



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

8 April 2025

**Case Document No. 2**

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

## **SUBMISSIONS OF THE GOVERNMENT ON THE MERITS**

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MINISTERIO  
DE LA PRESIDENCIA, JUSTICIA  
Y RELACIONES CON LAS CORTES

ABOGACÍA GENERAL DEL ESTADO

SUBDIRECCIÓN GENERAL  
DE ASUNTOS CONSTITUCIONALES Y  
DERECHOS HUMANOS

ÁREA DE DERECHOS HUMANOS

## TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

### COLLECTIVE COMPLAINT No 225/2023

UNIÓN FEDERAL DE POLÍCIA (UFP)  
v. Spain

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1. By letter of 18 December 2023, the Committee communicated its decision admitting the above-mentioned complaint and giving us time to comment on the merits of the case.
2. In accordance with the time limit, the Government of Spain hereby present

## **OBSERVATIONS ON THE MERITS OF THE PRESENT COMPLAINT**

### **I RELEVANT LEGISLATION**

#### **A. *Revised European Social Charter***

3. Article 6 - The right to bargain collectively

#### *Part II*

*With a view to ensuring the effective exercise of the right to bargain collectively, the Parties recognise:*

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

*Article 6, paragraph 4*

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

4. Article G - Restrictions

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

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

<b>B. European Convention of Human Rights</b>
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5. Article 11

*Freedom of assembly and association*

*1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

*2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

### **C. National legislation**

#### **6. Spanish Constitution**

##### *Article 28.1*

*Everyone has the right to freely join trade unions. The law may limit or exempt the exercise of this right to the armed forces or institutes or to other bodies subject to military discipline, and shall regulate the particularities of its exercise for public servants. Freedom of association includes the right to form trade unions and to join the trade union of one's choice, as well as the right of trade unions to form confederations and to form or join international trade union organizations. No one may be compelled to join a trade union.*

##### *Article 28.2*

*The right of workers to strike in defence of their interests is recognised. The law regulating the exercise of this right shall establish the necessary guarantees to ensure the maintenance of essential community services.*

##### *Article 104*

*The mission of the Security Forces and Corps, under the authority of the Government, shall be to protect the free exercise of rights and freedoms and to guarantee public safety.*

*An organic law shall determine the functions, basic principles of action and statutes of the Security Forces and Corps.*

### **D. General legislation on the right to strike**

- 7. The constitutional mandate is developed by through Organic Law 2/1986, of 13 March, on Security Forces and Corps.**

8. The main objective of the aforementioned Law focuses on the design of the main lines of the legal regime of the Security Forces and Corps as a whole, both dependent on the National Government and the Police Forces. The law establishes the basic principles of action common to all of them and lays down their fundamental statutory criteria.
9. It is worth noting that the preamble contemplates the particularities of the concept of "public security": *"Public security constitutes a competence that is difficult to divide up, since it does not allow for delimitations or definitions with the rigour and precision admissible in other matters. This is so because the rules governing public security do not contemplate tangible physical realities, but merely foreseeable events for the future, for which the time, place, importance and, in general, the circumstances and conditions of occurrence are unknown"*.
10. Thus, the structure of public security in Spain, contemplates its practical indivisibility of this structure and the concurrent nature of the exercise of competence.
11. Inherent to the difficulty of dividing up public security, and bearing in mind the coexistence of various Security Forces and Corps in the Spanish police model (Security Forces and Corps of the State, that of the Autonomous Communities and that of Local Corporations), it should be noted that the maintenance of Public Security is exercised by the different Public Administrations through the Security Forces and Corps in accordance with Article 1.4 of Organic Law 2/1986, of 13 March 1986.
12. On this point, it is worth highlighting the civilian nature of the National Police, according to article 9 of **Organic Law 2/1986, of 13 March**, which states that *"The National Police Corps is an Armed Institute of a civilian nature, dependent on the Minister of the Interior"*.

13. This Organic Law contemplates the **social relevance of the concept of public security, which must be understood and provided on a continuous basis**, as it is understood as **a set of social interests that cannot be divided up or interrupted**.

The Preamble of the aforementioned organic law includes a mention of the prohibition of strikes, within the constitutional framework of article 28, with the following wording.

*"Special mention should be made, in this respect, of the prohibition of strike action or actions in lieu thereof, which is carried out, within the framework delimited by article 28 of the Constitution, for the sake of the pre-eminent interests that the Security Forces must protect, in order to ensure the continuous provision of their services, which cannot be interrupted. Logically, as required by the protection of the personal and professional rights of these officers, the Law provides for the determination of the channels for the expression and resolution of conflicts that may arise for professional reasons".*

*In relation to the prohibition of strike action or actions in lieu of strike action, reference should be made to article 6.8 of Organic Law 2/1986 of 13 March 1986, which states:*

*"Members of the Security Forces and Corps may under no circumstances exercise the right to strike, nor may they take any action in substitution thereof or concerted action with a view to disrupting the normal functioning of the services".*

14. It should also be noted that the aforementioned Law establishes that the exercise of functions by members of the Security Forces and Corps must be in accordance with certain basic principles of action, being the principle of political neutrality and impartiality and the principle of professional dedication specially relevant.

### **The duty of political neutrality and impartial**



15. Art.5 (b) Act, in the performance of their duties, with complete political neutrality and impartiality and, consequently, without discrimination of any kind as to race, religion or opinión.

**Art. 5.4. Professional dedication.**

*They shall carry out their duties with total dedication, and shall always intervene, at any time and place, whether on duty or not, in defence of the law and public safety".*

16. The purpose of this regulation, is to "*establish the personnel regime of the career civil servants of the National Police, as well as the rights that correspond to them and the duties that are required of them, in accordance with their nature as an armed institute of a civilian nature*" (Article 1).
17. The aforementioned regulation contemplates the character of an armed institute of a civilian nature, which specifies and conditions certain aspects such as internal organisation, the personnel regime and the rights and duties of the National Police.
18. Consistent with the provisions contained in Organic Law 2/1986, the **Organic Law 9/2015, of 28 July, on the Personnel Regime of the National Police, establishes in Article 8**, the collective exercise rights of National Police officers, with the following wording.
- 1. National Police Officers have the right to form national trade union organisations for the defence of their professional interests.*
- 2. Notwithstanding the provisions of the preceding paragraph, they may only join trade union organisations made up exclusively of National Police Officers. Such organisations may not federate or confederate with other organisations which, in turn,*

*are not made up exclusively of members of the National Police, although they may form part of international organisations of the same nature.*

*3. They also have the following rights which are exercised collectively:*

*a) To unionise and to take trade union action, in the manner and within the limits established by law. They may not, under any circumstances, exercise the right to strike or actions in lieu thereof, or concerted actions with the aim of disrupting the normal operation of services.*

*b) To collective bargaining, understood, for the purposes of this Act, as participation through the representative trade union organisations, within the Police Council or in the committees set up within the framework of this body, in the determination of the conditions for the provision of the service by means of the procedures established by law.*

*c) To be informed, through the trade union organisations, of the data provided by the Directorate General of the Police on matters that are the subject of study, participation and report by the Police Council or by other bodies for consultation and participation of civil servants.*

*d) To the approach to collective disputes in the Police Council.*

19. In view of the above, the legislator has provided for the regulation of the right to strike with regulations of the rank of Organic Law, and it is not possible for members of the National Police to exercise this right under the current regulatory framework.

