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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

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Case Document No. 1

JUPOL - *Justicia Policial* v. Spain
Complaint No. 251/2025

COMPLAINT

Registered at the Secretariat on 28 August 2025

COLLECTIVE COMPLAINT BEFORE THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Madrid, 3 July 2025

To the Secretary General of the European Council

European Council

F-67075 Strasbourg Cedex

France

Subject: Collective complaint presented under the Additional Protocol to the European Social Charter that established a collective complaints system (1995)

Claimant organisation:

JUPOL - Justicia Policial (Police Justice)

Majority trade union of the National Police in Spain

(Bylaws and certification of trade union representation are attached)

Respondent State:

Kingdom of Spain

I. Purpose of the complaint

This collective complaint is lodged against the Kingdom of Spain for violation of Article 6 of the European Social Charter (Revised), specifically in relation to the right to effective collective bargaining by the civil-servant personnel of the National Police Corps, represented in trade union matters by the organisation JUPOL.

II. Invoked provision: Article 6 of the European Social Charter

The complaint is based on the violation of the following points of Article 6:

- **6.2:** To promote voluntary negotiations between employers and worker's organisations.
- **6.4:** To ensure the right of workers to undertake collective actions, including strike action.

III. Facts that support the complaint

1. As regards the civil-servant personnel of the National Police Corps, the Spanish State has established a system of purported negotiation through the **Police Council**, a body provided for in the Organic Law 9/2015, of the Personnel Regime of the National Police.

2. However, this Council lacks in practice actual collective bargaining functions. The fundamental decisions concern labour, remunerative and organisational conditions are adopted unilaterally by the Ministry of the Interior or by the Government, without there being a binding framework of effective dialogue, comparable to that provided for other public or private sectors.

3. JUPOL, as the majority trade union in the Police Council, has repeatedly verified that its proposals are not subject to genuine negotiation, but rather are merely heard without legal consequences. The Council functions more **as an advisory body** without a real capacity to exert influence.

4. The impossibility of exercising the right to strike, along with the absence of a real negotiation mechanism, situates the police civil servants in a situation of defencelessness that violates the minimum European standard of the right to collective bargaining.

IV. Legal grounds

Consolidated case law of the European Committee of Social Rights has established that Article 6.2 of the European Social Charter requires the Member States to adopt **effective measures to ensure the exercise of collective bargaining**, even for the workers of the public sector or essential services, with the due adaptations.

The current Spanish model, with respect to the personnel of the National Police:

- Does not allow actual and effective negotiation on fundamental conditions.
- Does not offer alternative mechanisms to make up for the lack of strike action.
- Does not ensure the active role of the trade union organisations in determining the basic labour rights.

All of this leads to a violation of the commitments assumed by the Spanish State pursuant to the European Social Charter (Revised) and the Protocol of Collective Complaints.

Aside from the conclusions detailed above, we must take into account that the Police Council does not currently serve as a mechanism through which police officers may have binding decision-making capacity, as can be seen from numerous minutes of ordinary meetings that have taken place.

From all of them it can be seen that the council only has an informative and advisory character.

In each of the reviewed minutes, the Council is limited to **informing, debating and gathering allegations,** but **it does not adopt executive decisions**. For example:

- It indicates that calls for applications, competitive examinations, administrative proceedings and regulatory reforms are merely **reported or submitted for consideration**, but **the final decision corresponds to the Administration**, normally through the Directorate-General of Police.
- The allegations of the trade unions are only **taken into consideration** if the Administration deems it advisable.

In addition, an absence of plural effective representation is noted. In several meetings it stands out that **only the SPP** [Professional Police Trade Union] **is present**, as in the sessions of 31 October and 12 December 2024. This reflects partial or limited trade union participation that **undermines the legitimacy of a body with decision-making capacity.**

The Council has limited normative competence. Repeated reference is made to regulations that **assign decision-making authority to the Directorate-General of the Police**, for example:

- On subjects of merit-based competitions or free appointment.
- In application of Royal Decree 1087/2024.

- In the reform of the Job Post Catalogue (CPT), where it is stated that "**timing and decisions are determined by the higher authority**," and it is acknowledged that the Council has no scope for decision-making.

Many of the matters dealt with (such as assignments of specific posts, reorganisation of staff or internal rules) require technical and complex strategic valuations that are outside the trade union deliberation. This is expressed by the Head of the Personnel Division, for example, when he affirmed that:

"…announcing certain posts through a General Merit-Based Competition may harm highly specialised units such as the UDEF [Economic and Fiscal Crime Unit].."

Despite the lack of attendance by other trade unions, the Council **continues functioning and takes notes of matters** with normality. This shows that **the trade union presence is not essential for administrative decisions to be adopted,** which reinforces their merely advisory role.

The Police Council is not viable as a decision-making body due to its advisory configuration, the hierarchical structure of the National Police and the legal distribution of competences. Its usefulness is based on offering a voice to trade union representatives, but the final decisions are adopted by the Directorate-General, according to technical, statutory and strategic criteria.

In this regard, the **Legal Opinion** is also relevant in relation to "the right to exercise strike action by the members of the

National Police", which reaches the following conclusions in relation to the rights of the National Police.

