

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



25 July 2025

Case Document No. 1

Asociación Profesional Justicia Guardia Civil (JUCIL) v. Spain
Complaint No. 248/2025

COMPLAINT

Registered at the Secretariat on 3 July 2025

TO THE EUROPEAN SOCIAL RIGHTS COMMITTEE

COMPLAINANT: ASOCIACIÓN PROFESIONAL JUSTICIA GUARDIA CIVIL (JUCIL)
[Guardia Civil [Civil Guard] Professional Association for Justice (JUCIL)]

CONTRACTING PARTY: SPAIN

SUBJECT: COMPLAINT REGARDING THE IMPROPER APPLICATION OF ARTICLES 5 AND 6 (PARAGRAPHS 2 AND 4) OF THE REVISED EUROPEAN SOCIAL CHARTER, DUE TO THE PROHIBITION OF THE RIGHT TO ORGANISE, TO COLLECTIVE BARGAINING, AND TO STRIKE, IMPOSED ON MEMBERS OF THE SPANISH GUARDIA CIVIL

**TO THE SECRETARY GENERAL OF THE EUROPEAN
COMMITTEE OF SOCIAL RIGHTS**

I, **Ernesto Vilariño Correa**, with National Identification Document 08.947.716- A, Secretary General and Institutional Relations of the **ASOCIACIÓN PROFESIONAL JUSTICIA GUARDIA CIVIL (JUCIL)**, as accredited by the attached **document number 1**, with Fiscal Identification Code in Spain number G-88189071 and address at Calle Guardia Civil, número 4, Entreplanta C, Postal Code 24001, León (Spain), and, therefore, acting on behalf of and representing the main professional association that advocates for the economic and social interests of members of the Spanish Guardia Civil, respectfully appears before the **SECRETARY GENERAL OF THE EUROPEAN SOCIAL RIGHTS COMMITTEE** and as best fits in law, I hereby lodge a **COLLECTIVE COMPLAINT AGAINST THE CONTRACTING PARTY “SPAIN”, FOR THE UNSATISFACTORY APPLICATION OF ARTICLES 5 AND 6, PARAGRAPHS 2 AND 4, OF THE EUROPEAN SOCIAL CHARTER, DONE AT STRASBOURG ON 3 MAY 1996 (REVISED VERSION), DUE TO PROHIBITING WITHOUT JUSTIFICATION THE RIGHT TO ORGANISE, TO COLLECTIVE BARGAINING, AND TO STRIKE IMPOSED ON MEMBERS OF THE SPANISH GUARDIA CIVIL**, all of this based on the following

FACTS

First. Regarding the Spanish Guardia Civil

The Spanish Guardia Civil is a public law enforcement body with a national scope that forms part of the Spanish Security Forces and Corps.

It was created by a Royal Decree on 28 March 1944, as a special corps of the Armed

Force of Infantry and Cavalry.

Despite its origin, and being internally subject to a regime of military discipline, it is under the Spanish Ministry of the Interior regarding its services, remuneration, postings and resources.

It only depends on the Ministry of Defence with regard to promotions of its members.

With respect to its functions and services, it may only come under the Ministry of Defence when missions of a military nature have been assigned to it, cases that rarely occur in practice.

The principal mission of the Spanish Guardia Civil is to guarantee the protection of citizens against criminal acts that could threaten them, ensuring compliance with the laws by bringing those who break the law before the Justice system, defending the free exercise of citizens' rights and freedoms and protecting internal public security.

For the performance of its duties, the Spanish Guardia Civil has more than 2,000 installations deployed throughout Spain and surpasses 80,000 members.

Second. Legal nature of the Spanish Guardia Civil

The Guardia Civil is **not** part of the Spanish armed forces (Spanish Army).

The Spanish armed forces are mentioned in Article 8, first paragraph, of the Spanish Constitution, which states:

The mission of the Armed Forces, comprising the Army, the Navy and the Air Force, is to guarantee the sovereignty and independence of Spain and to defend its territorial integrity and the constitutional order."

Unlike the armed forces, the body of the Guardia Civil is regulated in Spanish legislation on State Security Forces and Corps (Civil Police).

Article 104, second paragraph, of the Spanish Constitution establishes that:

"An organic law shall specify the duties, the basic principles of action and bylaws of the Security Forces and Corps."

The Preamble of the *Organic Law 2/1986, of 13 March, on Security Forces and Corps* of Spain (hereinafter, LO 2/1986) establishes, with respect to the Spanish Guardia Civil, that:

"From the need to comply with Article 104.2 of the Constitution, it is deduced that

the statutory regime of the Guardia Civil must be regulated in the Organic Law on Security Forces and Corps.

*This means that the Guardia Civil, as a security corps, without prejudice of carrying out missions of a military nature under certain circumstances, **focuses its actions on the exercise of police duties**, whether in the judicial or administrative area.*

*Consequently, without prejudice to the personal status attributable to members of the Guardia Civil –due to matters of jurisdiction, discipline, training, and command– **their actions in the exercise of police-related functions, should be regarded as normal**, whether in the judicial or administrative area.*

*All of this **aims to focus the Guardia Civil on what is its true mission in today's society: guaranteeing the free exercise of the rights and freedoms recognised by the Constitution and protecting public security, within the collective of the Security Forces and Corps.***

Therefore, LO 2/1986 includes the Guardia Civil among the State Security Forces and Corps, whose basic mission, directed towards the interior of the national territory, is that of carrying out police duties and “*to protect the free exercise of the rights and freedoms and to ensure citizen security,*” in accordance with Article 11, first section, of this Law.

Although the Spanish Guardia Civil is considered as part of the State Security Forces and Corps, Article 9, section b) of the LO 2/1986, formally defines the Guardia Civil as an institution of a military nature.

