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

16 September 2024

**Case Document No. 4**

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

**REPLY FROM THE GOVERNMENT  
TO UFP'S RESPONSE ON THE MERITS**

**Registered at the Secretariat on 4 September 2024**



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. In its written statement of allegations, the UFP refers to the observations submitted by the Spanish Government to its collective complaint, considering that, although it is certainly not possible to recognise an absolute right to strike, this right could be articulated with certain limitations and restrictions, since a total prohibition is contrary to the revised European Social Charter, and there are sufficient legal mechanisms to regulate the exercise of this limited right, preserving and guaranteeing the protection of the values invoked by the Spanish Government.

### **1.- Existence of compelling reasons for the restriction of the right in the national police collective**

2. In our first set of observations we thoroughly exposed the compelling reasons that support an absolute ban of the right to strike for Police Forces in Spain. These reasons have not been thoroughly contested by the complainant trade union UFP.
3. While strike action is a fundamental means by which workers and their organisations can promote and defend their social and economic interests, it is also the most visible and controversial manifestation of collective action in the event of a labour dispute, mainly because of its high impact in terms of service disruption, which is precisely the reason for its strength in the context of collective bargaining.
4. It is the aforementioned impact on the provision of the service which means that Spain, like the rest of Spain's neighbouring countries, has opted in its constitutional rules to exempt the right to strike for certain groups whose important role in society does not allow for a reduction in the quality or quantity of the services they provide. This is why the phenomenon of strike action cannot be considered without taking into account the context of the labour sphere in which it is implemented. Thus, and in accordance with the doctrine of the European Committee of Social Rights itself, by virtue of Article G of the Charter, although the complete denial of the right to strike to public servants as a whole cannot be considered compatible with the Charter, it can be restricted for certain categories of public servants, including members of the police and armed forces, judges and senior civil servants;
5. It is for this reason that, as reasoned in our previous written observations, in the specific case of the National Police in Spain, the absolute or limited recognition of a right to strike for its members would be highly costly to society, which is why the Spanish Government considers that the Spanish legislation in force is in accordance with the

revised Social Charter, in the terms in which it has been interpreted by the Committee to which we have the honour to address ourselves.

6. The complainant trade union has not provided "compelling reasons" - in the very terms used by the Committee to accept such a complaint - based on mere assertions they wish to make without any statistical basis or proven facts to support them. On the contrary, the Spanish Government has argued the need to restrict this right in the National Police, considering such a measure necessary in a democratic society for national security, public safety, the defence of order and the prevention of crime, the protection of health or the protection of the rights and freedoms of all its citizens.

## 2.- International framework

7. UFP also claims that the right to strike has been recognised for some police forces in different States, without this having been detrimental to the general interests of the democratic society of those States or endangering any essential value of their community, without again providing objective data to support its claims. In this respect, it should be pointed out that this comparative framework ignores the fact that the particular social, legal and economic circumstances of each State justify the existence of a sufficiently broad margin of appreciation, recognised by the Committee itself, following the case law of the European Court of Human Rights, to justify a restriction such as that contemplated in the Spanish legislation. On the other hand, in the few cases in which strike action is recognised, it is carried out in a restricted manner, in order to guarantee public safety.
8. This is why the regulation of each state on this point will depend both on the general objectives and the concrete means that the different governments devote to guaranteeing good administration, the protection of their population, the provision of services of general interest and the protection of fundamental rights and freedoms.
9. Thus, the Spanish Government considers that the permanent availability for duty required of the security forces is incompatible with the exercise, whether limited or not, of the right to strike. Moreover, that permanent availability is not only applicable to individual officers, as the UFP claims. Recognition of the right to strike in the form claimed by the trade union organisation would be extremely difficult to regulate and apply, and would become a constant source of conflict over its objective and, above all, subjective limits because of their membership of certain units or services, who could be prevented from exercising it.

