EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

EMBARGO
17TH MAY 2014, 00:01AM

Confidential[1]

European Confederation of Police (EuroCOP) v. Ireland

Complaint No. 83/2012

REPORT TO THE COMMITTEE OF MINISTERS

Strasbourg, 2 December 2013

[1] It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 17 May 2014.

Introduction

1. Pursuant to Article 8§2 of the Protocol providing for a system of collective complaints ("the Protocol"), the European Committee of Social Rights, a committee of independent experts of the European Social Charter ("the Committee") transmits to the Committee of Ministers its report[2] on Complaint No. 83/2012. The report contains the Committee's decision on admissibility and on the merits of the complaint (adopted on 2 December 2013).

2. The Protocol came into force on 1 July 1998. It has been ratified by Belgium, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal and Sweden. Furthermore, Bulgaria and Slovenia are also bound by this procedure pursuant to Article D of the Revised Social Charter of 1996.

3. The Committee's procedure was based on the provisions of the Rules of 29 March 2004 which it adopted at its 201st session and revised on 12 May 2005 at its 207th session, on 20 February 2009 at its 234th session and on 10 May 2011 at its 250th session.

4. The report has been transmitted to the Committee of Minister on 16 January 2014. It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 17 May 2014.

[2] This report may be subject to editorial revision.

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON THE ADMISSIBILITY AND THE MERITS

2 December 2013

European Confederation of Police (EuroCOP) v. Ireland

Complaint No. 83/2012

The European Committee of Social Rights, the committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 268th session attended by:

Luis JIMENA QUESADA, President
Monika SCHLACHTER, Vice-President
Petros STANGOS, Vice-President
Lauri LEPPIK
Birgitta NYSTRÖM
Rüçhan IŞIK
Alexandru ATHANASIU
Giuseppe PALMISANO
Karin LUKAS
Jozsef HAJDU
Marcin WUJCZYK

Assisted by Régis BRILLAT, Executive Secretary,

Having deliberated on 3 July, 11 September, 22 October and 2 December 2013,

On the basis of the report presented by Luis JIMENA QUESADA,

Delivers the following decision adopted on the latter date:

PROCEDURE

1. The complaint submitted by the European Confederation of Police ("EuroCOP") was registered on 7 June 2012.

2. The complainant organisation alleges that in Ireland, police representative associations do not enjoy full trade union rights in violation of Article 5 (right to organise), Article 6 (right to bargain collectively) and Article 21 (right to information and consultation) of the European Social Charter ("the Charter").

3. On 27 September 2012, the Government of Ireland ("the Government") submitted its submissions on the admissibility and merits of the complaint. On 27 November 2012, EuroCOP submitted its response to the Government's submissions.

4. By a letter dated on 20 February 2013, the Committee invited the states parties to the Protocol providing for a system of collective complaints ("the Protocol") and having made a declaration in accordance with Article D§2 of the Charter to transmit to it, before 9 May 2013, any observations they may wish to make on the merits of the complaint in the event that that it is declared admissible.

5. By a letter dated on 20 February 2013, referring to Article 7§2 of the Protocol, the Committee invited the international organisations of employers or trade unions referred to in Article 27§2 of the 1961 Charter to submit their observations within the time-limit of 9 May 2013.

6. No such observations were received.

7. In accordance with Rule 29§2 of the Rules of the Committee ("the Rules"), on 28 March 2013, the President of the Committee asked the respondent Government to make, before 10 May 2013, any additional submissions on the admissibility and merits of the complaint. The Government's submissions were registered on 8 May 2013.

8. The submissions were sent to the complainant organisation for information on 17 May 2013.

9. On 24 May 2013, the parties were requested to submit their responses to a questionnaire, agreed upon by the Committee, before 21 June 2013. The replies of the parties were both registered on 21 June 2013.

10. At the end of the final deliberation, Monika SCHLACHTER withdrew from the functions of the Rapporteur. The President, Luis JIMENA QUESADA, acted as Rapporteur for the adoption of the decision.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

11. The complainant organisation asks the Committee to find that the situation in Ireland is not in conformity with Article 5, 6 and 21 of the Charter, as national police representative associations - in particular the Association of Garda Sergeants and Inspectors ("AGSI"), a member organisation of EuroCOP - do not enjoy full trade union rights.

12. EuroCOP claims that the police are prohibited from establishing trade unions. Moreover, police representative associations are prohibited from affiliating with national employees' organisations, provided insufficient access to pay agreement discussions, denied access to the Labour Relations Commission and Labour Court, as well as denied the right to take collective action. In the opinion of the complainant organisation, each of these grounds amounts to a violation of the Charter.

B – The respondent Government

13. The Government refutes the complainant organisations' assertions in their entirety and asks the Committee to declare the complaint unfounded in all respects.

