



DECISION ON ADMISSIBILITY
5 December 2006

European Council of Police Trade Unions (CESP)
v. Portugal

Complaint No. 37/2006

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 219th session attended by:

Mr Jean-Michel BELORGEY, President
Mrs Polonca KONČAR, First Vice-President
Messrs Andrzej SWIATKOWSKI, Second Vice-President
Stein EVJU, General Rapporteur
Rolf BIRK
Matti MIKKOLA
Alfredo BRUTO DA COSTA
Nikitas ALIPRANTIS
Tekin AKILLIOĞLU
Mrs Csilla KOLLONAY LEHOCZKY
Mr Lauri LEPPIK
Mrs Ersiliagrazia SPATAFORA
Mr Colm O' CINNEIDE

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter,

Having regard to the complaint dated 29 September 2006, registered on the same date as number 37/2006 and lodged by the European Council of Police Trade Unions ("CESP") and signed by its President, Mr Branco PRAH, requesting the Committee to find that Portugal is not in conformity with Articles 4 paras. 1 and 2 as well as 6 paras. 1 and 2 of the Revised European Social Charter ("the Revised Charter");

Having regard to the documents appended to the complaint;

Having regard to the Revised Charter, and in particular to Article 4 §§ 1 and 2 and Article 6 §§ 1 and 2 which reads as follows:

Article 4 – The right to a fair remuneration

Part I : "All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families."

Part II : " With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
 2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
- (...)"

Article 6 – The right to bargain collectively

Part I : "All workers and employers have the right to bargain collectively."

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

1. to promote joint consultation between workers and employers;
 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;
- (...)"

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session ("the Rules");

Having deliberated on 5 December 2006;

Delivers the following decision, adopted on the above date:

1. CESP alleges that the Criminal Police Act of 21 September 1990 and the current Criminal Police Act of 9 November 2000 are not in conformity with Articles 4 paras. 1 and 2 as well as 6 paras. 1 and 2 of the Revised Charter because the Portuguese state has not observed the democratic rules of collective bargaining, having decided unilaterally to apply to the criminal investigation personnel of the Portuguese Criminal Police a rule reducing their basic pay by 25%, thus avoiding payment of the on-call bonus. According to the CESP, this situation is all the more serious in that the Portuguese Government regards bonuses as forming part of overall remuneration, increasing basic remuneration, for all areas of public administration except for the specific case of the Criminal Police.

THE LAW

2. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Portugal on 30 May 2002 and entered into force for this state on 1 July 2002, the complaint has been submitted in writing and concerns Articles 4 paras. 1 and 2 as well as 6 paras. 1 and 2 of the Revised Charter, provisions accepted by Portugal when it ratified this treaty and to which it is bound since the entry into force of this treaty in its respect on 1 July 2002.

3. Moreover, the grounds for the complaint are indicated.

4. The Committee also observes that, in accordance with Articles 1 b) and 3 of the Protocol, CESP is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international nongovernmental organisations that are entitled to lodge complaints.

5. The Committee has already considered that CESP has particular competence (see *CESP v. Portugal*, complaint n° 11/2001, decision on admissibility of 17 October 2001, §5). It confirms this decision since no significant change has taken place.

6. The complaint is signed by Mr Branco PRAH, who is President of the CESP. The Committee therefore considers that the complaint complies with Rule 23 (see *CESP v. Portugal*, complaint n° 11/2001, decision on admissibility of 17 October 2001, §6).

7. For these reasons, the Committee, by 10 votes to 3, without finding it necessary to invite the Government to submit observations on admissibility (Article 6 of the Protocol and Rule 29§3), on the basis of the report presented by Mr Lauri LEPPIK and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the defending state of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Invites the Government to make written submissions on the merits of the complaint by 16 February 2007 including a translation of the Criminal Police Act approved by Legislative Decree 295-A/90, on 21 September 1990 as well as the actual Criminal Police Act approved by Legislative Decree 275-A/2000, on 9 November 2000, in one of the Council of Europe's official languages.

Invites CESP to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 16 February 2007, should they so wish.

In application of Article 7§2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27§2 of the Charter and to invite them to make observations by 16 February 2007.

Lauri LEPPIK
Rapporteur

Jean-Michel BELORGEY
President

Régis BRILLAT
Executive Secretary