“The State Security Forces and Corps perform their duties throughout the national territory and are made up of:

(...)

b) The Guardia Civil, which is an armed institution of a military nature, under the authority of the Minister of the Interior in the performance of the functions assigned to it by this Law, and under the Minister of Defence in carrying out the military missions entrusted to it by the latter or by the Government. In times of war and during a state of siege, it shall depend exclusively on the Minister of Defence”.

It is defined in this way for historical reasons and for being internally subject to a regime of military discipline, with the consequent promotion system, but it is ordinarily under the Ministry of the Interior and habitually exercises duties of citizen security.

As can be seen, the Guardia Civil can only be converted into a military corps at the request of the Government or of the Ministry of Defence, when they entrust military missions to it, or when, exceptionally, the country is in a situation of war or of siege, completely extraordinary cases that rarely occur in practice.

Third. Regarding the Asociación Profesional Justicia Guardia Civil (JUCIL)

JUSTICIA GUARDIA CIVIL (JUCIL) is the main professional association representing the professional, economic, and social interests of the Spanish Guardia Civil.

Currently, it has more than 15,000 members.

To certify the representativeness of JUSTICIA GUARDIA CIVIL (JUCIL), attached are the Minutes dated 2 June 2023, granted before a Spanish notary, at which time the census of the Association's members was comprised by a total of 12,353 (twelve thousand three hundred and fifty-three) members, of which 36 belonged to the Officers' Corps, 426 to the Non-Commissioned Officers Corp and 11,891 to the Corporals and Guards Corps (notary record is attached as **document number 2**).

The Association was established by means of a Founding Charter on 28 June 2018 and was registered in the "Registro de Asociaciones Profesionales de Guardias Civiles" [Register of Spanish Guardia Civil Professional Associations], applying the provisions of Title VI of *Organic Law 11/2007, of 22 October, regulating the Rights and Duties of the members of the Guardia Civil* (hereinafter, LO 11/2007), which allows the creation of this type of Associations.

The Association is currently governed by Bylaws registered in the Registro de Asociaciones Profesionales de Guardias Civiles, Section 1, Number 21, according to the wording incorporating the latest modifications agreed at its Extraordinary General Assembly on 29 August 2023 (attached as **document number 3**).

According to Articles 1 and 2 of its Bylaws, the Professional Association has its own legal personality, full capacity to act, is non-profit, and its duration is indefinite.

In accordance with the provisions of Article Three, paragraph 1, of its Bylaws, the aims and actions that the Professional Association carries out are of a representative nature and pursue the economic and professional satisfaction and improvement of its members.

Furthermore, given its high level of representativeness, JUSTICIA GUARDIA CIVIL (JUCIL) has appointed 6 of the 16 board members representing the Spanish Guardia

Civil in the Guardia Civil Council, an associate body with mixed membership in which representatives of the Spanish State (Ministry of the Interior and Ministry of Defence) and an equal number of personnel representatives participate.

To certify this, *order PCM/149/2022, of 3 March, may be cited,, which designates board members and their substitutes in representation of the General Administration of the State in the Guardia Civil Council and the composition of the cited Council is published, for a mandate of four years, as recorded in the Spanish Official Gazette number 54, of 4 March 2022.*

However, JUSTICIA GUARDIA CIVIL (JUCIL) is a civil association within the ordinary legal regime, **not a trade union**, and therefore, **cannot carry out trade union activities** in the strict sense, due to the prohibition of the right to organise and to carry out trade union activities imposed on the Guardia Civil in Spain.

In fact, Article 9, first paragraph, of the LO 11/2007, establishes that “*Guardia Civil members have the right to freely associate and form associations, in accordance with the provisions of Articles 22 and 104, second paragraph, of the Constitution and of this Organic Law, for the defence and promotion of their professional, economic and social rights and interests.*”

For its part, Article 22, first paragraph, of the Spanish Constitution, establishes that “*The right of association is recognised*”, but, as we said, it deals with the right of general association, and not with the right to establish a trade union and to carry out trade union activities, in the strict sense, rights that are regulated in Article 28 of the Spanish Constitution.

Fourth. Absolute prohibition of the right to organise for the Spanish Guardia Civil

Article 28, first paragraph, of the Spanish Constitution establishes that:

All have the right to freely join a trade union. The law may restrict or except the exercise of this right in the Armed Forces or Institutions or other bodies subject to military discipline, and shall lay down the special conditions of its exercise by civil servants. *Freedom to organise includes the right to set up trade unions and to join the union of one's choice, as well as the right to organise to form confederations and to found international trade union organisations, or to become members thereof. No one may be compelled to join a trade union.*”

As can be seen, the Spanish Constitution grants the right to organise to workers under the ordinary legal regime and to public servants.

However, in the case of military institutions or armed forces, the Spanish Constitution allows the Spanish legislator all possible options regarding their right to organise and the exercise of trade union activities: to impose no restrictions, to impose limitations, or to prohibit the right altogether.

Spain considers the Spanish Guardia Civil to be a military institution (even though it performs civil police functions) and, in addition, within the options that the Spanish Constitution allows for military institutions or armed forces, it completely prohibits (also for the Guardia Civil) the right to organise and the freedom to carry out trade union activities.

Specifically, Article 11 of LO 11/2007 establishes that:

*“Members of the Guardia Civil **may not exercise trade union rights**. ”*

Furthermore, Article 9, paragraph five, of LO 11/2007 establishes that: *The Guardia Civil Associations **may not carry out** political or **trade union activities, or form part of political parties or trade unions**. ”*

In fact, the Spanish legislation strongly punishes members of the Guardia Civil who infringe these prohibitions.

Article 7, sections three and three *bis*) of *Organic Law 12/2007, of 22 October, on the disciplinary regime of the Guardia Civil* (hereinafter, LO 12/2007), classifies the promoting or belonging to trade unions or the organisation or active participation in meetings or demonstrations of a trade union nature as a very serious offence.

Article 11 of LO 12/2007 considers very serious sanctions for those who do not comply with these prohibitions: separation from service, suspension of employment or loss of seniority or demotion in rank.