### **3. - Impact on public safety and minimum service impact**

10. Public security is defined by Organic Law 2/1986, of 13 March, on Security Forces and Corps, the preamble of which contemplates the particularities of this concept as a competence that is difficult to divide up, as 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 rather foreseeable events for the future, in respect of which determining factors such as time, place, importance and, in general, the circumstances and conditions of occurrence are generally unknown.
11. This explains the complexity of quantifying the minimum resources with which public safety can be adequately guaranteed, for the purposes of establishing minimum services in the event of a police strike. Ultimately, any police presence that can be counted on is necessary to guarantee the effective exercise of rights and freedoms by citizens.
12. In this regard, the need to ensure the continuous and uninterrupted provision of public security services, the need to guarantee the maintenance of public security and the other considerations set out in our previous written observations in numbers 52 to 56, to which we refer in full, do not constitute conjecture or conceptual definitions.
13. The establishment of a minimum service that would guarantee the need to cover the basic needs of the population during a national police strike would not cover the space of unpredictable threats with irreparable effects on people's lives if not responded to quickly and effectively with all available resources and means.

### **4.- Impossibility of substitution by other police forces**

14. As regards UFP's argument that public safety could be protected simultaneously by the different police forces that coexist in Spain, they omit to add that, in the current legal configuration in Spain (Organic Law 2/1986, of 13 March, on Security Forces and Corps, which determines the existence of the security forces dependent on the National Government, the Autonomous Communities and the Local Corporations), the scope of action of each of the territorial police services is different both in terms of their territorial scope and the substantive content of their competences, of the Autonomous Communities and Local Corporations), the scope of action of each of the territorial

police services is different both in terms of their territorial scope and the substantive content of their competences, so that such a complementary substitution would not be possible in any case.

15. Thus, the territorial distribution of action of the State Security Forces (National Police and Civil Guard) in those functions of a common nature established in Article 11.1, differs precisely in order to avoid a conflict of competences (Article 11.2), while Article 12 grants specific and concrete competences to each of them, who also have a different nature, civilian and military, respectively. For their part, the Police Forces of the Autonomous Communities, whose territorial scope is the Autonomous Community (art. 42) also have a list of specific functions (art. 38.1) and are also attributed functions of collaboration with the State Security Forces and Corps; while the Local Police Forces whose territorial scope is the municipalities (art. 51) are also attributed other functions focused on problems in these areas, such as traffic accidents in urban areas or surveillance of public spaces, with the aforementioned Organic Law also granting them the status of collaborators with the State and Autonomous Community Security Forces and Corps (art. 53). For their part, the authorities exercising command in each of the security forces also depend on the territorial area in which they carry out their functions. Finally, the training and specialisation they receive in the different areas of security and the material resources they have also differ from one force to another.
16. On the other hand, the basic principle of action that both the Council of Europe in its "Declaration on the Police" and the United Nations General Assembly in the "Code of Conduct for Law Enforcement Officials" prescribe as part of a true Code of Ethics for police forces imposes permanent service to the community. This implies that a possible recognition of the right to strike for a specific security force would imply an effect on the rest of the police forces that would lead to a detriment of the security functions attributed to them.
17. In conclusion, it is not possible to replace the police forces of the different territorial administrations in Spain, given that it is precisely the National Police that has a greater deterrent capacity for criminal actions than other security forces, so that a possible exercise of the right to strike could be perceived as a situation of reduced security, which they will try to take advantage of.

#### 5.- Incompatibility between the right to strike and the functions of the Judicial Police.

18. The UFP offers as an example of the possibility of exercising the right to strike by civil servants involved in the administration of justice, the strike recently called and carried

out by the lawyers of the administration of justice, stating that it finds no justification for police officers who carry out judicial police functions not being allowed, under equal conditions, to exercise this right.