1) An accomplishment of the State of Law is, without doubt, the assumption by public authorities of the legitimate use of force. This is reflected, at the organisational level, in the integration of the police within the structure of the Public Administration. The members of the National Police are public servants. In this regard, the Spanish Constitution regulates the Security Forces in Title IV, which has the heading "Government and Administration". Following this heading, Article 1, Section 4 of the Organic Law 2/1986, on Security Forces and Corps, establishes that "the maintenance of public security shall be exercised by the distinct Public Administrations through the Security Forces and Corps". As Barcelona Llop affirms, an important conclusion is derived from this:

"**if the Police is part of the Administration, the guiding constitutional principles of the latter must extend to the former**, along with other constitutional provisions that refer to this". For example, it is clear that the Police serve the general interests with objectivity. This in no way impedes the fact that certain aspects of the Statute of the Police are subject to specific special conditions depending on the functions entrusted to the Corps.

2) Now that the relationships of special subordination, in which administrative authority prevailed over public servants above all other considerations, have been tempered, their place

in today's current constitutionalism has been taken by the legal development of the statute of these Corps, through a statutory reservation in favour of the democratic Parliament. The substitution of the administrative will by the will of the legislator does not mean, however, that the Parliament is completely free to configure the fundamental right or freedom, since **the law that implements a fundamental right must respect the constitutional provisions in that regard**, the essential content of the right, the principle of direct applicability of fundamental rights, the principle of proportionality, and the fundamental right of equality.

3) The fundamental rights are not absolute rights, but rather they have limits on their exercise, derived from conflicts with other rights and freedoms, or in favour of the protection of other constitutionally recognised assets and rights. However, it must be taken into consideration that the Constitutional Court has declared that "the expansive force of any fundamental right in turn restricts the scope of the limiting norms that act upon it; **hence the requirement that the limits of constitutional rights must be interpreted narrowly and in the manner most favourable to the effectiveness and essence of such rights**" (STC 159/1986 and STC 254/1988, among others).

4) The extrinsic limits on the exercise of the fundamental rights are those that have been expressly provided by the legal system, either in the Constitution itself in an immediate and express manner (i.e., Art. 20.4 CE declares the freedom of

expression is limited by respect of honour, personal and family privacy, one's own image and the protection of youth and childhood), or else in a mediated and indirect manner, although in all cases they must be justified by the need to preserve and protect other constitutionally protected assets, values or rights (STC 11/1981, STC 2/1982, STC 110/1984, among others). Here is where the imposition of specific special conditions would be recorded for the exercise of the fundamental right to trade union freedom and to the right to strike for the members of the National Police.

5) The legal academic community has engaged in extensive debate over whether the constitutional right to strike, established in Art. 28.2 CE, is an autonomous fundamental right or, on the contrary, it is framed among the connected rights derived from the trade union freedom (Art. 28.1), because the consequences of placing it in one place or the other are different. **In the case of subsuming the police among the public servants, holders of the right to strike of Article 28.2, the consequence would be the direct recognition of an autonomous fundamental right in order to, in case of dispute, make possible the cessation of the collective provision of entrusted public services.** On the other hand, **the inclusion of the right to strike for police officers in Article 28.1 CE would grant it the consideration of an entitlement connected to the fundamental right to trade union freedom, and would be integrated as an added element in the complex system of initiatives of professional self-defence.** This difference in the

constitutional placement of the right to strike, either as an autonomous right or as an entitlement linked to the trade union freedom, is relevant in light of the protagonism played by the "essential content" of the right. **In other words, the field of lawfulness of the right would be broader if the placement occurred in the scope of Article 28.2, which enshrines the right to strike in the strict sense, and not as an entitlement inherent to trade union freedom,** since it would have different margins for the legislative regulation of the strike action and different systems of limitation of the recourse to strike action by this professional sector of the National Police. What is indisputable is the close connection between both rights. For this reason, it is necessary to analyse jointly both paragraphs of Article 28 of the Constitution.

6) Article 28.1 CE, after recognising that "All have the right to freely join a trade union", establishes some qualifications of the freedom of association for public servants. In this sense, it states that "The law may restrict or except the exercise of this right in the Armed Forces or Institutes or other bodies subject to military discipline, and shall lay down the special conditions of its exercise by civil servants." The reference that Article 28.1 makes to "the Armed Forces or Institutes or other bodies subject to military discipline" is worded in a confusing manner, since it mixes the Armed Forces (made up by the Army, Navy and Air Force, according to Article 8 CE) and other Institutes subject to military discipline (the Guardia Civil, the personnel who provide their services in the National Intelligence Centre) and alludes in second place to the civil servants, among which

the members of the Police may be understood as being included.

7) An interpretation, in our correct understanding, of Article 28.1 leads us to the following conclusions: In the first place, **when the provision refers to the scope of application ("All have the right to freely join a trade union") one must consider this includes the workers of all types: those working for others, self-employed or public employees** of all the Administrations, whether of Spanish or foreign nationality. Then the provision establishes an exceptional regime regarding the right to join a trade union, which can be split into two distinguishable subgroups: the members of the Armed Forces and Institutes, as well as those belonging to the Corps subject to military discipline, on the one hand, and the Corps of a civilian nature such as police officers, on the other. All of them are public servants. Having said that, on this internal diversification, Art. 28.1 establishes two levels of intensity in the restriction of the right: A minimum obligatory level that affects all the public servants (and, therefore, also the members of the military, Guardia Civil and police) and that are specified in the mandate to the legislator to establish a regime of "special conditions" for the exercise of the right, although it does not indicate which ones; and a second, maximum, optional level, for the military members and personnel subject to military discipline, for which the legislator shall be able "to limit or except" the exercise of the right to join a trade union.

8) The status of the members of the National Police, as a Corps of a civilian nature, would be among the public servants subject to "special conditions" in the exercise of the right to trade union freedom. The reason for imposing specific special conditions is the nature of the functions that these public employees carry out. The only difference existing between the "special conditions" of the right to join trade unions for public servants in general and the "limitations" that may be applied to members of the military and Institutes subject to military discipline is based on the fact that for the first group (public servants), the legislator must respect the essential content of the right (Art. 53.1 CE), a limit that does not affect the second group (military members and personnel subject to military discipline) so that the legislator may completely except the right to join trade unions or subject it to restrictions that affect the "essential content" thereof.