The ordinary Spanish courts have confirmed the prohibition imposed on the Spanish Guardia Civil concerning the establishment of trade unions and carrying out union activities.

The Spanish Supreme Court, the highest judicial body of the ordinary courts, has confirmed the absolute prohibition contained in Spanish legislation, and it has done so despite of the provisions of Article 11 of the European Convention on Human Rights of 1950, signed in Rome, and the judgments of the European Court of Human Rights that interprets it, which are not applied in Spain.

Article 11 of the European Convention on Human Rights recognises the right of assembly, association, and in particular, freedom to organise, although it establishes that “(...) *This article does not prohibit the imposition of legitimate restrictions on the exercise of these rights by members of the armed forces, the police or the State Administration.*”

As can be read, the article admits the adoption of restrictions, but does not allow an absolute prohibition.

At this point it is important to recall the Resolution of the European Court of Human Rights of 2 October 2014, the *Matelly v. France* case, on whether the legal prohibition that existed in France for the French Gendarmerie (a Corps similar to the Spanish Guardia Civil) was or was not compatible with Article 11 of the European Convention on Human Rights.

The French Gendarmerie is, like the Spanish Guardia Civil, an institution of a military nature, but ordinarily carries out police and security duties within the French national territory, being able to be mobilised occasionally on missions of a military nature, in those countries where the French armed forces are deployed.

The European Court of Human Rights considered that, although the prohibition was established by a legal norm and its aim was legitimate, namely the maintenance of discipline and public order, it was deemed lawful and sufficient to impose limitations, considering that the absolute prohibition was not necessary in a democratic society.

Nonetheless, the Resolution of the Social Chamber of the Spanish Supreme Court, of 22 June 2016 issued within appeal no. 158/2015, upheld the refusal to allow the establishment of an association of Guardia Civil members who had sought the application of Article 11 of the European Convention on Human Rights and the doctrine contained in the Resolution of the European Court of Human Rights, issued in the *Matelly v. France* case.

It did so because, when Spain ratified the European Convention on Human Rights, in 1979, it made an express reservations to guarantee the application of Article 28 of the Spanish Constitution, which allows a prohibition of the right to organise of the Spanish Guardia Civil.

In fact, in the Legal Ground 5 of the aforementioned judgement, the Spanish Supreme Court states the following:

“(...) it is necessary to emphasise that the original rule of the exception is the Spanish Constitution, and the European Convention (on Human Rights) is excluded insofar as it is incompatible with the former. Article 11 of the cited Convention has never become part of the body of Spanish Law, nor can the Constitution be

interpreted in accordance with its terms.

For the same reason, case law of the European Court of Human Rights cannot be invoked in relation to this precept and therefore the doctrine set out in the judgments of 2 October 2014, Matelly v. France and Adefdromil v. France, which contain the European Court of Human Rights' interpretation of Article 11 of the Convention, a provision on which France had not made any reservation at all, cannot be taken into account. These were the judgments cited by the complainants in their lawsuit."

Notwithstanding the prohibition to organise and carry out trade union activities established in Spanish legislation and ratified by the highest judicial bodies, imposed on the members of the Spanish Guardia Civil, the rest of Spain's Security Forces and Corps considered in Article 2 of Organic Law 2/1986 (the national police corps, regional police forces, and local police forces) are recognised as having the right to organise and to carry out trade union activities.

Article 1, fifth paragraph, of the *Organic Law 11/1985, of 2 August, on Freedom to Organise* (hereinafter, LO 11/1985), mentions that "*The exercise of forming trade unions by members of the Security Corps and Forces that do not have a military nature, shall be governed by their specific regulations, given the armed nature and the hierarchical organisation of these Institutions.*"

Therefore, Spanish legislation and the Spanish judicial bodies absolutely prohibit the Guardia Civil from any trade union activities and oblige the JUSTICIA GUARDIA CIVIL (JUCIL) to be constituted as a civil regime association, without being able to carry out trade union activities, in the strict sense, despite the provisions of the European Convention on Human Rights.

With respect to freedom to organise, Article 2, first paragraph of the *Organic Law 11/1985, of 2 August, on Freedom to Organise* (hereinafter, LO 11/1985), mentions that in Spain the right to organise includes the right to form trade unions, the right of personnel to join or withdraw from them, the right to elect their representatives before employers or authorities, and the right to carry out trade union activities.

The right to trade union activities includes, in accordance with the provisions of the second paragraph, letter d) of this LO 11/1985:

"The exercise of trade union activities in the company or outside of it, which will

include, in any case, the **right to collective bargaining, the exercise of the right to strike, the raising of individual and collective disputes and the presentation of candidatures for the election of Works Councils and Personnel Delegates, and the corresponding bodies of Public Administrations**, under the terms of the corresponding laws”.

However, as we stated, the professional associations of Guardia Civil members are not trade unions and cannot carry out trade union activities.

Title VI of LO 11/2007 refers to the “*professional associations*” of Guardia Civil members.

Article 38, first paragraph, of LO 11/2007 recognises the right of these professional associations to “(...) *make proposals and submit petitions related to their purposes to the competent authorities (...)*”, granting them a right to be heard. However, the professional associations do not have the right to an effective consultation procedure such as trade unions have.

Moreover, in accordance with the third paragraph of this article, their representative function is limited, in practice, to promote candidatures for the election of members of the Council of the Guardia Civil, a body that, according to Article 52 of that Law, depends organically on the Ministry of the Interior, and that, also in accordance with Article 54, in the same way, only a right to be heard is granted.

In line with the prohibition to which we have been referring, Article 41 of LO 11/2007 establishes that “*The **exercise of the right to strike, the actions substituting them, collective bargaining and the adoption of collective dispute measures** are excluded from the scope of actions of the professional associations (...)*”.