## II

### ANALYSIS OF THE REQUIREMENTS FOR A RESTRICTION OF THE RIGHT TO STRIKE TO BE IN CONFORMITY WITH THE REVISED SOCIAL CHARTER

#### A. *The ECSR doctrine*

##### 1. Possibility of restriction ex Art. G of the Charter

20. As the Committee itself points out in *European Council of Trade Unions (CESP) v. France*, Complaint No.101/2013, decision on the merits of 27 January 2016, §80, restrictions on the rights of members of the Armed Forces or equivalent "*must also take Article G of the Charter into consideration, which provides that any restriction to the right to organise provided for under Article 5 of the Charter must be prescribed by law, pursue a legitimate purpose and [be] necessary in a democratic society for, inter alia, the protection of national security*".
21. As regards the right to strike of public officials, the Committee recognises that, under Article G of the revised Charter, the right to strike of certain categories of public officials may be restricted, including members of the police and armed forces, judges and senior civil servants (*European Organisation of Military Associations (EUROMIL) v. Ireland*, Complaint No. 112/2014, decision on the merits of 12 September 2017, §113.).
22. The Committee has held that restrictions on the right to strike of the police may be in conformity with Article 6§4 of the Charter (Conclusions XVIII-1 (2006), Croatia). States enjoy a wide margin of appreciation when it comes to restricting the right of police

personnel to strike (Conclusions XIV-1 (1998), Norway; Conclusions XIV-1 (1998), Denmark; Conclusions I (1969), Denmark.

23. In its Conclusions I (1969), Statement of Interpretation on Article 6§4, pp. 38-39, the Committee observed as follows: "*As regards the right of public servants to strike, the Committee recognises that, by virtue of Article 31 [now Article G of the Revised Charter], the right to strike of certain categories of public servants may be restricted, **including members of the police and armed forces, judges and senior civil servants**. On the other hand, the Committee takes the view that a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter*".

<b>2. Decision EuroCOP v. Ireland, complaint no. 83/2012</b>
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24. In this case the Committee found a violation of art. 6.2 of the revised Charter on the following grounds:

*Since this applies in respect of restrictions on the exercise of the right to strike for the purpose of improving conditions of work beyond a given minimum level, it a fortiori applies also for every absolute prohibition of the right to strike established a priori by law. In other words, the Committee holds that restrictions on human rights must be interpreted narrowly. As a consequence, in the context of the regulation of the collective bargaining rights of police officers, states must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified in the specific national context in question, as distinct from the imposition of restrictions as to the mode and form of such strike action.*

*Thus, in this case, the margin of appreciation of the state party is restricted, because the abolition of the right to strike affects one of the essential elements of the right to collective bargaining, as provided for in Article 6 of the Charter, and without which the content of*

*this right becomes void of its very substance and is therefore deprived of its effectiveness.*

*In the situation at issue in this complaint, the Government as previously noted has not presented such a compelling justification for the imposition of the absolute prohibition on the right to strike set out in Section 8 of the 1990 Industrial Relations Act. As a result, the Committee considers that this statutory provision is not proportionate to the legitimate aim pursued and, accordingly, is not necessary in a democratic society.*

#### **B. The Committee of Ministers of the Council of Europe position**

25. The Committee of Ministers has already concluded that a total ban on the right to strike for the police is not contrary to the Charter.
26. The relevant parts of Recommendation (Rec (2001) 10) of the Committee of Ministers of the Council of Europe on the European Code of Police Ethics, adopted on 19 September 2001, state the following:

*Article 32 du code: « Les personnels de police doivent bénéficier, en tant que fonctionnaires, d'une gamme de droits sociaux et économiques aussi étendue que possible. Ils doivent en particulier bénéficier du droit syndical ou de participer à des instances représentatives, du droit de percevoir une rémunération appropriée, du droit à une couverture sociale et de mesures spécifiques de protection de la santé et de la sécurité tenant compte du caractère particulier du travail de la police ».*

*Commentaire du Comité des Ministres:*

*Cet article concerne les droits sociaux et économiques qui sont garantis par la Charte sociale européenne, instrument complétant en la matière la Convention européenne des droits de l'homme.*

*La Charte sociale européenne (article 5) donne une interprétation spéciale du droit de se syndiquer dans le cas de la police, laissant à cet égard une marge d'appréciation aux États. Toutefois, selon la jurisprudence relative à la Charte, même s'il ne peut être question d'accorder à la police un droit illimité de se syndiquer, on ne saurait, sans violer la Charte, interdire aux fonctionnaires de police de créer leurs propres organisations représentatives. Le droit interne peut prévoir des organisations composées uniquement de policiers, comme cela est le cas dans certains États membres. Cela étant, **l'interdiction totale du droit de grève pour la police n'est pas contraire à la Charte et à la jurisprudence s'y rapportant, et la présente Recommandation ne va pas plus loin.***

### **C. The European Court's doctrine**

27. Article 11 of the ECHR expressly foresees among its limitations the restriction of this right to police forces. This is a specific and much more concrete limitation than that provided for in the case of civil servants, when the provision itself refers to the State administration. This shows that the drafters of the ECHR took into account the peculiarities which, within the public service, correspond to the security forces and corps, considerations which can also be transferred to the similar rights contained in the CSE(r). And indeed, the possibility of such a restriction on the right to strike under Art. 6 of the Charter has been expressly admitted by the Committee (European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017, §113).
28. Indeed, Article 11 allows the establishment of those restrictions "which, provided for by law, constitute necessary measures, in a democratic society, for national security, public

safety, the defence of order and the prevention of crime, the protection of health or morals, or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, the police or the administration of the State.