9) Case law existing up to now has considered as a *totum revolutum* the reference made in Article 28.1 to "the armed forces or institutes or other bodies subject to military discipline". Considering the radical prohibition of the right to strike for all, established in the specific laws, as valid, the different Courts have not carried out, in our opinion, a sufficient interpretative activity at the level this issue requires. We consider that the provision clearly separates the Forces and Corps subject to military discipline and the Security Corps of a civilian nature, and **for this reason we consider**

unconstitutional the prohibition of the right to strike for members of the police. That said, ultimately, and arguing the contrary, even when a different reading of Art. 28 CE is done and it is understood that the National Police are included among the "Armed Forces or Institutes" to which the law may impose "limitations or exceptions", the wording of the provision does not require the legislator to opt for imposing such restrictions and, much less, to inflict radical prohibitions for the members of the National Police. The civil nature of the Force and the obligation of establishing the guarantees necessary to ensure the maintenance of such an essential service would impose an equivalence of sacrifices among the striking persons and the public service, which will always have some minimum services to ensure a sufficient standard of security.

10) The second position in the constitutional interpretation regarding the matter that concerns us would be the consideration of the right to strike as an autonomous, individual right, however, of collective exercise, although intimately related to trade union freedom. Its essential content is quite precise and has been established by the Constitutional Court in the famous STC 11/1981: "consists of the cessation of work in any of the manifestations or modalities that it may take". Its constitutional placement is found in Article 28.2 that establishes the following: "The right of workers to strike in defence of their interests is recognised." As can be noted, the Constitution does not introduce here any type of possible restrictions or exclusions. The only condition that the

Constitution contains is very specific: “The law governing the exercise of this right shall establish the safeguards necessary to ensure the maintenance of essential public services of the community.” (Art. 28.2 CE).

11) The conceptual delimitation of “essential services” has also been carried out by the Constitutional Court, in its early sentence STC 26/1981. A service is essential when it satisfies essential assets and interests, such as the fundamental rights, public freedoms and the constitutionally protected assets. From this, it follows that the concept of essential services, as maintained by constitutional case law, is a substantive one, in such a way that the “essential services” are not equivalent to “public services” (since essential activities may also be provided by private entities), nor to “minimum services”. A service is “essential” –the Court states– “by virtue of the result that the activity in question intends to achieve. More specifically, by the nature of the interests which the provision of the service is intended to resolve. For a service to be essential, the assets and interests it satisfies must themselves be essential. Fundamental rights, public freedoms, and constitutionally protected assets must be considered as essential rights and interests…”

12) Whether through Article 28.1 (a right connected to trade union freedom) or through Article 28.2 of the Constitution (a fundamental, autonomous right), **in both cases, the Constitution calls on the legislator to develop and supplement the conditions for exercising the right to**

strike. This is fully congruent with the provisions of Article 53.1 CE, which establishes that "Only by a law which in any case must respect their essential content, could the exercise of such rights and liberties be regulated", a law that, in addition should be organic, since "organic laws are those relating to the implementation of fundamental rights and public liberties" (Art. 81.1 CE).

13) After more than forty years since the Constitution went into effect, **there is no Organic Law on Strike Action in Spanish Constitutional Law**. This fundamental right is governed by the provisions declared to remain in force of the pre-constitutional Royal Decree-Law 17/1977 of 4 March, on Labour Relations, as well as the case law that the Constitutional Court and the ordinary jurisdiction have produced on them. Trade unions' fear regarding the future law introduces restrictions has delayed its approval and this, together with its absence has created problems, in particular as refers to the establishment and supervision of minimum services, the classification as lawful or unlawful of a called strike action, and the defence of the rights of workers who do not make use of it.

The Court has frequently recorded the urgent need to have this law. Thus, in STC 193/2006 the following was affirmed: "It should be emphasised that the possible limitation of workers' right to strike with the aim of ensuring the continuity of essential community services is provided for in Article 28.2 as necessary content of the Law that regulates the

corresponding safeguards. The current absence of such legislation naturally gives rise to numerous issues, particularly –and relevant to the matter at hand– concerning the identification of what may be classified as essential services and the scope of the safeguards required to ensure their continuity."

14) The lack of consensus for the approval of the Organic Law on Strike Action has led to the right to strike in force today in Spain to be regulated for the workers by the pre-constitutional Decree-Law 11/1977 and the interpretation that is given to it by the Constitutional Court by the often cited STC 11/1981. For the public servants of the general regime serving the Public Administrations, the right to strike is recognised and regulated in Legislative Royal Degree 5/2015, of 30 October, which approved the Consolidated Text of the Law of the Basic Statute of Public Employees, whose Article 4 establishes that the provisions of this Statute shall only apply to personnel of the Security Forces and Corps "when their specific legislation so deems".

15) The divergence of legal regimes among the different Security Forces and Corps was already made clear very early, upon the Spanish Parliament approving Organic Law 11/1985, of 2 August, on Trade Union Freedom. In it, upon setting the subjective scope of the Law, it includes: "all the workers under an employment contract, whether or not of the Public Administrations. The only exceptions from the exercise of the right are the members of the Armed Forces and Institutes of a

military nature, as well as the Judges, Magistrates and Public Prosecutors, while they are actively serving... The regulation of the rights of the Security Forces and Armed Institutes of a civilian nature is referred to a specific law." (Preamble). It remains perfectly clear that it deals with two different legal regimes, which must be dealt with differently by the specific organic legislator.