Therefore, Spain absolutely prohibits the exercise, by the Spanish Guardia Civil, of the right of freedom to organise, preventing its members from forming trade unions, requiring JUSTICIA GUARDIA CIVIL (JUCIL) to be established as a professional association under the ordinary legal regime, without being able to carry out genuine trade union activities (presenting collective conflicts, implementing collective bargaining, and the right to strike), discriminating against the personnel compared to other civilian police forces (with whom they share functions) and against other Spanish civil servants and workers.

Fifth. Prohibition of the right to collective bargaining for Spanish Guardia Civil members

As we have had the opportunity to see previously, Articles 11 and 9, fifth paragraph,

of LO 11/2007, prohibit the Guardia Civil members from the right to organise or to carry out any type of trade union activities, an activity which includes the right to collective bargaining of their labour conditions.

In fact, the Guardia Civil members do not have the right for their labour demands to be taken into account through the formal mechanisms of collective bargaining.

According to Article 8, second paragraph, of LO 11/2007, the meetings of Guardia Civil members must be authorised in advance by the Unit Commander, who may refuse permission for operational reasons, without further justification.

With such limitations regarding the right of assembly, Article 13 of LO 11/2007 only recognises for the Guardia Civil members “(...) a right of petition, individually, in the cases and with the formalities that the regulating legislation on the right of petition indicates.” According to the provisions of Article 11 of the *Organic Law 4/2001, of 12 November, which regulates the Right of Petition*, the petitioner only has the right, strictly speaking, to be heard and to obtain a reply from the authorities.

On the other hand, as we have seen, Article 41 of LO 11/2007 establishes that “Excluded from the scope of action of the professional associations are the exercise to strike, any substitute actions thereof, collective bargaining and the adoption of measures for collective conflicts (...).”

Therefore, in the framework of the general prohibition of the right of forming trade unions and to exercise trade union activities, Spain specifically prohibits the right of collective bargaining for the Guardia Civil members and their professional associations, discriminating against their personnel compared to the rest of the civil police corps (national police, regional police and local police), with which they share duties, and compared the rest of the civil servants and workers of the ordinary legal regime.

Sixth. With respect to the prohibition of the right to strike imposed on Spanish Guardia Civil members

Spain also prohibits the exercise of the right to strike considered in Article 28 of the Spanish Constitution, for the armed institutions of a military nature, and also in this case, for the State Security Forces and Corps.

Article 6, eighth paragraph, of LO 2/1986, establishes an absolute and general prohibition with respect to the exercise of the right to strike for all the State Security Forces and Corps and therefore mentions that *“The members of the State Security Forces and Corps*

cannot exercise in any case the right to strike or substitutive actions thereof or arranged actions with the aim of altering the normal functioning of the services. ”

Specifically, Art. 12 of LO 11/2007 establishes that “Guardia Civil members cannot exercise the right to strike or carry out substitutive actions or similarly arranged ones, nor other agreed with the aim of altering the normal functioning of the services.”

Therefore, in the framework of the general prohibition of the right to form trade unions and to carry out trade union activities, Spain prohibits the right to strike for Guardia Civil members and their professional associations, in this case jointly with the military institutions and armed forces, and the rest of the State Security Forces and Corps.

LEGAL GROUNDS

–Procedure–

1) Application of the European Social Charter to Spain

Spain signed the European Social Charter, done in Strasbourg on 3 May 1996 (revised version), on 23 October 2000.

The need to adapt some aspects of the national legislation caused the Charter not to be ratified by Spain until later.

Spain ratified the European Social Charter (revised version) on 29 April 2021, according to an instrument published in the Spanish Official Gazette on 11 June 2021.

The European Social Charter took into effect for Spain on 1 July 2021, in accordance with the provisions of its Part VI, Article K, paragraphs 2 and 3, therefore being fully applicable.

2) Application of a collective complaints system to control of its compliance

On 4 February 2021, the Plenipotentiary of Spain signed the Additional Protocol to the European Social Charter, adopted by the Committee of Ministers of the European Council on 22 June 1995.

The Protocol establishes a system of collective complaints, ratified through the Instrument of 26 July 2022 and published in the Spanish Official Gazette on 2 November 2022.

The Protocol took into effect for Spain on 1 December 2022, in accordance with

the provision in its Article 14.2 and therefore it is fully applicable.

With respect to the procedure to follow in order to lodge a collective complaint, in accordance with its Article 4, the complaint against non-compliance with the Charter must be presented in writing, it shall refer to a provision of the Charter accepted by the Contracting Party, and it shall specify in which extent said Party has not ensured satisfactory application of this provision.

The Complaint shall be addressed to the Secretary General of the Committee, who will process it accordingly. In the event of admission by the Committee of Independent Experts, and following the procedure considered in Articles 7 and subsequent articles of the Protocol, the Committee of Ministers, by a two-thirds majority, may adopt a Recommendation to the Contracting Party, in view of unsatisfactory application thereof, so that it may proceed to adopt specific measures so that the Charter is duly applied.

In the event the Complaint is upheld and a Recommendation is formulated by the Committee of Ministers, the Contracting Party must report on the measures adopted in the Reports it has to submit every two years to the Secretary General of the European Committee of Social Rights, in accordance with Art. 21 of the Charter, Part IV, modified by the 1991 Turin Protocol.

3) Legal standing of JUSTICIA GUARDIA CIVIL (JUCIL)

Article 1 c) of the Additional Protocol of 1995 recognises the right to present collective complaints to the representative National Organisations of workers subject to the jurisdiction of the Contracting Party.

Justicia Guardia Civil (JUCIL) has legal standing and is entitled to lodge this complaint due to non-compliance with the revised Charter, insofar as it is the main professional association representing the professional, economic and labour interests of the Spanish Guardia Civil under the jurisdiction of the Contracting Party "*Spain*", in the terms of Article 1 c) of the Additional Protocol.

A relevant element to be taken into consideration is that JUSTICIA GUARDIA CIVIL (JUCIL) is the association registered in the Registro de Asociaciones Profesionales de Guardias Civiles with the largest number of members, currently representing over 15,000 workers.