29. After the cited Committee's decision on the Irish case issued on 2014, the European Court of the Council of Europe has had the opportunity to give its view on two cases:

<p><b>1. <i>Affaire Junta rectora del ertzainen nazional elkartasuna (E.R.N.E.) c. Espagne (Requête no 45892/09)</i></b></p>
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30. **The first judgment was issued in** a very similar case to that brought in the present collective complaint to the attention of this Committee's, indeed related with a similar prohibition of the right of strike of an autonomous Police force in Spain (in fact, the País Vasco police force called *Ertzaintza*):

**I.- In *Affaire junta rectora del ertzainen nazional elkartasuna (E.R.N.E.) c. Espagne (Requête no 45892/09)* of April 2015,** the Court analysed an application having to do with the prohibition of the right to strike in the case of the autonomous police -*Ertzaintza*- of the Autonomous Community of *El País Vasco*. Due to the interest of the reasoning of this judgment for the present Complaint, we reproduce its essential paragraphs:

*i. Sur l'existence d'une ingérence, sa base légale et son but légitime*

34. *Le syndicat requérant a subi directement les conséquences des décisions administratives et judiciaires rejetant sa demande d'autorisation d'effectuer une grève et*

*peut par conséquent se prétendre victime d'une ingérence dans l'exercice de son droit à la liberté syndicale.*

*35. La Cour note que l'article 6 § 8 de la Loi organique 2/1986, du 13 mars, des corps et forces de sécurité, prévoyant que les membres des Forces et Corps de Sécurité de l'État ne peuvent exercer en aucun cas le droit de grève, constitue la base légale de l'ingérence litigieuse. Les termes de cette loi doivent être considérés comme étant suffisamment clairs et prévisibles. Les membres du syndicat requérant pouvaient ainsi raisonnablement s'attendre à être visés par l'interdiction. En effet, l'expression « Forces et Corps de Sécurité » utilisée par la loi, englobe tant les collectifs de nature civile que ceux à caractère armé.*

*36. Par ailleurs, la Cour accepte que l'ingérence poursuivait un objectif légitime au regard du paragraphe 2 de l'article 11, à savoir la défense de l'ordre, eu égard aux fonctions spécifiques attribuées à ce corps de police et aux conséquences éventuelles en cas d'interruption de ses activités.*

*ii. Sur la nécessité dans une société démocratique*

*37. La Cour note que la restriction prescrite par la loi litigieuse ne s'étend pas sur l'ensemble des fonctionnaires publics mais vise exclusivement les membres des Forces et Corps de Sécurité de l'État en tant que garants du maintien de la sécurité publique (voir a contrario Enerji Yapı-Yol Sen susmentionné, § 32). La Cour note en outre que cette même loi accorde à ces corps une responsabilité accrue leur exigeant d'intervenir à tout moment et en tout lieu en défense de la Loi, que ce soit pendant les heures de travail ou pas.*

*38. Aux yeux de la Cour, cette nécessité d'un service ininterrompu et le mandat armé qui caractérise ces « Agents de l'Autorité » distingue ce collectif d'autres fonctionnaires tels*



que les magistrats ou les médecins et justifie la limitation de leur liberté syndicale. En effet, les exigences plus sévères les concernant ne vont pas au-delà de ce qui est nécessaire dans une société démocratique, dans la mesure où elles permettent de préserver les intérêts généraux de l'État et, en particulier, d'en garantir la sécurité, la sûreté publique et la défense de l'ordre, principes énoncés à l'article 11 § 2 de la Convention.

39. Par ailleurs, la nature spécifique de leurs activités justifie l'existence d'une marge d'appréciation suffisamment large pour l'État pour développer sa politique législative et lui permettre ainsi de réglementer, dans l'intérêt public, certains aspects de l'activité du syndicat, sans pour autant priver ce dernier du contenu essentiel de ses droits au titre de l'article 11 de la Convention (voir *National Union of Rail, Maritime et Transport Workers c. Royaume-Uni*, no 31045/10, § 104, CEDH 2014).

40. De plus, la Cour ne peut pas être d'accord avec le syndicat requérant en ce qui concerne les conclusions extraites des recommandations du Comité des ministres du Conseil de l'Europe sur le code européen d'éthique de la Police. La Cour note en particulier que le droit de grève pour la police n'est pas reconnu dans ledit code. À cet égard, **le Comité des Ministres a considéré que l'interdiction totale du droit de grève pour la police n'est pas contraire à la Charte sociale et à la jurisprudence s'y rapportant (paragraphe 16 ci-dessus). La Cour n'aperçoit pas de raison de s'écarter de cette conclusion.**

41. Les considérations qui précèdent mènent la Cour à conclure que les faits soulevés par la situation spécifique de la présente affaire ne constituent pas une ingérence injustifiée dans le droit du syndicat requérant à la liberté d'association, dont il a pu exercer le contenu essentiel.

43. *Par conséquent, la Cour conclut à la non-violation de l'article 11, pris isolément ou combiné avec l'article 14 de la Convention.*

## **2. Grand Chamber judgment *Humpert and others v. Germany***

31. In this second judgment, issued just a couple of months ago (December 2023), the Grand Chamber has had the opportunity to consolidate the Court's doctrine on the issue now dealt by the ESCR. In that case the Court examined Germany's absolute ban on the right of teachers to strike:

*The objectives pursued by the prohibition on strikes*

**1. The Court reiterates that it accepts the Government's submission that the prohibition on strikes by civil servants as combined with several complementary, legally enforceable fundamental rights pursues the overall aim of providing for good administration. This reciprocal system of interrelated rights and duties (see paragraphs above) guarantees the effective performance of functions delegated to the civil service and thereby ensures the protection of the population, the provision of services of general interest and the protection of the rights enshrined in the Convention through effective public administration in manifold situations (see paragraph ;Error! No se encuentra el origen de la referencia. above). In this connection, the Court observes, more generally, that restrictions on the right to strike may serve to protect the rights of others, which are not limited to those on the employer's side in an industrial dispute, and may serve to fulfil a Contracting State's positive obligations under its constitutional law, the Convention and other human rights treaties (see *National Union of Rail, Maritime and Transport Workers*, § 82, and *Association of Academics*, § 30, both cited above).**

144. *Having regard to the foregoing, the Court reiterates that the impugned restriction on the right to strike of civil servants, including teachers with that status, such as the*

applicants in the present case, was severe in nature (see paragraphs 123-127 above). However, **while the right to strike is an important element of trade-union freedom, strike action is not the only means by which trade unions and their members can protect the relevant occupational interests and Contracting States are in principle free to decide what measures they wish to take in order to ensure compliance with Article 11 as long as they thereby ensure that trade-union freedom does not become devoid of substance as a result of any restrictions imposed** (see paragraph 128 above).