19. It cannot be forgotten that the primary objective of police forces is the maintenance of public order, national security and the rights and freedoms of others, ensuring that the police force remains fully operational at all times, in defence of rights and in response to breaches of the exercise of rights and the rule of law.
20. Specifically, and with regard to the functions carried out by Judicial Police officers (specified in Spain in Article 282 of the Criminal Procedure Act), the most important of these include:
  - the taking of the necessary measures to ensure, without delay, the establishment of the offences, the discovery of the offenders, and the collection of effects, instruments or evidence of the offence whose disappearance is endangered, and to place them at the disposal of the judicial authority.
  - in relation to victims, must comply with the duty of information, carrying out an assessment of the particular circumstances of the victims in order to determine provisionally what protective measures should be taken to ensure their safety.
  - Judicial police officers must "immediately" intervene Article 284 of the LECrim determines when "they have knowledge of a public offence or are required to prevent the instruction of proceedings for a private offence, they shall inform the judicial authority or the representative of the Public Prosecutor's Office, if they can do so without ceasing to carry out the preventive proceedings. Otherwise, they shall do so as soon as they have completed them.
21. All these activities, if not carried out immediately, would mean that the investigations into the presumed commission of criminal acts would be at a high risk of being frustrated. Thus, the need for immediate intervention in the practice of these diligences would not admit that, in the framework of an eventual strike, they could be failed to be carried out with the urgency they require, which could result in irremediable consequences such as the disappearance or destruction of evidence of the crime, that the offender could be removed from the action of justice, or that immediate, priority attention and assistance to the victim could not be developed.
22. Finally, it is not possible to make a comparison between the functions of the judicial police and those of the corps of lawyers in the administration of justice, as they do not

share the same nature, since while the former carry out functions presided over by the immediacy of their actions, necessary for the proper development of the subsequent judicial process - whose delays could imply the non-administration of justice either due to lack of evidence or absence of defendants - the latter carry out merely procedural tasks whose development is adapted to the rhythms of the Administration of Justice.

#### 6. - Incompatibility between the right to strike of the National Police and the right to strike of other sectors

23. Citizen security is a necessary precondition for the effective exercise of other rights. This implies that the State must at all times guarantee adequate and sufficient levels of service provision, which cannot be limited by the possible calling of a strike in defence of certain corporate or professional interests of the members of the police force. From this derives the constitutional imposition of this sacrifice in the labour rights of these civil servants, which must be sacrificed for the benefit of the community.
24. As we have already stated in our written observations, the possible call for a strike by police officers, who would perform their duties with minimum services, would conflict with the performance of their duties in the event that other sectors of society, be it the agricultural, livestock or transport sectors, call strikes and marches that affect a large part of the population.
25. If key sectors in the economy or society were to carry out large-scale strike actions, coinciding in time with a strike by police officers, the fulfilment of the functions and duties of the security forces could not be adequately guaranteed and, due to a lack of resources, they would not be able to safeguard the correct exercise of this right by those involved so that such exercise would take place in a context of public order, avoiding actions that disturb social peace and are contrary to the rights and freedoms of citizens.

#### 7. - Effectiveness of "Collective Bargaining" as a mechanism to achieve improvements in working conditions

26. The right to collective bargaining is a fundamental right, firmly enshrined in the Constitution of the International Labour Organisation and reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work, which the Organisation adopted in 1998.