In this respect, we have attached record authorised before a Spanish notary dated

2 June 2023, at which time JUSTICIA GUARDIA CIVIL (JUCIL) already had a total of 12,353 (twelve thousand three hundred and three) members.

Furthermore, as we have had the opportunity to mention, JUSTICIA GUARDIA CIVIL (JUCIL) has appointed 6 of the 16 board members representing the Spanish Guardia Civil to the Guardia Civil Council, an advisory body composed of the authorities and the representatives of the workers.

Therefore, it is considered that JUSTICIA GUARDIA CIVIL (JUCIL) holds sufficient representativeness to lodge this Collective Complaint.

4) Spain's passive legal standing

It is possible to lodge a Complaint against Spain for the incorrect application of Articles 5 and 6, second and fourth paragraphs, of the European Social Charter (revised version), insofar as Spain is the Contracting Party of the Charter and has ratified the 1995 Protocol that makes Collective Complaints possible.

5) Body to which the Complaint is addressed

The body to which the Complaint is addressed is the Secretary General of the European Committee of Social Rights, in accordance with the provisions of Article 5 of the 1995 Additional Protocol, a body to which the Complaint must be addressed for it to be processed under the terms of Articles 5 and subsequent articles of the 1995 Additional Protocol.

6) Representative of the ASOCIACIÓN JUSTICIA GUARDIA CIVIL (JUCIL) before this body

In accordance with Article 7, paragraph 1) of the Association's bylaws, it is within the competence of the board of directors (National Executive Committee) to adopt decisions to submit complaints and appeals:

“The designation of a court representative and legal counsel in cases where such are necessary for the lodging of the different judicial proceedings that the National Executive Committee could deem necessary. This designation shall always require the approval of the National Executive Committee at the proposal of the National Legal Secretary.”

In this regard, the Agreement of the National Executive Committee dated 15 May 2025 is attached as **document number 4**, for the formulation and submission of this

Collective Complaint.

The undersigned is duly authorised to represent the ASOCIACIÓN JUSTICIA GUARDIA CIVIL (JUCIL) before the European Committee of Social Rights, insofar as he holds the post of Secretary General of the Association, as was accredited in the attached document 1.

According to Article 8, first section, of the Association's Bylaws:

"The Secretary General shall preside over the Association and shall have the following responsibilities:

1. To assume the legal representation of the Association before any class of public and private bodies."
(...)".

7) Merits of the case

The present Complaint is formulated under the terms of Article 4 of the Protocol, insofar as the Provisions 5 and 6, second and fourth paragraphs, of the European Social Charter, ratified without reservations by the Contracting Party "*Spain*", are not applied satisfactorily when it prohibits in absolute terms Spanish Guardia Civil's right to organise, right to collective bargaining and the right to strike.

It must be taken into account that the non-compliances with the Charter that are reported are of a very serious nature, insofar that Spain absolutely prohibits the Guardia Civil members the right to organise, under threat of serious sanctions, and obliges JUSTICIA GUARDIA CIVIL (JUCIL) to be constituted as a civil association of the ordinary legal regime.

In fact, JUSTICIA GUARDIA CIVIL (JUCIL) cannot be constituted as a trade union and cannot carry out any trade union activities, in the strict sense, with the rights to collective bargaining and to presenting collective conflicts being prohibited, in a discriminatory way with respect to the rest of the State Security Forces and Corps.

Furthermore, this party considers that the prohibition existing in Spain on exercising the right to strike is contrary to the provision of Article six, fourth paragraph, of the European Social Charter (revised), which in this case is common for all the armed forces, military institutions and the rest of the State Security Forces and Corps.

8) Cited legislation

In this Collective Complaint, the following laws extracted from Spanish legislation have been cited:

1) Spanish Constitution

Published in the Spanish Official Gazette number 311 of 29 December 1978.

2) Organic Law 2/1986, of 13 March, on Security Forces and Corps of Spain (LO 2/1986)

Published in the Spanish Official Gazette number 63 of 14 March 1986.

3) Organic Law 11/2007, of 22 October, regulating the Rights and Duties of the members of the Guardia Civil (LO 11/2007).

Published in the Spanish Official Gazette number 254 of 23 October 2007.

4) Order PCM/149/2022, of 3 March, which designates board members and substitutes in representation of the General State Administration on the Council of the Guardia Civil and in which the composition of the cited Council is published.

Published in the Spanish Official Gazette number 54, of 4 March 2022.

5) Organic Law 11/1985, of 2 August, on Freedom to Organise (LO 11/1985).

Published in the Spanish Official Gazette number 189 of 8 August 1985.

6) Organic Law 12/2007, of 22 October, on the disciplinary regime of the Guardia Civil (LO 12/2007).

Published in the Spanish Official Gazette number 254, of 23 October 2007.

7) Organic Law 4/2001, of 12 November, regulating the Right of Petition.

Published in the Spanish Official Gazette number 272, of 13 November 2001.

9) Attached documents

The following documents are attached to this Collective Complaint, translated to English through a certified translation system:

1) **Document 1:** Appointment of Mr. Ernesto Vilariño Correa as Secretary General and Institutional Relations of the ASOCIACIÓN PROFESIONAL JUSTICIA GUARDIA CIVIL (JUCIL) dated 4 September 2019.

2) **Document 2:** Notarial document where the census of members of the

Association (12,353) is included, granted in the presence of a Spanish notary on the date 2 June 2023.

The Association currently has more than 15,000 members.

- 3) **Document 3:** Bylaws of the Association deposited in the Registro de Asociaciones Profesionales de Guardias Civiles on 25 September 2023.
- 4) **Document 4:** Agreement of the National Executive Committee dated 15 May 2025, for the formulation and presentation of this Collective Complaint.