In this connection, the Court emphasises that, in the respondent State, a variety of **different institutional safeguards have been put in place to enable civil servants and their unions to defend occupational interests** (see paragraphs 128-135 above). As explained above, civil servants' trade unions are granted a **statutory right to participate in the drafting of statutory provisions for civil servants, who are also granted an individual constitutional right to be provided with "adequate maintenance", which they can enforce in court. The Court considers that these measures, in their totality, enable civil servants' trade unions and civil servants themselves to effectively defend the relevant occupational interests.** The high unionisation rate among German civil servants illustrates the effectiveness in practice of trade-union rights as they are secured to civil servants. In this connection it is noteworthy that the Association of Civil Servants and Union for Collective Bargaining, the largest civil servants' union, representing about 50 per cent of all civil servants, submitted to the Court that civil servants already had all that could be gained by strike action owing to the constitutional rights which came with their status and advocated against granting civil servants a right to strike (see paragraphs 97 and 129 above).

147. The Court thus concludes that the measures taken against the applicants did not exceed the margin of appreciation afforded to the respondent State in the circumstances

*of the present case and were shown to be proportionate to the important legitimate aims pursued. Accordingly, there has been no violation of Article 11 of the Convention.*

#### **D. Spanish Constitutional Court's approach**

32. Finally, the Spanish **Constitutional Court**, in its **ruling of 8 April 1981**, in reference to the constitutional limitations of the right to strike in Article 28, contemplates the following with regard to the minimum essential services of the community.

*Article 28 of the Constitution is very clear in the sense that the law must establish the necessary guarantees to ensure the maintenance of essential community services in the event of a strike. This idea is reiterated in Article 37, when it refers to the right to take collective action.*

*Both these provisions mean **that the right of workers to defend their interests by using an instrument of pressure in the process of production of goods or services gives way when this causes or is likely to cause a more serious harm than that which the strikers would experience if their demands or claims were unsuccessful.** This is clearly the case when the operation of what the Constitution calls the "production process" is prevented or seriously impeded.*

*"Essential community services":*

*Insofar as the recipient and creditor of such services is the entire community and the services are at the same time essential to it, **the strike cannot impose the sacrifice of the interests of the recipients of the essential services. The community's right to these vital services takes priority over the right to strike. The limit on the latter right is fully justified, and the fact that such a limit is set does not violate the essential content of the right.***

**III**

**THE COMMITTEE'S APPROACH ON THE PROHIBITION OF THE  
RIGHT TO STRIKE FOR MEMBERS OF THE POLICE FORCES**

33. The Committee has already stated (Decision *Eurocop v. Ireland*) that it falls to States, within their margin of appreciation, to decide, in light of the circumstances of a given national system, whether a restriction upon the right to strike of the police for a certain part of the police force is truly necessary with a view to achieving the legitimate objective pursued.
34. Nevertheless, the data collected from the States members to the Council of Europe reveal that **a vast majority of States in Europe foresee an absolute ban of the right of strike for the member of the Police Forces** (exceptions being just Switzerland, Croatia and Slovenia). This allows to draw three conclusions:
- 1.- There is no european consensus on the need to allow the right to strike for the members of the Police Forces. On the contrary, the vast majority of them prohibit this right in an absolute way for similar reasons.
  - 2.- The Spanish regulation on this issue, is in line with the vast majority of the High Contracting Parties of the Council of Europe.
  - 3.- A decision of the Committe -separated from that of the Court already outlined- considering that Spanish national regulation is not inconformity with the Social revised Charter would inevitably send a discouraging message to the rest of the State members to ratify this important instrument.

**IV**  
**THE SPANISH CASE**  
**REQUIREMENTS FOR THE INTERFERENCE WITH THE RIGHT TO  
STRIKE FOR THE POLICE MEMBERS TO BE IN CONFORMITY  
WITH ART. 6§4 AND G OF THE CHARTER**

35. In order to analyse whether the interference with the general right to strike of normal workers is, in the case of the members of the Police Forces in Spain, in conformity with the revised social Charter, we will address the following issues: whether the interference is provided for by law, if it seeks a legitimate purpose and whether it is necessary in the Spanish democratic society.

**A) The interference is regulated by a law**

36. The limitation of the right to freedom of association in the case of police officers and members of the armed forces is enabled by the highest-ranking provision in the Spanish constitutional order, which allows, in the terms set out above, the introduction of limitations on the right to freedom of association of the military, members of armed forces and police officers.
37. The law that establishes the prohibition of this right is an organic law (LO 9/2011 and LODDGC), which requires a special high number of votes at the Parliament for its approval (absolute majority, as opposed to a simple majority, Article 81 of the Spanish Constitution), therefore enjoying greater democratic support than an ordinary law.
38. The special regulation applicable to the National Police forces is contained in Article 8.3 of the said Organic Law 9/2015, of 28 July, on the Personnel Regime of the National Police, setting up National Police as an armed institute of a civilian nature:

*3. They also have the following rights which are exercised collectively:*

*a) To organise and to take trade union action, in the manner and within the limits provided for by law. They may not, under any circumstances, exercise the right to strike or actions in lieu thereof, or concerted action with the aim of altering the normal with the aim of disrupting the normal operation of services.*

39. Therefore, with regard to the exercise of the right to strike (which is generally included among the powers of the right to strike) it may not be exercised in any case. The law in force denies the possibility of adopting measures of collective conflict and, in particular, expressly vetoes the exercise of the right to strike, and the use of alternative recourse to actions in lieu thereof, or concerted action with the aim of disrupting the normal operation of services.
40. Such restrictions are a consequence of the special functions carried out by the Police forces(to protect the free exercise of rights and freedoms and the exercise of rights and freedoms and guaranteeing public safety), and based on the possible incompatibility between the calling of and participation in the collective conflict measures and the appropriate performance of the public service tasks entrusted to them by law.
41. In this respect, it is worth recalling the wording of the constitutional regulation in relation to the right to strike and collective action provided for in Articles 37 and 28 EC. At least three aspects can be highlighted from this regulation:
- The recognition of the adoption by workers of various collective conflict measures, among which are different collective conflict measures, including the exercise of the right to strike. Therefore, strike action is an instrument of conflict, but not the only one to be taken into consideration when assessing possible restrictions on the exercise of the right to strike.