27. Collective bargaining within the Directorate General of the Police is exercised through the participation of the representative trade union organisations in the Police Council or in the committees set up within the framework of this body to improve the conditions of service provision. It is, in essence, a right of the same nature as collective bargaining resulting from the pressure exerted through strike action, since through both types of negotiations the administration/employers and trade unions discuss and negotiate their relations in the particular terms and conditions of work, with the only limitation being that the workers, in this case police officers, may not cease to perform their duties, even temporarily.
28. However, in the private sphere and part of the public sector, workers resort to strike action as a bargaining pressure measure and to enforce agreements when trade union organisations or workers' representatives consider that they have not been complied with. The exercise of the right to strike is used in this case as a mechanism of legitimate pressure with the ultimate aim of establishing a collective bargaining process in conditions of balance between the parties.
29. In the National Police, they use "collective conflict" as a legitimate means of pressure, which is the exercise of a right that can be used, either because of the failure of collective bargaining or to force collective bargaining when the administration refuses to deal with the issue in question.
30. The UFP alleges an alleged ineffectiveness of the collective dispute mechanism, citing as the only example a dispute brought before the administration in 2016, which was not formally lifted. In this regard, it should be pointed out that throughout all these years, regardless of the use of such recourse, the trade union organisation has been carrying out its functions of representing civil servants in a normal manner.
31. Thus, the mechanism of collective conflict is one more trade union tool within a whole range of rights and powers recognised in Organic Law 9/2015, on the National Police Personnel Regime, as mechanisms for consultation and participation of police officers in collective bargaining with the Administration through their representatives. In fact, the right to strike is the only one of the rights comprising freedom of association that is prohibited for members of the national police, with the organisations enjoying the rest of the prerogatives associated with this fundamental right.
32. In conclusion, measures of pressure or conflict - strike action and collective bargaining itself - and the mechanisms for resolving them - collective bargaining - are different realities in law and in fact, but they are not completely unrelated; the points of

connection between the two types of measures are many and the aims of both measures converge in a single direction: to improve the bargaining position in the framework of collective bargaining, either to initiate it, to overcome bottlenecks or to bring about improvements in the working conditions of police personnel.

33. Against the alleged ineffectiveness of the conflict mechanism, raised by the applicant trade union, it should be noted that in recent years a significant number of collective conflicts have been declared by the various trade union organisations, thus demonstrating its potential to serve as an instrument for the defence of the interests of public employees. Some examples are the following, in order from the most recent to the oldest.

- 2024 : declared by the CEP and EYA in relation to wage equalisation, dignified retirement and declaration of risk profession, as common points; having achieved that on 10 June 2024 an extraordinary meeting was held with the Administration to listen to their demands and expose the arguments of the Administration.

- 2022: declared by JUPOL in relation to the draft royal decree approving the Regulations on selective processes and training of the National Police, equal pay and working hours. There was no formal lifting of the conflict. However, JUPOL participated in the drafting of the aforementioned regulation, and many of its demands were met and included in the regulatory text that was finally approved.

- 2019: declared by JUPOL on the occasion of wage equalisation. There was no formal lifting of the conflict.

- 2017: declared by all the trade union organisations in unity of action for the equalisation of salaries with the autonomous police. The formal lifting 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: there were several collective disputes, one declared by the organisation Alternativa Sindical de Policía (ASP) over the enjoyment of Christmas leave, having finally desisted thanks to the meetings held at the DGP headquarters; and the one declared by the Sindicato Unificado de Policía (SUP) and the UFP itself over the approval of the working day by Circular of the Directorate General of the Police of 2015, achieving an extraordinary meeting of the Plenary of the Police Council for its treatment.

## **8.- Improvements in the working conditions of the National Police officers**

34. Both the use of collective conflict and the participation of the organisations in the various forums for consultation and participation, together with the real and verifiable will of the Spanish State to improve the working conditions of police officers, have led to a significant number of improvements in terms of statutory regulations, remuneration, and the provision of personal and material resources, among which the following are worth highlighting:

- Approval in 2015 of the Working Time Circular with the majority of the representative trade union organisations, highlighting the great impact that this circular has on the working conditions of National Police officers, which approved, among other improvements, the establishment of the 6x5 shift, which was very well received by the police force.
- Pay increase in the National Police. The implementation of the so-called "Equalisation Agreement" has produced the largest salary increase for National Police professionals. The agreement was implemented between 2018 and 2020, in 3 tranches. Taking as a sample the salary of a newly sworn police officer (assigned in Madrid in Citizen Security), the application of this increase, together with the general salary increases, means receiving 757 euros gross more per month. This is an increase of 34.4% over the salaries prior to the equalisation.
- Increase in resources for operational expenditure. In 3 years (2021-2023) the appropriations for current expenditure (Chapter 2) have increased from €385.7 million to €467.5 million. This is an additional €81.8 million for operational expenditure such as clothing, police equipment, vehicle leasing, allowances, etc.
- Personnel: increase in the number of active personnel. The number of active police officers in the different scales and categories has increased from 63,157 police officers in 2018 to a total of 70,943 in 2023 (as of 31 December). This is the highest number of active police officers in the history of the National Police. A net balance of 7,786 more active police officers has been achieved in 5 years, which represents an average increase of 12.3% in the workforce.
- Modernisation and upgrading of police equipment.
- Vehicle fleet : the fleet of owned vehicles has increased by 1,722 vehicles (19.8%) and the total fleet (owned, leased and leased) has increased by 2,481 vehicles, an increase of 18.8%. Thanks to the new acquisitions of police vehicles, the average

age of the fleet has been reduced by -6.2 years (from an average age of 16.3 years in 2018 to 10.1 years today), which means a renewal and modernisation of the fleet with vehicles with better performance that consume less and pollute less.

- Protective waistcoats : In the period 2019-2023, a total of 28,717 bullet-proof, knife-proof and stab-proof waistcoats adapted to both anatomies will have been procured. These acquisitions represent 41.7% of all waistcoats procured by the National Police. By the end of 2023, we have 67,266 waistcoats (excluding decommissioned vests). Thus, we can ensure that all police officers whose mission requires them to wear waistcoats have this equipment.
- Other equipment (electric immobiliser, cameras, extendable baton): In the 2020-2023 period, police equipment has been modernised with the incorporation of new, more advanced equipment that improves the police's capacity to act. 1,600 taser devices and 4,000 recording cameras have been purchased. Similarly, 30,332 extendable batons have been purchased as an additional deterrent tool to be used in certain police actions.
- Creation of the National Police University Training Centre. The University Training Centre of the National Police is created by Law 22/2021, of the General State Budget for 2022. It is attached to the University of Salamanca, starting its training activity in the 2022-23 academic year with the first 400 officers enrolled to obtain the Degree. In the academic year 2023-24 there will already be 800 students and in the following academic year the first 150 students from the Executive scale will join to study for a Master's degree: Total: 1,150 students.

-Approval of draft regulations in statutory matters.

- Royal Decree 853/2022, of 11 October, approving the Regulations on selective processes and training for the National Police.
- Royal Decree 666/2022 of 1 August, approving the Statutes of the University Training Centre of the National Police,
- Royal Decree 49/2024, of 16 January, approving the Regulations of the National Police Training Centres.

- Resolution of 16/03/2020 approving the "Action Plan against Covid-19, in the area of the National Police".
- Resolution of 5/11/2020: " Plan for the Promotion of Mental Health and Prevention of Suicidal Behaviour" in the General Directorate of the Police.
- Resolution of 19/12/2022 approving the Protocol for action against sexual harassment and harassment based on gender, orientation and sexual identity.
- Resolution of 15/02/2021 approving the Protocol for action in cases of gender violence in the National Police.
- Resolution of 28/02/2023 approving the 1st National Police Equality Plan.

## **9.- Conclusions**

35. Following the analysis of the allegations presented by the UFP trade union, which does not provide additional arguments to those already replied to, nor does it provide data that contradict those provided in our first written observations, the Government of Spain reiterates the conclusions formulated in its written observations:

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 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 present answer of the Government of Spain to UFP's submissions
- 2.- Declare that the current absolute prohibition of the right to strike for the National Police forces in Spain is in conformity with Article 6(4) of the revised European Social Charter.

Madrid for Strasbourg on 4 September 2024

THE AGENT OF SPAIN

A handwritten signature in blue ink, appearing to read 'Alfonso Brezmes Martínez de Villarreal', with a horizontal line drawn through it.

Alfonso Brezmes Martínez de Villarreal

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS – COUNCIL OF EUROPE**