10) Registered offices for the purpose of notifications with respect to this Collective Complaint

For the purposes of this Collective Complaint, the registered offices set for notifications and contact data are the following:

JUSTICIA GUARDIA CIVIL (JUCIL)

[Seal]

Postal Address

Calle Guardia Civil
Número 4, Entreplanta C
Postal code 24001
León (Spain)

E-mail

secretariogeneral@jucil.es

LEGAL GROUNDS

-Merits of the case-

First. With respect to the unsatisfactory application of Article 5 of the European Social Charter when Spanish legislation prohibits the right to organise for Spanish Guardia Civil members

Article 5 of the European Social Charter, related to the right to organise, reads as follows:

*“With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. **The application of the guarantees provided for in this article to the Police Corps shall be determined by national laws or regulations. Likewise the principle establishing the application to the members of the armed forces of these guarantees and the extent of their application shall be determined by national laws or regulations.**”*

As can be read, Article 5 of the European Social Charter establishes, both in the case of the police corps, as in the case of the armed forces, that the principle that establishes the application of the guarantees shall have to be determined by national laws and regulations.

From the reading of the article, it is deduced that, although such guarantees may be limited in view of the functions performed by the police corps and armed forces, the Contracting Parties of the Charter have to apply them to some extent, in such a way that the absolute prohibition constitutes an unsatisfactory application of the text of the European Social Charter.

Therefore, the complete prohibition of the right to organise imposed on Guardia Civil members, which the Spanish legislation contains in Article 11 of LO 11/2007, related to their rights and obligations, and the complete prohibition of trade union activities imposed on their professional associations, contained in Articles 9, fifth paragraph, and in Article 41, of LO 11/2007, are clearly contrary to the provisions of Article 5 of the European Social Charter (revised version).

In addition, the prohibition is discriminatory and especially prejudicial for Guardia Civil members.

It is not correct to state that, for these purposes, the Guardia Civil is a military institution, since, as we have seen, it forms part of the State Security Forces and Corps, its ordinary activity is under the Ministry of the Interior and it shares security duties with the civil police (national police, regional police and local police) in Spain, duties that it performs in the interior of the country and that are aimed at defending citizen security.

As we have said, only on completely exceptional occasions, which rarely occur in practice, such as the assignment of military missions or during states of siege or war, the members of the Spanish Guardia Civil may functionally depend on the Ministry of Defence and carry out military duties.

It is for historical reasons, or due to the internal military discipline to which the members of the Guardia Civil are subject, that explain why they are formally considered an institution of a military nature; however, this formal designation does not justify any limitation of its members' social rights.

For this reason, this party considers that the particular character of the Spanish Guardia Civil does not justify a total and absolute prohibition with respect to the right to organise, because functionally there are no differences with respect to the civil police corps.

The prohibition results in many serious consequences, since, in this way, JUSTICIA GUARDIA CIVIL (JUCIL) must be constituted as a civil association of the ordinary legal regime, without being able to be constituted as a trade union and without it being able to carry out trade union activities, strictly speaking, that include, according to Spanish national legislation, the right to collective bargaining, the right to lodge collective conflicts and the exercise of the right to strike.

As we have had the opportunity to observe, the prohibition is not imposed by the Spanish Constitution, but rather by the legislation that implements it, with the prohibition being contrary not only to Article 5 of the European Social Charter, but also to Article 11 of the European Convention on Human Rights, and also to the case law of the European Court of Human Rights that interprets it, which considers the prohibition of trade union activities imposed on corps similar to the Spanish Guardia Civil (such as in the case of the French Gendarmerie) contrary to the Charter.

This prohibition is not consistent with Article G of the European Social Charter (revised version) insofar as, even if the prohibition is established by Law and is based on reasons of public security, it is not necessary or proportional in a democratic society and is

discriminatory with respect to other police corps, public servants and workers of the ordinary legal regime.

Therefore, this party considers that Spain applies Article 5 of the European Social Charter (revised version) in an unsatisfactory manner when it prohibits the right to organise imposed on the Spanish Guardia Civil members and the right to carry out trade union activities for its associations, with the consequent prejudice for the interests and professional, economic and social rights of the members.

Moreover, as we have said, the prohibition is especially serious, insofar as it is discriminatory with respect to the rest of the State Security Forces and Corps (national police, regional police and local police), which share duties with the Guardia Civil, and that have such rights recognised, with the consequent economic and social advantages.

Second. With respect to the unsatisfactory application of Article 6, second paragraph, of the European Social Charter when Spanish legislation prohibits the right to exercise collective bargaining of the Spanish Guardia Civil members

Article 6 of the European Social Charter, concerning collective bargaining, states the following:

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

- 1) (...)*
- 2) To promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements*

Within the framework of the general prohibition of any trade union activities, the specific prohibition of the right to collective bargaining, as applied in Spain for the Guardia Civil and its associations, is also contrary to the Charter and discriminatory in comparison with other civil police forces, public servants and workers under the ordinary legal regime.

Therefore, as a result of the prohibition of the trade union activities, JUSTICIA GUARDIA CIVIL (JUCIL) does not have the right to participate in consultation processes or of collective bargaining with the public authorities that allow their claims to be taken into consideration effectively.

In this way, our Association is required to be established as an association of ordinary legal regime, which can only indirectly oversee the interests of its members, without having the right to a consultation procedure or effective negotiation with the public authorities, being granted solely a right to be heard.

As we have seen, the Guardia Civil members have merely a right of individual petition and its Associations, in accordance with Article 38, first paragraph of LO 11/2007, a right to formulate proposals and to name the members of the Guardia Civil Council, a body that, in turn, does not merely depend hierarchically on the Ministry of the Interior, but, in addition, it only has, in the same manner, a right to be heard before the authorities.

At this point, it is interesting to recall that the European Committee of Social Rights has recently recognised that the European Charter protects the right to collective bargaining, which includes the armed forces.

In fact, in the Resolution of the European Committee of Social Rights of 11 September 2024, issued with respect to the Complaint number 199/2021, *EUROMIL v. Portugal* case, the Committee considered that Portugal violated Article 6, paragraph 2, of the European Social Charter (revised version) with respect to the Portuguese armed forces.