- The regulation of collective conflicts and strike action can establish limitations. We are not, therefore, dealing with absolute rights, although limitations have to be expressly regulated and in a manner proportionate to the interests or rights that are intended to be protected by such limitations.

- In any case, the regulation of the exercise of the right to take collective disputes and strike action must ensure the maintenance of essential community services. Therefore, the exercise of the right to strike is also possible in the field of essential services, although in these cases the Constitutional law requires the maintenance of such services. In this sense, it should be noted that in Spain the recognition of the right to strike extends to people who perform a multitude of services that have been legally classified as essential services because they affect fundamental rights or higher interests.

42. It should also be pointed out that, when generally speaking of in these essential services , the right to strike is very limited as the law imposes the maintenance of a contingent of people to guarantee those services, a limitation particularly intense in services such as hospital emergencies, emergency services, etc. In any case, these are personal limitations but not an absolute prohibition of the exercise of the right.

***B) Legitimate purpose***

43. At this point, it is worth considering whether, as stated in the Explanatory Memorandum of LO 9/2015, the scope of the restrictions and prohibitions in the sphere of the State security forces and bodies of the State is proportionate and respectful of the essential content of the right to freedom of association and the right to strike and, above all, if such restrictions, established in view of the special characteristics of police work, exceed or not the special characteristics of the police function, pass or fail the Strasbourg test. In



particular, it is necessary to analyse whether these restrictions are necessary in a democratic society for the satisfaction of the legitimate aims pursued by the legitimate aims pursued or, on the contrary, they could be applied to the PN the legislation applicable to civil servants of the General Administration of the State, with or without in the matter.

44. In any case, the regulations applicable to the National Police in this respect, Organic Law 9/2015, on the personnel regime of the National Police in its articles 8.3.d) and 94.2.a), includes the possibility of raising other collective conflicts in the terms established in the aforementioned law, including its specialities and specific precautions.
45. The existence of a legitimate aim for a restriction of the right to strike in the case of the members of the Police Forces has been confirmed by the Spanish Constitutional Court in its Judgment 371/1993 of 13 December 1993, which declared, along the same lines as the ECHR (Engel et al. case, 8 June 1976), that

*"Given the important tasks assigned to the Armed Forces by art. 8.1 CE, it is of unquestionable relevance to the constitutional order that they should be configured in such a way as to be suitable for the fulfilment of those tasks (ATC 375/1983). To this end, the missions entrusted to them by the aforementioned constitutional precept require an adequate and effective configuration of the Armed Forces from which, among other singularities, derives their indispensable and specific character as a deeply hierarchical, disciplined and united organisation (arts. 1 and 10 RROO). As a consequence of this, and in accordance with the aforementioned constitutional doctrine, there is no doubt that the legislator can introduce certain peculiarities or establish specific limits to the exercise of the freedoms recognised in the Constitution by the members of the Armed Forces, limits which would imply a differentiation with respect to the general and common regime of these freedoms [...]....] provided that these limits respond to the essential principles and criteria of organisation of the military institution, which guarantee not only the necessary*

*discipline and hierarchical subjection, but also the principle of internal unity, which excludes expressions of opinion that could introduce undesirable forms of partisan debate [...] or dissension and strife within the Armed Forces, which are imperative for the achievement of the lofty goals assigned to them by Article 8.1 of the EC assigns to them, a special and suitable configuration".*

**C) Necessity of the restriction in a democratic society in Spain**

46. As stated above, the ECtHR has already ruled in relation to the absolute restriction of the right to strike of the autonomous police of the Community of the Basque Country, considering that such a restriction was necessary in a democratic society, so that there is no violation of Article 11 of the Convention, taken in isolation or in conjunction with Article 14 of the Convention.
47. *Mutatis mutandi*, the situation is exactly the same for the National Police throughout Spain, given the similarity of functions assigned to both police forces.
48. As regards the duty to respect the principle of proportionality, it should be noted that the ECtHR has stated that the right to strike acts as an indispensable corollary of the right to trade union association, insofar as it is what enables a trade union to make its voice heard and thus constitutes an important aspect for its members in safeguarding their interests (Schmidt and Dahlström v. Sweden, 6 February 1976). It has also recalled that the European Social Charter recognises the right to strike as a means of ensuring the effective exercise of the right to collective bargaining (Enerji Yapı-Yol Sen v. Turkey, 21 April 2009).
49. Finally, the committee has recognised that this right is not absolute and that it may be subject to certain conditions and restrictions for officials exercising functions of authority on behalf of the State, as opposed to other members of the public service whose functions

are purely managerial or to public employees of commercial or industrial undertakings of the State, to whom it should not be extended (see *Pellegrin v. France*, 8 December 1999). Legal restrictions on the right to strike should therefore define as clearly and strictly as possible the categories of civil servants concerned (*Enerji Yapı-Yol Sen*, cited above).

50. For the above reasons, the Spanish Government consider that the prohibition of strike action and actions in lieu of strike action by members of the National Police is legally regulated in regulations in accordance with the Constitution.
51. The concept of public safety would support and justify the current regulation of the right to strike in the National Police, in line with the ratification of the revised European Social Charter, in line with possibility awarded for states to regulate restrictions of this right by law.

**V**

**COMPELLING REASONS FOR THE PROHIBITION OF THE RIGHT TO  
STRIKE FOR THE MEMBERS OF THE NATIONAL POLICE  
FORCES IN SPAIN**

52. In this balance between the instrumental power that this right implies in guaranteeing effective and solid collective bargaining power on the part of police officers, and the effect that its exercise has on society as a whole, all possible scenarios must be weighed up, bearing in mind the specificities of the functions attributed by law to the security forces and corps, in this regard the following is taken into account:

### **1.- Public Security:**

53. Public security is a function of the State whose purpose is to safeguard the integrity and rights of individuals, as well as to preserve public freedoms, order and peace. Public security implies that citizens can live together in harmony, each respecting the individual rights of the other. In addition to the maintenance of public order, its purpose is to prevent the commission of crimes and infractions of government and police regulations, to collaborate in the investigation and prosecution of crimes and to assist the population in the event of accidents and disasters. The range of activities carried out by the National Police is very broad and the crucial role it plays in all of them is fundamental to the stability of a country, and any failure to do so leads to the insecurity of the population.
54. Public security is an absolute, non-gradable concept, since public security cannot be guaranteed "just a little". Therefore, it is incompatible with the establishment of minimum services during the exercise of the Right to Strike by those obliged to ensure it. Neither is it possible to foresee, nor to measure, future events that may threaten security, in order to establish the aforementioned minimum services.
55. In this sense, the Strategic Plan of the National Police in Spain is designed for each period based on the analysis of the situation at any given time, and the foresight obtained from this analysis, on the basis of which the police resources and strategy for the following years are adapted, all in line with the general lines determined by the Ministry of the Interior, developed in a specific Security Model. Despite the efforts made by all security operators to turn police intelligence, understood as the anticipation and prevention of threats and challenges to security, into a scientific discipline, it is not possible to foresee all future events and therefore adapt personnel needs to them.