16) Surprisingly and against all legal logic, this diversity of regimes envisaged by the Trade Union Freedom Law was blatantly disregarded when the Spanish Parliament passed Organic Law 2/1986 of 13 March, on the Security Forces and Corps, whose Article 6.8, in setting out the common provisions, prohibited the exercise of the right to strike for all Security Forces and Corps. Specifically, for the members of the National Police, the later Organic Laws 4/2010, of 20 May, on the Disciplinary Regime of the National Police Force and 9/2015, of 28 July, on the Personnel Regime of the National Police, have done nothing more than reiterate the prohibition of the exercise of the right to strike. Given that these are such distinct organisations, not only in structure and organisation but also in their own history, configuration and even idiosyncrasy, it is surprising, in the clear absence of any solid basis, that the implementing organic legislation has treated them identically with regard to the prohibition of the right to strike. As we have been reiterating, the Armed Forces and the Guardia Civil are subject to military discipline while the different police forces are Security Corps of a civilian nature. The unjustified equal treatment to restrict or limit the rights of the members of

distinct institutions violates the right to equality of treatment of Article 14 of the Constitution and supposes a form of *reformatio in peius* that is constitutionally inadmissible.

17) In order to maintain equality of treatment regarding the subject of strike action for Security Forces and Corps that are of a different nature, Organic Law 2/1986 on Security Forces and Corps, prohibited overall the right to strike for members of all armed institutions. This involved a restrictive overall interpretation of Article 28 of the Constitution, contrary to the case law of the Constitutional Court. The legislator considered that the connection between trade union freedom and the right to strike justified the fact that the deprivation of the former would entail the same for the latter. However, in order for this constitutional reasoning to be logical and coherent, the supposed inseparability between trade union rights and the right to strike would need to be overcome, an operation made quite difficult given the individual entitlement of the latter as an autonomous fundamental right, as demonstrated by the fact that the Constitution sets it out in a separate paragraph from trade union freedom (Art. 28.2). In addition, in order for this inseparable connection to hold up, it would be necessary for those deprived of the right to strike to first have been deprived of the right to form trade unions, which is constitutionally permissible –and has indeed been interpreted as such by the organic legislator– in the case of the members of the Armed Forces, the Guardia Civil and the National Intelligence Centre (CNI). Apart from these, all other police officers ought to have, with their special conditions, their trade

union rights recognised. It follows that the general prohibition of the right to strike for police officers cannot be presented as a natural consequence of the prohibition on the right to form trade unions, since that prohibition exists only for members of the Armed Forces, the CNI and the Guardia Civil. Legal scholars have made clear that “this generalised prohibition, in short, is seriously problematic in constitutional terms”, (for example, Barcelona Llop).

18) Article 53.1 of the Constitution requires the legislator of rights and freedoms to respect “in any case” the essential content of the right; that is to say, its core that, if not respected, makes the right unrecognisable or subjects it to limitations that make it impracticable. The prohibition of the right to strike made by the legislator does not disfigure the “essential content” of the right and does not make it unrecognisable, using the linguistic categories of the Court itself. It simply ignores it by radically prohibiting its exercise. Therefore, the intention of the Spanish legislator is clear, at the present time: to prohibit the right to strike and the substitutive actions or actions arranged to alter the normal functioning of the services by members of the National Police. However, the scientific scholarship, in its majority, (M. E. Casas Bahamonde, F. J. Sánchez Pego, etc.) have criticised, with greater or lesser intensity, this prohibition of the right to strike for this category of special public servants, as an option of legal policy by the organic legislator. The obligatory nature of introducing special conditions in the trade union right may never reach the

prohibition of the right to strike because it deals with different, although interconnected, rights.

19) This prohibition for the police creates a constitutional conflict since at the same time that the right to strike is restricted, the right to form trade unions is recognised. This produces a distortion of the trade union right since the recognition of one and the denial of the other lacks legal logic. The reason for the prohibition is provided by the Organic Law on the Security Forces and Corps itself in its Preamble, when it concludes that these Forces are responsible for defending a series of preeminent interests, among them being the security of the State, for which reason their activities must be carried out without any margin of interruption. But it is true that the only constitutional limit to the right to strike, provided in Article 28.2, is the establishment of "safeguards necessary to ensure the maintenance of essential public services of the community." This limit functions as a correction mechanism, since, although it does not permit a normal functioning of the services, it does provide, on the other hand, sufficient functioning that impedes the service from being paralysed completely. The nature of the functions performed by the police would call for negotiation mechanisms in which strike action is considered as a measure of last resort.

20) The principle of proportionality has supplemented the case law by projecting a triple dimension over the limitation of rights: a) the limitations that are established for any right or freedom cannot be obstructed beyond what is reasonable. (STC

53/1986, STC 120/1990, among others); b) the limiting measures must be rational, appropriate and reasonable in relation to the achievement of the pursued aim, which must be constitutionally protected (STC 62/1982); and c) the resulting restriction of the right must be proportionate between the sacrifice of the right and the situation of the person on whom it is imposed, even in the cases in which the holders of the rights in question are in a situation called "special subordination" (STC 37/1989, STC 120/1990, among others). The consequence of the above is that the exercise of the fundamental rights and freedoms is not absolute and may have special conditions, restrictions or limitations, whenever they are provided for in the Constitution, which, due to their exceptional character, must be interpreted in a restrictive manner.