In its Resolution, the Committee recalled that both the civil police corps and the military institutions and armed forces have to have the same treatment regarding the evaluation of the limitations of the rights recognised in Article 6, paragraph 2, citing the Resolution of the European Committee of Social Rights in the *EUROMIL v. Ireland* case, Complaint 112/2014.

From that point, reference is made to the Resolution issued in the case of *EUROCOP v. Ireland*, Complaint 83/2012, to order to recall that an effective consultation must exist in which the opinions of the trade union of workers are taken into consideration, without being sufficient to grant a right to be heard.

Lastly, it concluded that Portugal did not guarantee the associations of military members' access to an effective collective bargaining on the conditions of the military service which could favour or improve the interests of the collective body.

Therefore, this party considers that the Contracting Party Spain fails to apply in an satisfactory manner Article 6, second paragraph, of the European Social Charter (revised version) when it prohibits the Spanish Guardia Civil and its associations the right to a collective bargaining procedure with the authorities, and it does so discriminating the

members of the Guardia Civil compared to the rest of the Spanish State Security Forces and Corps, with which the share duties, when the Committee that we address has recognised such right, even for military institutions and armed forces, in their recent Resolutions.

Third. With respect to the unsatisfactory application of Article 6, fourth paragraph, of the European Social Charter when the national legislation prohibits the right to strike of the Spanish Guardia Civil

Regarding the right to strike, Article 6, fourth paragraph, of the European Social Charter, recognises:

“(...) 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.”

In this case, as we have previously mentioned, Spain prohibits the exercise of the right to strike to all the State Security Forces and Corps, under the terms of Article 6, eighth paragraph of LO 2/1986.

In this case, the prohibition is common for all the civil police corps (national police, regional police and local police), for the Spanish Guardia Civil and for the military institutions and members of the armed forces.

The Resolution of the European Committee of Social Rights, dated 8 October 2014, is of particular importance, with respect to Complaint no. 83/2012 filed by *European Confederation of Police (Eurocop)* against Ireland, in which, after an analysis of the absolute prohibition of the right to strike imposed on the Irish police force, the Committee concluded that the Charter had not been applied satisfactorily despite the legislative nature of the prohibition, considering that it dealt with unjustified discrimination in comparison with the trade unions, which denied Eurocop, its members, and the group of workers it represented from the possibility of utilising this fundamental mechanism of pressure in order to negotiate their salary and labour conditions, without this being in accordance with the principle of proportionality.

In view of the Resolution, this party understands that the absolute prohibition of the right to strike contained in Spanish legislation is contrary to the European Social Charter (revised version).

As we have said, the fact that the Spanish Guardia Civil is subject to an internal military regime or the fact that it could be sent, in an extraordinary manner, to carry out

military missions, does not justify an absolute prohibition, since exercising the same duties as the European civil police corps, for whom this Committee, which we have the honour to address, has recognised the right to strike.

In the Resolution of the European Committee of Social Rights of 11 September 2024, issued with respect to the Complaint number 199/2021, *EUROMIL v. Portugal* case, it was considered that Portugal did not violate Article 6, paragraph 4, of the European Social Charter (revised version) when it prohibited the exercise of strike for the Portuguese military members.

Complaint 112/2014 was cited in it, regarding the *EUROMIL v. Ireland* case, in which the specific nature of the tasks carried out by the members of the armed forces was taken into consideration, whose strike could disrupt national security.

In this way, it was considered that the legal provision was reasonable regarding the pursued objective and it could be considered proportional in a democratic society, under the terms of Article G of the Charter.

Nonetheless, as we have said, the Spanish Guardia Civil ordinarily carries out civil police duties, for which reason the evaluation of the limitations of their social rights under the terms of Article G of the Charter, and the considerations of whether or not they are necessary in a democratic society, must be carried out in the same terms as that which is done with respect to the members of the civil police.

Therefore, the criteria established by the Committee in the *EUROCCOP v. Ireland* case, Complaint 83/2012, is applicable to the Spanish Guardia Civil.

In it, after the analysis of an absolute prohibition of the right to strike imposed on a civil police corps, it was concluded that a violation of this Charter existed, since, despite the fact that the prohibition was established in a legal provision with the rank of law, and was justified on reasons of security, it constituted unjustified discrimination in comparison with the trade unions of the rest of the workers, which denied the police organisations of the possibility of one of the fundamental mechanisms for negotiating salary and labour conditions, without being consistent with the principle of proportionality, despite the specialised nature of the services provided by the police corps.

Thus, this party considers that the Spanish Guardia Civil must not be discriminated against with respect to the rest of the European police corps, whose right to strike has been recognised by this Committee.

In addition, Spanish legislation could provide for the limitation or exception of the right in the case of members of the Guardia Civil who are exceptionally assigned military duties, without it being proportional that the prohibition is established with a general nature on the basis of a possibility that almost never occurs in practice.

Therefore, this party considers that Spain fails to apply satisfactorily Article 6, fourth paragraph, of the European Social Charter (revised version) when it prohibits the Spanish Guardia Civil members, along with the rest of the State Security Forces and Corps, from exercising their right to strike. The mere possibility that the Spanish Guardia Civil could be assigned military missions should not entail the application of this Committee's criterion regarding the compatibility with the Charter of prohibitions of strikes imposed on members of the armed forces, because, as we have mentioned on numerous occasions, the Spanish Guardia Civil belongs to the State Security Forces and Corps, with which it share the performance of its ordinary duties.