56. In this way, security needs are adapted according to known or foreseeable threats, as is the case with regard to declarations of an anti-terrorist alert situation, which is currently at level four for a very long period of time, because the threat is permanent (and yet susceptible to change), but not with regard to unknown or unforeseeable threats. The occurrence, for example, of a public calamity or catastrophe, during the possibly legitimate exercise of the right to strike by a majority of police officers, would have irreparable consequences for people's lives, making it materially impossible for them to return to service, even if the exercise of this right were limited in these or similar cases. On the other hand, in cases of threats to national security, the ability of all security forces to act quickly and in a coordinated manner is essential, thus reinforcing the idea that it is not possible for one police force to replace the other in the event of a strike. The distribution of powers established in O.L. 2/1986, of 13 March, on Security Forces and Corps, between the different police forces operating throughout the national territory, also prevents the substitution of one force for another, given that the material distribution of powers implies both the specialisation of the officers of each force in different areas and the different distribution of material resources available to each of them.

## **2.- Possibility of establishing minimum services and their impact on security**

57. In view of what has been said above about public security, it can be affirmed that the level of demand that arises in terms of security is NOT reducible or adjustable. Unlike other public and private sectors that can determine the reduction of the service to be provided, in terms of security it is not possible to choose to reduce the number of crimes, for example gender-based violence or crimes against sexual freedom that occur during the strike period, and which would require immediate and non-extendable intervention.

58. However, what can be predicted with complete certainty is that the exercise of the right to strike by police officers has a stimulating effect on the commission of crimes, that is, the less security, the greater the increase in crime, given the direct interrelationship between criminal behaviour, police action and the deployment of police forces, as a result of the deterrent capacity that the police have on the undertaking of criminal actions. The 3.5 rule (study by political scientist Erica Chenoweth together with Maria J. Stephan, edited by Columbia University 2011), the result of a long study on social movements, reaches the conclusion that 3.5% of the population is sufficient to achieve changes through peaceful movements. This rule can be extrapolated to the field of security, and demonstrates the fragility of security in the face of any type of coordinated threat, which will undoubtedly always try to benefit from the announcement of a strike by the security forces.

### **3.- Possible adverse effect of the right to strike on the basic principles of action of the members of the Police Forces.**

59. The power or sovereignty of the State requires autonomy to administer its territory and population, and for this it is essential to have a monopoly (exclusive and excluding) of force to guarantee its integrity, and to respond quickly and effectively to any threat that may alter public security. In Spain, in order to guarantee public security and order, and internal stability, police forces are set up and regulated by LO 2/1986 of 13 March 1986 on Security Forces and Corps. In order for the monopoly on the use of force to be a reality, and to effectively guarantee the defence of fundamental rights and freedoms, public security and, in general, the interests of the State, the State must have effective and complete resources available for its exercise, among which are the police forces. To this end, specific requirements are established for this group of civil servants that differentiate them from other civil servants in the public sector, and which are reflected in the basic

principles of action (art. 5 of Organic Law 2/1986, of 13 March, on Security Forces and Corps). In this respect, the following should be noted:

- **(Art. 5. 4) Professional dedication**

60. In accordance with this basic principle of action, officers of the security forces and corps must carry out their duties with total dedication, always intervening at any time and place, whether or not they are on duty, in defence of the law and public safety. The first is a direct consequence of the aforementioned unpredictability of security threats, which can arise at any time and place, and therefore require an immediate response from police officers, whether they are on duty or not. - The second is the obligation to make themselves available to the superior in the event of any serious disturbance to public safety, as well as in cases of declaration of states of emergency or siege, (Art. 9. I) of Organic Law 9/2015, of 28 July, on the National Police Personnel Regime), a direct reflection of the monopoly on the use of force that requires the State to freely dispose of its personnel in the event of such threats.

- **(Art. 5.1 b) The duty of political neutrality and impartiality**

61. The impartiality of civil service management provides security for the administration of democratic institutions. With regard to this impartiality, special emphasis should be placed on the duty of political neutrality, in the sense that police officers should be at the service of and respectful towards the democratically elected political administration in power at any given moment, even if it is contrary to their own ideology. This neutrality is the best guarantee of democratic stability, but it could be called into question if trade union organisations were to declare strikes at the same time as certain demands, thus providing additional support for the pressure exerted by such movements, even if this is not the

intention of the trade union organisation calling the strike. On the other hand, at times of particular social unrest, arising for example from legitimate decisions that could be considered unpopular, the exercise of the right to strike would impede the effective enforcement of the law.

#### **4.- Incompatibility of the right to strike with the functions of judicial Police**

62. The Security Forces and Corps, achieve the aims of public security through their actions not only preventive but also prosecutorial, the latter are specified in the functions of judicial Police that the National Police develops by constitutional mandate and which are defined in articles 29 and ss of the LO 2/1986, under the organic dependence of the Ministry of Interior, and under the functional dependence of Judges, Courts and the Public Prosecutor's Office, so that the exercise of the right to strike has a direct impact on the jurisdictional function that will directly affect its functions of investigating crime.
63. The prosecution of crimes cannot be made to depend on the discretionary exercise of a right by the public officials obliged to carry it out, among other things, because the very idiosyncrasy of the criminal action makes the paralysation or slowing down of police services incompatible with obtaining satisfactory results in the investigation, with the consequences of the delays produced in the investigation or judicial process being clearly irreparable.

#### **5.- Incompatibility of the exercise of the right to strike by the Security Forces and Corps with the exercise of the right to strike in other sectors**

64. In the event of any call for a strike (whether national or otherwise), the Security Forces and Corps are responsible for ensuring that the minimum services in the affected sectors are carried out normally, intervening in the event of the appearance of pickets or



disturbances of any kind. These actions are completely incompatible with the exercise of the right to strike by National Police officers. 6.- Impact on institutional credibility: A greater police presence not only leads to an increase in the prevention, detection and prosecution of criminal incidents, but also improves the feeling of social control and confidence in the police's ability to solve crimes. In view of the above, participation in strikes could affect public perception of the integrity and credibility of the security forces, which could undermine society's confidence in these institutions. In this sense, we cannot ignore the fact that security is at the bottom of the hierarchy of human needs, being essential to sustain and guarantee the normal development of all other vital needs.

