18 ***interest, national security, public health, or morals.***

19
20 *2. The restrictions permitted under this Charter to the rights and obligations*
21 *set forth herein shall not be applied for any purpose other than that for which*
22 *they have been prescribed.*

23
24 The **Preamble to Organic Law 2/1986 of 13 March 1986 on State security forces**
25 **and services**, in the **penultimate paragraph of section II**, sets out the reasoning
26 given by the Kingdom of Spain for totally prohibiting the exercise of the right to
27 strike by the Spanish National Police, in the following terms:

28
29 *'In this respect, special mention should be made of the prohibition of strike*
30 *action or actions carried out in lieu of strike action, within the framework*
31 *delimited by Article 28 of the Constitution, in order to safeguard the higher*
32 *interests that the Security Forces are bound to protect, in order to ensure the*
33 *continuous provision of their services, which must not be interrupted.*'

34 *(<https://www.boe.es/buscar/act.php?id=BOE-A-1986-6859>)*

1
2 The complainant is of the view that the reason given by the Kingdom of Spain in the
3 Preamble to the Organic Law to justify Article 6 of that same Law stipulating a total
4 prohibition of the right to strike for the police (and not a restriction or limitation on
5 the form of its exercise), is neither compatible nor consistent with the requirements
6 laid down in Article G of the Charter in respect of the restriction of exercising the
7 right to strike of police officers:
8

9 **Multiple police forces operating within the same territory**

10
11 As stated in **Article 2 of Organic Law 2/1986 of 13 March 1986 on State security**
12 **forces and services (Article 6 of which** imposes a total prohibition of the right to
13 strike for police officers), several police forces operate side by side with the National
14 Police within the same territory (see **Annex III**), with shared jurisdiction in the
15 sphere of public safety, and fall under the authority of the State (Civil Guard), the
16 Autonomous administrations (Autonomous Police) and local government (local
17 police under the authority of the town councils of each town).
18

19 There are even municipalities in which the National Police do not have a presence
20 and whose public safety is assumed directly by local police forces under the authority
21 of each town council.
22

23 There are autonomous territories in which the Autonomous Police forces are solely
24 competent in matters of public safety, as in the Autonomous Community of
25 Catalonia, where responsibility for public safety is conferred exclusively on the
26 police force of the **Mossos d'Esquadra**
27 (<https://mossos.gencat.cat/es/inici/index.html>). Similarly, in the Autonomous
28 Community of the Basque Country, jurisdiction in matters of public safety lies
29 exclusively with the **Ertzaintza** police force
30 (<https://www.ertzaintza.euskadi.eus/lfr/web/ertzaintza>).
31

32 *In conclusion, in the opinion of this complainant trade union, the total prohibition of*
33 *the right to strike for National Police officers is not a measure which is strictly*
34 *necessary to guarantee public order and the rights and freedoms of others, or one*
35 *which is justified.*

1
2 **Internal organisation of the National Police**

3
4 In terms of the organisation of the Spanish National Police, the total prohibition of
5 the right to strike is not legitimate either. As explained in section VII of this
6 document, **Article 3** of **Royal Decree 734/2020**
7 (<https://www.boe.es/buscar/doc.php?id=BOE-A-2020-9138>) provides that the
8 policing functions and jurisdiction of the National Police Force are structured and
9 broken down by area of operational specialisation. Therefore, since this internal
10 structure is clearly broken down by operational area, we believe that imposing a total
11 prohibition of the right to strike is not justified, when a restriction (*a limitation of a*
12 *lesser degree than a total prohibition*) would be sufficient to satisfy the objectives in
13 Article G of the Social Charter. A restriction would also be consistent with the
14 essence of the right to strike (defined by this Committee as the most effective means
15 to achieve a favourable outcome in a bargaining process).

16
17 **Recognition of the right to strike for police forces in other Member States**

18
19 As the Committee held in its decision in **EUROCOP V. Ireland, Complaint**
20 **No. 83/2012** (see paragraph 203), it must consider the development in the laws of the
21 Member States and in supranational standards towards extending the recognition of
22 the right to strike to police officers.

23
24 By way of illustration, the Committee also refers in that paragraph to its **Conclusions**
25 **XIV-1, 1998**, in which it noted, in relation to **Norway**, that *police officers had been*
26 *guaranteed the right to strike since 1995.*

27
28 In the same vein, it held in its **Conclusions XIX-3 (2010)**, in relation to **Croatia**, that
29 although Article 60 of the Croatian Constitution allowed for restrictions on the right
30 to strike for the police, *Croatian legislation had imposed no restrictions on the*
31 *exercise of this right by police officers.*

32
33 To conclude, **paragraph 214** of its decision **EUROCOP v. Ireland, Complaint**
34 **No. 83/2012** *states that the total prohibition of the right to strike of police officers in*
35 *Ireland amounts to a violation of Article 6§4 of the European Social Charter.*

1
2 In none of the democratic countries or parties to the Charter listed above, or in the
3 other countries mentioned in **EUROCOP v. Ireland, Complaint No. 83/2012**, has
4 the recognition of the right to strike of police officers historically posed any threat or
5 risk to public order, or to the rights and freedoms of others such as to justify, as the
6 Kingdom of Spain seeks to do, the imposition of a total ban on the exercise of the
7 right to strike for police officers of the Spanish National Police.

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9
10 ACCORDINGLY

11
12 **THE COMPLAINANT HEREBY**

13 **REQUESTS**

14 **THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS** to acknowledge this
15 **Collective Complaint** lodged by a representative organisation against the **Kingdom**
16 **of Spain** and, following completion of the legal formalities, to:

- 17
18
19 1. **DECLARE** this collective complaint admissible so that it may be processed in
20 accordance with the procedure laid down in the 1995 Protocol.
21
22 2. **DECLARE** that Spanish legislation, insofar as it provides for a total
23 prohibition of the right to strike for police officers of the National Police
24 (Article 6.8 of Organic Law 2/1986 of 13 March 1986 on State security forces
25 and services and related or similar legislation) is in breach of Article 6.4 of the
26 European Social Charter and is not compatible with this Article and the
27 European Social Charter.
28
29 3. **DECLARE** that the Kingdom of Spain has failed to ensure proper
30 implementation of the provisions contained in the Revised European Social
31 Charter, by which it is bound, resulting in the incorrect application of the
32 Revised European Social Charter in national law with regard to **Article 6.4 of**
33 **the European Social Charter** and the **right to strike** for police officers of the
34 National Police of Spain.

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- 4. **ADOPT** all measures laid down in the Revised European Social Charter and related regulations to ensure that the Kingdom of Spain remedies this violation of the right to strike of the National Police recognised in Article 6.4 of the Charter, by adopting appropriate protection to guarantee the right to strike for police officers of the National Police Force.

- 5. **ADOPT** such other rulings and measures as may be favourable and appropriate in law to protect the right to strike for police officers of the National Police Force as enshrined in Article 6.4 of the Social Charter.

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In honour of justice sought in Madrid - Strasbourg, on 22 May 2023, signed by:

Mr Victor Duque León
Secretary General

Mr Cristian Juravle
Mates
National Member
Commission for Police Occupational Health and Safety