



**DECISION ON ADMISSIBILITY**

**COMPLAINT No. 5/1999**

From the European Federation of Employees in Public Services  
Against Portugal

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as "the Committee"), during its 168<sup>th</sup> session attended by:

Messrs Matti MIKKOLA, President  
Rolf BIRK, Vice-President  
Stein EVJU, Vice-President  
Ms Suzanne GRÉVISSE, General Rapporteur  
Mr Alfredo BRUTO DA COSTA  
Ms Micheline JAMOULLE  
Messrs Nikitas ALIPRANTIS  
Tekin AKILLIOĞLU

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

Having regard to the complaint registered as number 5/1999, lodged on 13 August 1999 by the European Federation of Employees in Public Services (hereafter referred to as "EUROFEDOP") represented by its President, Mr Guy Rausner and its Secretary General, Mr Bert Van Caelenberg, requesting that the Committee find that Portugal fails to apply in a satisfactory manner Articles 5 and 6 of the European Social Charter;

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 6 and 13 December 1999 by the Portuguese Government represented by Ms Cristina Siza Vieira, Director of the Legal Affairs Department of the Ministry of National Defence;

Having regard to the European Social Charter and in particular to Articles 5 and 6 which read as follows:

**“Article 5 — The right to organise**

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 Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

**Article 6 — The right to bargain collectively**

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting 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;
- 3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

- 4 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.”

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

Having regard to the rules of procedure adopted by the Committee on 9 September 1999 during its 163rd session;

After having deliberated on 10 February 2000;

Delivers the following decision, adopted on the above date:

1. EUROFEDOP states that, according to its statute, its objective is to defend and promote the economic and social rights of employees in European public services taking into account their specific rights and obligations.
2. It alleges that Portugal does not comply with Articles 5 and 6 of the European Social Charter in so far as members of the armed forces do not enjoy the right to organise. The complaint is based on Section 270 of the Constitution and the Act on National Defence (Act No. 29/82 of 11 December 1982) which prohibit military personnel of the armed forces and of the “Guarda Nacional Republicana” from joining a trade union but allows them to affiliate only to professional associations which must be concerned solely with the professional code of ethics. Moreover, it is alleged that the situation of civil personnel in the armed forces is not in practice in conformity with the same provisions of the Charter. EUROFEDOP emphasises that that other States, notably in Northern Europe, have granted the right to organise to members of the armed forces. It considers that the absence of a right to organise in several States, including Portugal, is particularly

unjustifiable in view of both the domestic and the international context. In many States the armed forces have been restructured in order to abolish compulsory military service and aiming to establish an army composed exclusively of professionals, civilian and military. At the international level the tasks assigned to the armed forces have changed and now include peace-keeping and humanitarian operations. They are based on co-operation between European States within the framework of a policy on peace and security. In this context it seems unacceptable that employees of the armed forces would not enjoy the same trade union rights as their colleagues from other countries.

3. The Portuguese Government does not in substance contest the conformity of the complaint with the admissibility conditions laid down in Articles 1 b) and 3 of the Additional Protocol. It refers in this respect to the control exercised by "the competent bodies".

4. However, the Portuguese Government holds the view that the complaint is inadmissible as it does not fulfil the conditions of Article 4 of the Protocol that the complaint shall indicate the provisions of which violation is alleged and in what respect the said provisions have not been satisfactorily applied.

According to the Portuguese Government, EUROFEDOP restricts itself to invoking violation of Articles 5 and 6. The government considers that the complaint is contradictory since in reality a question of principle is at issue, namely the harmonisation of national systems which are too differentiated. It does not concern a violation by Portugal of Articles 5 and 6, because, as admitted by EUROFEDOP, Portugal may as other States provide for restrictions on the right to organise for the armed forces.

As regards the civilian personnel in the armed forces, the complaint indicates neither the scope nor the nature of the non-conformity.

On the basis of Article 4 of the Protocol the Portuguese Government concludes that the complaint should be declared inadmissible.

*As to the conditions of admissibility laid down by the Protocol and the rules of procedure of the Committee*

5. The Committee notes that, in accordance with Article 4 of the Protocol, which was ratified by Portugal on 20 March 1998 and which entered into force on 1 July 1998, the complaint has been lodged in writing and relates to Articles 5 and 6, provisions accepted by Portugal on 6 August 1991 upon its ratification of the Charter.

6. It further notes that, in accordance with Article 1 b) and Article 3 of the Protocol EUROFEDOP is an international non-governmental organisation with consultative status with the Council of Europe. It is included on the list, compiled by the Governmental Committee, of international non-governmental organisations which are entitled to lodge complaints.

7. In addition, as laid down by Rule 20 of the rules of procedure of the Committee, the complaint lodged on behalf of EUROFEDOP is signed by its President and its Secretary General who, according to the statute of the organisation, are the persons empowered to represent it.

8. The Committee considers that this organisation has lodged a complaint in a field in which it has particular competence within the meaning of Article 3 of the Protocol.

*As to the objections of inadmissibility raised by the Portuguese Government*

9. The Committee observes that the complaint concerns violation of Articles 5 and 6 of the European Social Charter. The alleged violation concerns norms of the Portuguese legal system. The complaint aims expressly at the provision of the Portuguese Constitution and the Act on National Defence which are alleged to contravene two provisions of the Charter by prohibiting military personnel of the armed forces and the "Guarda Nacional Republicana" from organising, except in respect of professional associations which are concerned solely with the professional code of ethics.

10. The Committee thus considers that Article 4 of the Protocol and its different conditions are fulfilled and that the reasons given in the complaint, although succinct, are sufficiently indicative of the extent to which the Portuguese Government is alleged not to have ensured the satisfactory application of the provisions concerned.

11. Consequently, the Committee considers that the objections of inadmissibility raised by the Portuguese Government cannot be sustained. It reserves the possibility of examining the different arguments put forward as well as the observations made by the Portuguese Government in so far as they relate in substance to the case and in particular to the interpretation of Article 5 of the Charter.

12. In the light of the information submitted to it, the Committee does not consider it necessary to request supplementary observations from EUROFEDOP.

13. For these reasons, the Committee, on the basis of the report presented by Ms Micheline JAMOULLE, and without prejudice to its decision on the merits of the complaint,

**DECLARES THE COMPLAINT ADMISSIBLE.**

In application of Article 7 para. 1 of the Protocol, requests the Executive Secretary to inform the Contracting Parties to the Charter that the present complaint is admissible.

Invites the Portuguese Government to submit in writing by 15 March 2000 all relevant explanations or information.

Invites the Contracting Parties to the Protocol to communicate to it by the same date any observations which they wish to submit.

Invites EUROFEDOP to submit in writing by a deadline which it shall fix all relevant explanations or information in response to the observations of the Portuguese Government.

In application of Article 7 para. 2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27 para. 2 of the Charter and to invite them to submit their observations by 15 March 2000.

Micheline JAMOULLE  
Rapporteur

Matti MIKKOLA  
President

Régis BRILLAT  
Executive Secretary