21) The optional and not imperative manner to regulate the possible restrictions of Article 28.1 of the Constitution ("The law may restrict or except...") leads us to the important conclusion **that the Constitution does not contain a general discipline of the right to strike. Neither does it establish an express mandate of prohibition of the right to strike for the members of the State Security Forces and Corps, nor, much less, when, as in the case of the National Police, it deals with a civilian-type Corps not subject to military discipline**. From the Constitution, therefore, it cannot be deduced, neither directly nor indirectly, that there exists a restriction or limitation of this fundamental right for the National Police. A different matter will be the provisions that

must be adopted to ensure an essential service of the community, which is "to protect the free exercise of rights and liberties and to guarantee the safety of citizens". (Art. 104.1 CE).

22) The Constitution entrusts to the organic legislator the approval of the corresponding laws corresponding to each one of the Forces, Institutes or Corps. The decision to opt for a regime of recognising the right to strike or restriction thereof is, consequently, a legal configuration, and the organic law that implements it must always respect the letter and spirit of the Constitution. However, the opening of the Constitution to the recognition of the right to strike for the National Police has been closed by the sectoral legislator, which has opted for the position –in our opinion unconstitutional– of strictly prohibiting the right to strike for the members of the National Police. Even so, it must be clearly stated that this prohibitive attitude towards the Security Forces and Corps subject to military discipline is, in any event, one of the possible options of development by the legislator, but not the only one. We understand, however, that the radical prohibition lacks constitutional justification for the civilian Police Corps, which are public servants *sui generis,* for whom the Constitution only considers the establishment of special conditions in the exercise of the trade union rights and the right to strike. That being so, a correlation of different political forces may be able to rectify in favour of another reading that would guarantee the recognition of the right to strike of the police professionals, with the special conditions that may be necessary to establish.

This would be in accordance with the restrictive interpretation of the limits on constitutional rights, enshrined by the Constitutional Court, and would be coherent with the constitutional principles that uphold a favourable interpretation of the greatest possible effectiveness of the fundamental rights, with which the guarantees for ensuring maintenance of such a public service so essential for the community would remain safeguarded.

23) Not all the public servants are subject to the same statutory regime. Article 104 CE points to the existence of a Statute specific for the members of the police, a matter that was endorsed by the Constitutional Court on occasion of the retirement of one of its members. (Order 66/1987, of 21 January). The establishment of the special conditions referred to in Article 28.1 of the Constitution may well signify that the legal regime of the rights to form trade unions and to strike for civil servants serving the general Public Administrations may differ from that applied to the public servants of the Police. The nature of the police service, the functions entrusted to them, their hierarchical organisation, the condition of being an armed force, and their required political neutrality may advise differentiated special conditions (which might even entail some prudent limitations) in the way of exercising the right to strike with respect to the public servants of the General Administrations, as long as they do not suppose restrictions or, even less, prohibitions, since both would violate the "essential content" of the right to strike to which the legislator is bound, pursuant to Art. 53.1 of the Constitution. This was

the jurisprudential line followed by the Constitutional Court in STC 91/1983, of 7 November, FJ 4, and STC 141/1985, of 22 October, FJ 4, issued prior to the approval of the Organic Law 2/1986, of 13 March, on Security Forces and Corps. And this same position is that supported by the main scholarship on the subject, especially by J. Barcelona Llop in his monograph "*Policía y Constitución*".

24) The argument used by the Organic Law of Security Forces and Corps to prohibit the right to strike of the members of the police is found in its Preamble, in the preeminent interests that correspond to the Security Forces to protect, which require ensuring a continued provision of their services that does not admit interruptions. However, in order for such a prohibition to adjust to the Constitution, it would be necessary to consider that Article 28.2 of the Constitution excludes civil servants from its field of application, an issue that, in its day, was raised and is now completely settled in favour of their inclusion.

25) There is no doubt that the services that the Police provide, whether national, regional, or municipal, fit easily into the concept of essential services of the community. If the National Police has as its duty to ensure citizen security and protect the free exercise of the rights and freedoms, it is clear that their mission enters fully in the classification of an essential service. By understanding the Constitutional Court, "one of the limitations or restrictions that the exercise of the right to strike may suffer comes from the need to ensure the continuance of the services", which are thus classified according "to the

nature of the interests that the provision of the service is intended to resolve" and whose assurance constitutes "a safeguard of the right to strike…in such a way that there is a reasonable balance between the sacrifices imposed on the striking persons and those suffered by the users of essential services." (STC 148/1993, FJ 5). This case law doctrine may be compatible if the terminology is used with propriety and in place of "limitations" or "restrictions", the Court would allude to "special conditions" in the exercise of the right, which is the appropriate term that, for the civilian Security Forces made up of public servants, is used in Article 28.1 of the Constitution. It should be recalled that the only condition that Article 28.2 places upon recognising the right to strike, is the establishment of "the safeguards necessary to ensure the maintenance of essential public services of the community."