### **In conclusion**

65. The ECtHR recalls that a distinction is discriminatory within the meaning of Article 14, if it "lacks objective and reasonable justification", i.e. if it does not pursue a "legitimate aim" or if there is no "reasonable relationship of proportionality between the means employed and the aim pursued".
66. The denial of the right to strike to certain sectors of the administration such as the National Police in Spain does not imply per se any kind of discriminatory treatment.
67. On the other hand, the Contracting States enjoy a certain margin of discretion in determining whether and to what extent differences between situations which are analogous in other respects justify distinctions in treatment.
68. In accordance with this conception of the concept of discrimination, and in view of the legal interests affected by the possible exercise of the right to strike in the National Police, as well as in view of the fatal consequences that could be foreseen in the event of its implementation, we are forced to conclude that the provision currently existing both in the

Spanish Constitution and in Organic Law 2/1986, of 13 March, on Security Forces and Corps, regarding the right to strike, is completely reasonable and necessary.

69. There are compelling reasons to consider the serious and detrimental effects that the exercise of the right would have on the rest of society and the state as a whole, which can be summarised as follows:

- Incompatibility with some of the basic principles of action of the officers of the National Police.
- Weakening of public security as the demands for security are not predictable, generating on the contrary an effect that will lead to an increase in crime and the breaking of rules (irregular immigration, drug trafficking, security of critical infrastructures, etc.) and greater vulnerability of institutions.
- Incompatibility with the exercise of the right to strike by other sectors.
- Incompatibility with the fulfilment of the duties of the Judicial Police in relation to the demands of jurisdictional bodies, irreparable damage to the outcome of investigations.
- Weakening public perception of the integrity and credibility of the security forces.

**VI**  
**ADDITIONAL SAFEGUARDS TO ENABLE SPANISH NATIONAL POLICE**  
**MEMBERS TO DEFEND OCCUPATIONAL RIGHTS COLLECTIVE**  
**BARGAINING**

70. As cited above, Organic Law 9/2015, of 28 July, of the Personnel Regime of the National Police establishes in Article 8, the **collective exercise rights of National Police officers**, with the following wording.

*"1. National Police Officers have the right to form national trade union organisations for the defence of their professional interests.*

*2. Notwithstanding the provisions of the preceding paragraph, they may only join trade union organisations made up exclusively of National Police Officers. Such organisations may not federate or confederate with other organisations which, in turn, are not made up exclusively of members of the National Police, although they may form part of international organisations of the same nature.*

*3. They also have the following rights which are exercised collectively:*

*a) To unionise and to take trade union action, in the manner and within the limits established by law. They may not, under any circumstances, exercise the right to strike or actions in lieu thereof, or concerted actions with the aim of disrupting the normal operation of services.*

*b) To collective bargaining, understood, for the purposes of this Act, as participation through the representative trade union organisations, within the Police Council or in the*

*committees set up within the framework of this body, in the determination of the conditions for the provision of the service by means of the procedures established by law.*

*c) To be informed, through the trade union organisations, of the data provided by the Directorate General of the Police on matters that are the subject of study, participation and report by the Police Council or by other bodies for consultation and participation of civil servants.*

*d) To the approach to collective disputes in the Police Council".*

### **Trade unions**

71. Collective bargaining in the Spanish National Police is exercised through the **participation of the representative trade union organisations in the Police Council or in the committees** that are set up within the framework of this body to improve the conditions for the provision of the service. It is a mechanism through which the Administration and the trade unions negotiate individual working conditions, with the sole limitation that National Police officers may not temporarily cease to perform their duties, as occurs when the pressure mechanism of strike action is exercised.
72. The percentage of membership in the various trade union organisations of the National Police last November exceed 80% of its members.

### **Collective conflicts**

73. Trade unions have another legitimate means of pressure: the collective conflict, which is often used to force the negotiation with the public authorities. All the negotiation and communication instruments available to the trade union organisations of the National Police converge in a single direction: to strengthen the bargaining position of the workers,

### **The Police Council<sup>1</sup>**

74. The Police Council works as a collegiate body for the joint representation of the officers of the National Police and the Public authorities, constituting a channel for the expression and resolution of professional conflicts, in the determination of their conditions of employment or work and the provision of service and a means for the possible resolution of collective conflicts.

75. Its functions are contained in its bylaw <sup>2</sup>:

- a) Mediation and conciliation in the police of collective conflicts.*
- b) Participation in the establishment of the conditions of service of the officers of the National Police Force.*
- c) The formulation of motions and the evacuation of consultations on matters relating to the Professional Statute.*
- d) The issuing of reports in disciplinary proceedings instituted for very serious misconduct against members of the National Police Force, and in all those proceedings instituted against the representatives of the Trade Unions referred to in Article 22 of the aforementioned Organic Law, in relation to the provisions of Article 21.*

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<sup>1</sup> Provided for in Organic Law 9/2015, of 28 July as a mechanism for resolving collective conflicts within the National Police.

<sup>2</sup> Rules of Organisation and Internal Functioning of the Police Council, Order 22 July 1987.

*Likewise, it shall report, whenever expressly requested by the interested parties, on the proceedings instituted against members of the aforementioned Corps for the commission of serious misconduct*

*e) The prior police to the provisions of a general nature that are intended to be issued on the matters referred to in the previous sections.*

76. Mediation and conciliation in collective conflicts is the first of the functions attributed to the Police Council. It is established as the first function because of its importance, as it is the first time that a meeting and agreement body has been set up in which collective conflicts raised by trade 376lic organisations can be raised and negotiated.

77. It also participates issuing reports on draft regulations that may affect the members of the National Police Forces.

78. On the other hand, it also reports on disciplinary files, secondment to second activity and retirement of the National Police Forces.

79. Collective bargaining is carried out within the Police Council or in the committees that are set up within the framework of this body to improve the conditions of service provision. By way of example, during the year 2023, the following activities dealing with the right of collective bargaining were carried out within the Police Council:

**80. Meetings:**

- 10 of the Commission for Personnel and Regulatory Projects
- 2 of the Plenary Session of the Police Council
- 2 of the Police Occupational Health and Safety Commission.

- 2 of the Health and Safety Committees.
- 4 of the National Commission on Occupational Risks for Non-Police Personnel.