By virtue of all that has been expressed, I ask the SECRETARY GENERAL of the EUROPEAN COMMITTEE OF SOCIAL RIGHTS to consider this COLLECTIVE COMPLAINT AS FILED AGAINST THE CONTRACTING PARTY "SPAIN" FOR THE UNSATISFACTORY APPLICATIONS OF ARTICLES 5 AND 6, SECOND AND FOURTH PARAGRAPHS, OF THE EUROPEAN SOCIAL CHARTER DONE IN STRASBOURG ON 3 MAY 1996 (REVISED VERSION) FOR PROHIBITING WITHOUT JUSTIFICATION THE RIGHT TO ORGANISE, COLLECTIVE BARGAINING AND TO STRIKE IMPOSED ON THE SPANISH GUARDIA CIVIL, to admit it and, after the procedures that are pertinent under the terms of the 1995 Additional Protocol, to forward it to the COMMITTEE OF MINISTERS so that it may adopt a decision by a two-thirds majority, where,

WITH REGARD TO THE **ABSOLUTE PROHIBITION OF THE RIGHT TO ORGANISE**,

- 1) TO DECLARE THAT SPAIN APPLIES IN AN UNSATISFACTORY MANNER ARTICLE 5 OF THE EUROPEAN SOCIAL CHARTER WHEN IT PROHIBITS THE RIGHT TO ORGANISE FOR THE SPANISH GUARDIA CIVIL MEMBERS,
- 2) TO FORMULATE A RECOMMENDATION TO SPAIN IN ORDER FOR IT TO CARRY OUT THE LEGISLATIVE AMENDMENTS NECESSARY TO ALLOW THE EXERCISE OF THE RIGHT TO ORGANISE BY THE

SPANISH GUARDIA CIVIL AND ITS MEMBERS.

- 3) TO REQUEST SPAIN TO REPORT ON THE LEGISLATIVE AMENDMENTS MADE IN THE NEXT BIENNIAL REPORT, IN ORDER TO COMPLY WITH THE ABOVE RECOMMENDATION, IN ACCORDANCE WITH ARTICLE 21, PART IV, OF THE CHARTER.

REGARDING THE **ABSOLUTE PROHIBITION OF THE RIGHT TO COLLECTIVE BARGAINING**,

- 1) TO DECLARE THAT SPAIN APPLIES IN AN UNSATISFACTORY MANNER ARTICLE 6, SECOND PARAGRAPH, OF THE EUROPEAN SOCIAL CHARTER WHEN IT PROHIBITS THE EXERCISE OF THE RIGHT TO COLLECTIVE BARGAINING TO THE SPANISH GUARDIA CIVIL MEMBERS,
- 2) TO FORMULATE A RECOMMENDATION TO SPAIN IN ORDER FOR IT TO CARRY OUT THE LEGISLATIVE AMENDMENTS NECESSARY TO ALLOW THE EXERCISE OF COLLECTIVE BARGAINING RIGHTS BY THE SPANISH GUARDIA CIVIL AND ITS MEMBERS,
- 3) TO REQUEST SPAIN TO REPORT ON THE LEGISLATIVE AMENDMENTS MADE IN THE NEXT BIENNIAL REPORT, IN ORDER TO COMPLY WITH THE ABOVE RECOMMENDATION, IN ACCORDANCE WITH ARTICLE 21, PART IV, OF THE CHARTER.

REGARDING THE **ABSOLUTE PROHIBITION TO THE RIGHT TO STRIKE**,

- 1) TO DECLARE THAT SPAIN APPLIES IN AN UNSATISFACTORY MANNER ARTICLE 6, FOURTH PARAGRAPH, OF THE EUROPEAN SOCIAL CHARTER WHEN IT PROHIBITS THE EXERCISE OF THE RIGHT TO STRIKE TO THE SPANISH GUARDIA CIVIL MEMBERS,
- 2) TO FORMULATE A RECOMMENDATION TO SPAIN IN ORDER FOR IT TO CARRY OUT THE LEGISLATIVE AMENDMENTS NECESSARY TO ALLOW THE EXERCISE OF THE RIGHT TO STRIKE BY THE SPANISH GUARDIA CIVIL AND ITS MEMBERS,

3) TO REQUEST SPAIN TO REPORT ON THE LEGISLATIVE AMENDMENTS MADE IN THE NEXT BIENNIAL REPORT, IN ORDER TO COMPLY WITH THE ABOVE RECOMMENDATION, IN ACCORDANCE WITH ARTICLE 21, PART IV, OF THE CHARTER.

In León (Spain), for Strasbourg (France), on 24 June 2025.

Signed:
Mr. Ernesto Vilariño Correa
Secretary General and Institutional
Relations
Asociación Profesional Justicia
Guardia Civil (JUCIL)

Signed by ***4771** ERNESTO VILARIÑO
(R: ****8907*) on 25 June 2025 by means of the
certificate issued by an Authorising Body for
Representations

Signed:
Mr. Diego Sarabia Rodríguez
Managing Partner
Sarabia Tax & Legal

Diego Sarabia Rodríguez. Digitally signed by
Diego Sarabia Rodríguez. Date: 24 June 2025
15:59:06 +02'00'

Signed:
Mr. Alejandro Suárez Gutiérrez.
Lawyer – Administrative Law
Sarabia Tax & Legal

Alejandro José Suárez Gutiérrez. Digitally
signed by Alejandro José Suárez Gutiérrez. Date:
24 June 2025 15:59:40 +02'00'

SARABIA Y ASOCIADOS
TAX & LEGAL

Mrs Natalia Luque Dios, Sworn Translator of English, by virtue of qualification granted by the Ministry of Foreign Affairs, European Union and Cooperation, does hereby certify that the former is a faithful and complete translation into English of a document written in Spanish language:

In Córdoba, 26th of June 2025.

Doña Natalia Luque Dios, Traductora-Intérprete Jurada de Inglés, en virtud de título otorgado por el Ministerio de Asuntos Exteriores, Unión Europea y Cooperación, certifica que la que antecede es traducción fiel y completa al inglés de un documento redactado en español:

En Córdoba, a 26 de junio de 2025.

NATALIA LUQUE DIOS
Traductor-Intérprete Jurado de Inglés
Nº 6276

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