26) Supposing a close connection between the right to strike (Art. 28.2 CE) and trade union freedom and the rights that are derived from it (recognised in Art. 28.1), the Constitutional Court's Sentence 11/1981, which judged the constitutionality of Royal Decree-Law 17/1977, of 4 March, on Labour Relations, affirmed that, without prejudice of the individual entitlement of the right to strike, "a trade union without the right to exercise the right to strike would, in a democratic society, be rendered practically devoid of substance." (STC 11/1981, FJ 9). For its part, the Law of Trade Union Freedom recognises among the trade union rights the right to strike. Perhaps for this reason the doctrine has been able to affirm that "if it makes sense to deny the right to strike to those who

lack the right to join a trade union, it makes no sense to deny the former to those who enjoy the latter." (Sánchez Pego). From this it can easily be deduced that the general prohibition of the right to strike for the National Police may not be derived naturally from the prohibition of the right to join trade unions, as occurs with the institutes subject to military discipline. **This being so, the prohibition of the right to strike for the members of the National Police lacks constitutional basis.**

27) Article 10.2 of the Constitution establishes that "The provisions relating to the fundamental rights and liberties recognised by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain." Accordingly, as we have had the occasion to explain in Section IV, neither the Law of the European Union (European Social Charter, Charter of Fundamental Rights of the European Union), nor any of the international instruments ratified by Spain prohibit the exercise of the right to strike for the members of the police. As may well be appreciated, the international instruments ratified by Spain do not oblige the Member State to establish restrictions or limitations for the Security Forces and Corps. All of them admit the limitations as an option for the national law and as a mere possibility to consider. None of them impose prohibitions for the exercise of a fundamental right. All of them, in short, trust the prudence of the Member State (of the national legislation) to establish certain limits for those Corps and Institutes, without forgetting, in any case, that the special conditions and

limitations that are established by law, as exceptions to the common legal system, must be interpreted restrictively. As the Professor of Constitutional Law, G. Cámara Villar, a recognised expert in the subject, affirms: "we are, then, faced with the framework in which the legislator may lawfully establish certain limits on specific rights in the exercise of their freedom of configuration, as long as the pursued aim is justified."

28) As has been made clear by the most specialised scholarship (notably, the former President of the Constitutional Court and Professor of Labour Law, M.E. Casas Bahamonde, as well as scholars of the stature of L. Prieto Sanchís and J.M. Romero Moreno), the Constitution does not protect the entire right to strike, but only that part deemed acceptable, not by those who exercise it, but rather by those who regulate it. This also makes clear the conception that the Constitutional Court has maintained until now –although not without contradictions– regarding the right to strike, on which it maintains an approach that is *iusprivatista* and reductive. In absence of an Organic Law on the right to strike, with the pre-constitutional Decree-Law being applicable and with the Court reasoning in this manner, the cessation of activities by workers excluded from legal protection, according to the interpretation that the Constitutional Court has upheld up to now (especially for police officers), would not be lawful, putting to one side both the broader and fuller recognition afforded by a more favourable interpretation of the exercise of fundamental rights and the Court's own doctrine, which forcefully declares that "the expansive force of every fundamental right restricts, for its

part, the scope of the limiting rules that act on it." (STC 254/1988 of 21 December, FJ 3).

29) It is also advisable to recall that the right to strike, like all fundamental rights regulated in Chapter II or Title I of the Constitution, are immediately applicable and are especially protected before the ordinary Courts "by means of a preferential and summary procedure before the ordinary courts and, when appropriate, by lodging a Recurso de Amparo with the Constitutional Court" (Art. 53.2 CE). As for the fundamental rights and freedoms, they "are binding on all public authorities" (Art. 53.1 CE), the direct applicability of the right in question cannot be impeded or diminished by there not existing, on today's date, an organic law that regulates the right to strike. When such a law is approved, the exercise of the right to strike by police officers shall contain, as has already been said, at least one limitation: the establishment of the safeguards necessary to ensure the maintenance of essential public services of the community. (Art. 28.2 *in fine).*

30) However, the principle of direct and immediate application of the Constitution has been misinterpreted by the organic legislator. With respect to the subjective restrictions in the area of the Armed Forces, Guardia Civil and not to mention regarding the members of the National Police, the legislator has proceeded to suppress the fundamental rights without any constitutional basis. (J. M. Díaz Lema). In this case, the principle of direct and immediate applicability of the Constitution is negatively affected, as it does not consent to the

suppression by law of a fundamental right or liberty without a constitutional basis for it, nor that the administrative authority may deny the exercise of a fundamental right because the pertinent legal development does not exist. The binding of all public authorities to the fundamental rights (Art. 53.1 CE) requires that the subjective restrictions of rights of personnel who exercise functions of authority or provide essential services for the State have explicit reflection in the constitutional text itself. Hence, Organic Law 2/1986 and the specific Organic Law 9/2015, on the Personnel Regime of the National Police, have established a prohibition through a framework that is alien to, and contrary to, constitutional principles. One must bear in mind that, if such restrictions and limitations are not set out in the Constitution itself (as do, for example, Articles 28.1, 29.2 and 127), the power to establish such limitations and prohibitions would lie, abundantly, in the hands of the organic legislator. The distribution of roles in the subject of fundamental rights, between a normative Constitution, like ours, and the law, is very precise. **In this delicate matter, the law cannot introduce a prohibition when the Constitution has not provided for it.** Its role is constricted to the development of the conditions for exercising the right itself. As Díaz Lema forcefully states, "a law that suppresses a fundamental right without a precise basis in the constitutional text must be understood to infringe the Constitution." The same unconstitutionality would be produced if the restriction or

prohibition originated in either the constitutional or ordinary case law.

31) An important affirmation that the Constitutional Court made in the often cited STC 11/1981 should not be forgotten. It judged the constitutionality of the Decree-Law 17/1977 on Labour Relations, reiterated innumerable times in different rulings: “the Constitution is a sufficiently broad framework of coincidences to accommodate political options of widely differing orientations. The task of interpreting the Constitution, specifically article 110, necessarily consist of blocking such options or variants by an authoritarian imposition of one among them. This conclusion must be reached only when the univocal nature of the interpretation is imposed by the application of hermeneutic criteria. We mean that political and governmental options are not previously programmed once and for all in such a way that all that remains to be done is merely to implement a pre-existing programme.” (FJ 7). Clearly the Court is recognising that the Constitution allows different normative implementations, all of them valid as long as they do not violate the mandates contained in it. That is to say, the margin for establishing the constitutional discipline of a right and, specifically, the conditions for exercising the right to strike, is available for the organic legislator. In its development, it must respect the essential content of the right and has no authority to prohibit what the Constitution recognises and authorises.