**81. Informing the bases of calls for applications:**

- Of 11 open competitions to fill 7917 posts.
- Of 33 specific merit-based competitions to fill 1486 posts.

**82. Reporting on draft regulations:**

- Resolution of the Directorate General of the Police creating the Office of Translation and Interpretation of Languages of the National Police.
- Resolution of the Directorate General of the Police, approving the I Plan for Equality in the National Police.
- Resolution of the Directorate General of the Police creating the National Police Bicentenary badge.
- Resolution of the Directorate General of the Police regulating the function and permanence badges of the National Police personnel in the 386li of activity of the Judicial Police.
- Resolution of the Directorate General of the Police regulating the function and permanence badges of the National Police personnel in the 386li of activity of International Cooperation.
- Resolution of the Directorate General of the Police regulating the function and permanence badges of the National Police personnel in the 386li of activity of Documentation.

- Resolution of the Directorate General of the Police creating the National Police Language Centre.

**83. Reporting on disciplinary files, secondment to second activity and retirement:**

- 83 disciplinary files.
- 15 second activity files.

**84. Participation of national Police trade police organisations in the drafting of general provisions**

85. This collective bargaining through the Police Council has a real impact in the drafting of general provisions that affect the labour conditions of the members of Police Forces. The following data relate the regulations adopted in recent years as well as the number of proposals made by the police trade unions:

- In relation to Royal Decree 853/2022, of 11 October, approving the Regulations on selective processes and training of the National Police, when the draft was reported to the Police Council, the trade 39ólic organisations made 64 proposals for improvement, 27 of which were accepted.
- In relation to Royal Decree 49/2024, of 16 January, approving the Regulations of the National Police Training Centres, 58 proposals were made by the trade organisations, 22 of which were accepted:
- Question System: This is a mechanism through which requests for information, claims and petitions that trade organisations address to the different bodies of the Administration are channelled. In 2023 there were a total of 683 letters registered in this regard at the Secretariat of the Police Council.



- Peripheral trade polilic meetings: Quarterly meetings are held between the Senior Chiefs or Chiefs of the Provincial Police Stations and the regional or provincial representatives of the representative trade 40ólic organisations, and minutes are drawn up with the matters discussed and the issues raised. It is established as an agile system of dialogue between trade unión organisations and the territorial units of the National Police.

### **Collective conflict in the national police**

86. As already mentioned, the Police Council also plays a key role in collective conflicts.

87. In recent years the **following collective disputes** have been declared:

- 2022: declared by Jupol in relation to the draft royal decree approving the regulations for selective processes and training of the National Police, equal pay and working hours. There was no formal lifting of the conflict. - Year 2019: declared by Jupol on the occasion of pay equalisation. There was no formal lifting of the conflict.
- 2017: declared by all the trade union organisations in unity of action for wage equalisation with the regional police. The formal lifting of the agreement is produced by the signing of the MIR agreement - Police unions (except ASP) and associations of the GC, in unity of action, by letter dated 13 March 2018.
- 2016: declared by the Unified Police Union for the approval of the working time approved by Circular of the General Directorate of the Police in 2015. It should be noted that the trade union Jupol is currently still in collective conflict. However, the aforementioned union has been participating in the various activities of the Police Council.

88. In addition to the Police Council, there are collegiate participation bodies with equal representation of the Administration and representatives of the National Police, in matters of occupational risk prevention. These are the **Police Occupational Health and Safety Commission**, at national level, and **the Health and Safety Committees**, at the level of Police Headquarters and all central services<sup>3</sup>.
89. The **Police Occupational Health and Safety Commission** is constituted as a national joint and collegiate body for the participation of the officers of the National Police Corps, for the regular and periodic consultation of the actions of the Administration in matters of risk prevention, occupational health and safety. It will be made up of an equal number of members of the trade union organisations of this Corps as they have in the Police Council and an equivalent number of representatives of the Administration.
90. The **Health and Safety Committees** are the joint and collegiate bodies of participation at territorial level, intended for regular and periodic consultation on the actions of the Directorate General of the Police in matters of occupational risk prevention, in their respective areas.

## CONCLUSIONS

- 1.- The special nature of the activity carried out by the National Police offers powerful arguments to justify the establishment of severe restrictions on the exercise of the right to

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<sup>3</sup> Royal Decree 2/2006, of 16 January, establishing rules on the occupational risk prevention in the activities of officers of the National Police Corps.

strike, including prohibition as is the case in Spain. It should also be taken into account that these restrictions may be partially compensated with the recognition of the exercise of certain manifestations of the right to collective conflict to defend their interests. In any case, for an adequate weighing of the issue, it must be taken into account that the current regulation of the exercise of union rights in the public sector reveals the possibility of exercising the right to strike without endangering the provision of public services. and the exercise of powers reserved to the State, when it occurs with respect to the maintenance of essential services for the community and adequate guarantee measures are established for the protection of other rights or interests of constitutional relevance.

2.- The Government of Spain have presented compelling reasons for the existence of an absolute ban of the right to strike in Spain for the members of the National Police Forces.

3.- It has also presented statistical data on the ways the right of collective bargaining within the National Police is respected.

4.- The former reasons allow to conclude that the absolute ban of the right to strike for members of the Police Forces in Spain is

- legitimate and proportional to the need to ensure the national security in Spain
- absolutely necessary in the Spanish democratic society
- in conformity with the doctrine of the Committee as well as that of the European Court of human Rights
- in line with vast majority of the regulations within the Council of Europe.

On this basis, **we respectfully ASK the Committee to**

1. Admit the Kingdom of Spain's written observations on the merits of the present collective complaint, together with all the documentation and information forwarded by the competent public authorities.
2. Declare that the current Spanish prohibition of the right to strike for the National Police forces is in conformity with Article 6(4) of the revised European Social Charter.

Madrid for Strasbourg on 15 March 2024

THE AGENT OF SPAIN

A handwritten signature in blue ink, appearing to read 'Alfonso Brezmes Martínez de Villarreal', with a large, stylized flourish extending from the bottom.

Alfonso Brezmes Martínez de Villarreal

## ANNEXES

**Annex 1** Report of the Ministry of Interior (Subdirección General de Recursos Humanos y Formación, Secretaría General).

**Annex 2.** Report of the Ministry of Interior (Dirección Adjunta Operativa).

**Annex 3.** Judgment of the ECHR *Humpert and others v. Germany*

## EUROPEAN COMMITTEE OF SOCIAL RIGHTS