32) If, as we understand, from all of the above reasoning it follows that the Constitution does not contain restrictions or prohibitions on the right to strike for the members of the National Police, **the effectiveness of the right to strike depends exclusively on the political will of the organic legislator who must regulate the conditions for its exercise. For its activation, it would be sufficient for the Government to present a Bill, or for a Draft Law to be introduced in the Congress, either by a Parliamentary Group or by one member of Parliament supported by the signatures of fourteen other members of the Chamber**. The text must be preceded by a Statement of Reasons and of the necessary background so that the Chamber might rule. In doing this, Art. 8.3.a) of the Organic Law 9/2015, of 28 July, on the Personnel Regime of the National Police must be amended, deleting the prohibition of the right to strike and introducing a new paragraph where the special conditions as well as the conditions for exercising it are established. The wording of Art. 6.8 of the Law 2/1986, of 13 March, on Security Forces and Corps, must be amended where it establishes, among its Common Statutory Provisions applicable to all the State Security Forces and Corps, the prohibition of the right to strike. Lastly, Art. 7.j) of the Organic Law 4/2010, of 20 May, on the Disciplinary Regime of the National Police Corps, must also be amended, which considers "the participation in strikes, in actions substitutive of them, or in concerted actions aimed at disrupting the normal functioning of services" to be a very serious offence by its members (susceptible to dismissal from

service, suspension from duties for a period of three months and one day to six years, or forced transfer). According to the constitutional mandate, it would be a necessary requirement that the conditions for exercising the right to strike include, "the safeguards necessary to ensure the maintenance of essential public services of the community" (Art. 28.2 CE).

33) In the event there is no political will to lift the prohibition on the right to strike for the members of the National Police, and in view of the harm that the denial of such an important right entails for the defence of their rights and professional, economic and social interests, **a reasonable principle of proportional equivalence between the sacrifices imposed on the parties ought to come into play.** Assuming that fundamental constitutional rights are inalienable, and in the event that legislative amendment proves unfeasible for reasons of political expediency, JUPOL's proposal could consist of a type of qualified waiver of the right to strike, temporary and transitory, signed as a collective agreement, without affecting or waiving the right itself, but merely its exercise, so that the right is not extinguished, but rather there is a commitment not to exercise it. The Constitutional Court affirms in its STC 11/1981, cited so many times, "When the commitment not to exercise the right is made in exchange for certain compensations, it cannot be said that an agreement such as this one, which is a form of labour peace pact, is unlawful, let alone contrary to the Constitution." (FJ 14). As a compensation for the denial of such an important fundamental right of professional self-defence, the Ministry of the Interior should

arbitrate a system of countervailing remedies that preserves a fair balance between the rights/duties of the Administration and those of police officers. Such a measure would find support in the European Social Charter (Revised), ratified by Spain on 29 April 2021, which states in Article 2.4 that: "With a view to ensuring the effective exercise of the right to just conditions of work, the Parties (the States) undertake:

To eliminate risks in the occasions where it has not been possible (understanding that this is due to the nature of the service) to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations."

V. Relevant case law of the European Committee of Social Rights

The European Committee of Social Rights has reiterated in many decisions that the States must ensure effective forms of collective bargaining, even when the right to strike is restricted. In this regard, the following precedents stand out:

– Complaint no. 83/2012, EuroCOP v. Ireland: The Committee concluded that the lack of effective collective bargaining mechanisms for the members of the Irish police constituted a violation of Article 6.2 of the European Social Charter. Although the right to strike was limited, the absence of an alternative channel of pressure invalidated the system.

– Complaint no. 111/2014, CGIL v. Italy: The Committee emphasised that the simple existence of informal consultations or meetings without binding effects does not satisfy the collective bargaining standard required by Article 6.2. The dialogue must be substantive, structured and with actual impact on labour conditions.

Both cases reinforce the idea that the Kingdom of Spain is not meeting its obligations under the European Social Charter by maintaining a **structure that is merely consultative rather than negotiatory** in the scope of the National Police.

VI. Comparative law

The legal situation of the police officers in Spain, regarding their trade union rights and the right of collective bargaining, is more restrictive than in other Member States of the European Council. Below, a brief comparison is offered:

– France: The National Police has full recognition of the trade union right. There is a social dialogue board with actual capacity for negotiation and agreements.

– Italy: Although the right to strike is limited, the so-called 'sciopero simbolico' is allowed. This consists of visible protests without interruption of the service. In addition, the representative associations negotiate directly with the Ministry of the Interior.

– Portugal: It recognises the limited right to strike for security forces, accompanied by the obligation of maintaining minimum services.

In contrast, Spain imposes a total prohibition on the right to strike and limits collective bargaining to a consultative body such as the Police Council, without any alternate effective mechanisms, which is incompatible with European standards and entirely ineffective.

VII. Discrimination in trade union dialogue: JUPOL's marginalisation compared to the privileged treatment of SPP

Despite being the majority trade union in the Police Council, JUPOL suffers systematic exclusion of the actual dialogue processes with the Administration. The minutes of the Council itself reflect how, in key meetings, there was only the presence and contributions of the Professional Police Union (SPP), **which represents commanding officers, while it ignores the position of JUPOL, which predominantly represents base-level officers and intermediate-ranking offices.**

This is evidenced, for example, in the meeting of 3 April 2025 of the Personnel and Regulatory Projects Committee of the Police Council, in which it is expressly indicated that:

"… [the other members] have declined to participate and only the representatives of the Professional Police Union (SPP) are present in the meeting, and, being formally constituted as an

ordinary meeting, the Committee agreed to proceed with addressing the various items on the Agenda."

This type of functioning reveals that, even when the rest of the unions are not present –especially JUPOL–, the Administration gives full validity to the meetings and makes decisions with just the opinion of the SPP, evidencing an unequal and excluding treatment.

In turn, in each of the items dealt with in this meeting, it literally includes that the SPP representative "states that it does not want to present any allegation", which shows that there does not even exist a true debate or contrast of opinions. The modifications or decisions are driven by the Administration with the simple agreement of the allied minority union.

The repeated omission of voice of JUPOL, the majority trade union, undermines the principles of representativeness, plurality and balance required in effective collective bargaining, and reinforces the merely formal and consultative character of the Police Council, not meeting the standards of Article 6 of the European Social Charter (Revised).

VIII. Comparative Report on Trade Union Rights and Collective Bargaining in Police Forces in Spain

This report presents a comparison between the trade union and collective bargaining regime of the National Police Corps and that of the main regional and local police forces of Spain.

Key aspects are examined, such as the right to strike, collective bargaining and union representativeness.

1. National Police

– Dialogue body: Police Council (Organic Law (LO) 9/2015), with a merely consultative character.
– Right to strike: Prohibited (LO 2/1986, LO 4/2010).
– Collective bargaining: Without binding effect.

2. Mossos d'Esquadra (Catalonia)

– Dialogue body: Sectoral Joint Negotiation Board.
– Right to strike: Recognised, but limited and restricted, with regulation of minimum services.
– Collective bargaining: Effective and with binding effects.
– Main trade unions: SAP-FEPOL, SME-FEPOL, USPAC.

3. Ertzaintza (Basque Country)

– Dialogue body: Specific negotiation board with the Basque Government.
– Right to strike: prohibited.
– Collective bargaining: Effective.
– Main trade unions: ErNE, SIPE, ELA.

4. Navarre’s Regional Police

– Dialogue body: Personnel Committee and General Public Service Board.
– Right to strike: Recognised but limited and restricted.
– Collective bargaining: Genuine and with effect.
– Main trade unions: SPF, APF, ELA.

5. Local Police (City Halls)

– Dialogue body: General municipal negotiation boards.
– Right to strike: Prohibited.
– Collective bargaining: Effective.
– Main trade unions: CSL, CCOO, UGT, STAP.

6. Comparative Conclusion

POLICE CORPS	RIGHT TO STRIKE	COLLECTIVE BARGAINING	REPRESENTATION BODY	OBSERVATIONS
NATIONAL POLICE	PROHIBITED	NON-BINDING	POLICE COUNCIL	WITH NO ALTERNATIVE MECHANISMS, UNEQUAL TREATMENT OF JUPOL
MOSSOS D'ESQUADRA	PERMITTED BUT RESTRICTED	NON-BINDING	SECTORAL BOARD	BINDING AGREEMENTS, LEGAL PROTESTS
ERTZAINTZA	PROHIBITED	EFFECTIVE	NEGOTIATING BOARD	LEGAL AGREEMENTS AND STRIKES
REGIONAL POLICE	PERMITTED BUT RESTRICTED	EFFECTIVE	PERSONNEL COMMITTEE	RECOGNISED COLLECTIVE AGREEMENTS
LOCAL POLICE	PROHIBITED	EFFECTIVE	MUNICIPAL BOARDS	HIGH TRADE UNION AUTONOMY AND LEGAL PROTESTS

IX. CONSTRUCTIVE PROPOSAL

JUPOL, in its capacity of majority trade union organisation, formulates this proposal with a constructive spirit and respect for the European framework of social rights. Should the Committee consider that the limitation coming from the Police Council's lack of effectiveness can be maintained, it is

requested that the following recommendation be made to the Kingdom of Spain:

- The creation of a **joint negotiation board** between the Ministry of the Interior and the trade union organisations of the National Police, with binding effects.
- The legal recognition of a **compulsory independent mediation or arbitration body**, with decision-making authority in case of a deadlock in agreements.

These measures would respect the principle of proportionality, trade union effectiveness and the commitments assumed by Spain under the European Social Charter, without affecting public security or the principle of continuity of the police service.

X. Requests

For all that has been expressed, JUPOL requests the European Committee of Social Rights to:

1. Declare admissible this collective complaint.
2. Declare that the Kingdom of Spain has violated Article 6 of the European Social Charter (paragraphs 6.2 and 6.4).

3. Invite the Committee of Ministers to adopt a resolution that urges the Spanish State to reform the collective bargaining system within the National Police Corps, providing it with effective and binding mechanisms compatible with European legal standards.

The following are attached as **annexes:**

- **DOCUMENT 1**

  Bylaws of the JUPOL trade union and accreditation of its condition as majority trade union organisation.

- **DOCUMENT 2**

  Documentation on the functioning of the Police Council and its practical limitations.

- **DOCUMENT 3**

  Legal opinion on the subject of the infringement of trade union rights for the National Police in Spain.

- **DOCUMENT 4**

  Minutes of the Police Council to substantiate the above statements made in this document *ut supra.*

Mrs Natalia Luque Dios, Sworn Translator of English, appointed 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, 13th of August 2025.

NATALIA LUQUE DIOS
Traductor-Intérprete Jurado de Inglés
Nº 6276

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

En Córdoba, a 13 de agosto de 2025.

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