RELEVANT DOMESTIC LAW AND PRACTICE

14. Section 18 of the Garda Síochána Act 2005 (the consolidated act establishing the police force of Ireland; "the Garda Síochána Act") provides as follows:

> "1. For the purpose of representing members of the Garda Síochána in all matters affecting their welfare and efficiency (including pay, pensions and conditions of service), there may be established, in accordance with the regulations, one or more than one association for all or any one or more of the ranks of the Garda Síochána below the rank of Assistant Garda Commissioner.
>
> 2. An association established under subsection (1) must be independent of and not associated with any body or person outside the Garda Síochána, but it may employ persons who are not members of the Garda Síochána.
>
> 3. A member of the Garda Síochána shall not be or become a member of any trade union or association (other than an association established under this section or section 13 of the Garda Síochána Act 1924) any object of which is to control or influence the pay, pensions or conditions of service of the Garda Síochána.

4. If any question arises whether any body or association is a trade union or association referred to in subsection (3), the question shall be determined by the Minister whose determination shall be final.

5. The Minister—

(a) may, notwithstanding subsection (2), authorise an association established under this section to be associated with a person or body outside the Garda Síochána in such cases and in such manner and subject to such conditions or restrictions as he or she may specify, and

(b) may vary or withdraw any such authorisation.

[...]."

15. Further provisions on the organisation of the police representative associations are included into secondary legislation, namely the *Garda Síochána (Associations) Regulations 1978*, the *Garda Síochána (Associations) (Amendment) Regulations 1983*, the *Garda Síochána (Associations) (Amendment) Regulations 1998* and the *Garda Síochána (Associations) (Amendment) Regulations 2011*.

16. Provisions on the determination of claims relating to the conditions of service of the police are included into the Scheme to provide conciliation and arbitration machinery for members of the Garda Síochána ("the Scheme"). It provides, *inter alia*, as follows:

"1. The purpose of this scheme is to enable the Minister for Justice, Equality and Law Reform, the Minister for Finance and the Commissioner of the Garda Síochána on the one part, and the Association of Chief Superintendents, the Association of Garda Superintendents, the Association of Garda Sergeants and Inspectors and the Garda Representative Association on the other part, to provide means acceptable to the Government and to these representative bodies for the determination of claims and proposals relating to conditions of service of members of the ranks they represent and to secure the fullest co-operation between the State, as employer, and the members, as employees, for the better discharge of the functions of the Garda Síochána. Matters within the scope of the scheme will be dealt with exclusively through the machinery of the scheme."

[…]."

"8. This scheme will apply only to Chief Superintendents, Superintendents, Inspectors, Sergeants and Gardaí."

"10. The Council will consist of –

(a) a Chairperson, who will be a serving civil servant nominated by the Ministers;

(b) an official side comprising not more than six representatives of whom not more than four will be serving civil servants representing the Minister for Justice, Equality and Law Reform, or the Ministers for Justice, Equality and Law Reform and Finance, and not more than two will be members of the Force representing the Commissioner; and

(c) a staff side comprising not more than six representatives, each of whom will be a member of the Force or a civilian employed by the representative associations."

"16. (1) The Staff side may request that a matter which they believe to be appropriate for discussions by the Council should be placed on the agenda for the next meeting of the Council.

(2) The question of whether items placed on the agenda are appropriate for discussion by the Council will be a matter for the Chairperson to decide. Before any such item is excluded as not being appropriate for discussion, the Council will be given an opportunity to express its views as to whether it should be included or excluded."

"18. The matters appropriate for discussion by the Council for ranks covered by the scheme will be:-

claims relating to pay and allowances and other emoluments whether in cash or in kind,

[...]."

"19. The staff side may bring forward for discussion subjects not listed in paragraph 18 if the Ministers agree that they are appropriate for discussion by the Council."

"25. As an aid to the negotiation process, discussions at the Conciliation stage may be continued under a Facilitator should both sides so agree, where the matter under discussion is arbitrable, or at the request of either side, where the matter under discussion is not arbitrable or where there is doubt as to whether or not the matter is arbitrable."

"29. There will be two forms of arbitration – an Arbitration Board and an Adjudicator.

"30. The Arbitration Board will be appointed by the Government and will consist of:-

a) Chairperson;

b) member nominated by the representative associations;

c) a member nominated by the Government."

"31. The Chairperson shall, on the nomination of the Ministers in agreement with the representative associations, be appointed by the Government. The Chairperson and the other members of the Board will hold office for such term as may be fixed by the Government at the time of their appointment."

"37. The following claims for ranks covered by the scheme will be arbitrable;

a) claims for adjustments of rates of pay and allowances (including claims for new allowances);

[...]."

"39. All arbitrable claims for revisions of pay or significant changes in other remuneration or conditions of members of the Garda Síochána, and any other claims involving significant extra expenditure shall, subject to the provisions of the scheme, be referable to the Board. All other arbitrable claims will be referable to the Adjudicator save that any such claim may by agreement between the official side and representative associations concerned be referable to the Board."

"44. Claims will be fully discussed in Council or sub-committee with a view to seeking agreement through negotiation."

"45. The provisions of Part III of the Scheme (Facilitation) will apply in the event that agreement is not reached between the parties at the Conciliation stage."

"46. The detailed procedures for dealing with arbitrable claims for revisions of pay or significant changes in other remuneration or conditions are set out in the Appendix to this scheme."

17. The procedures for handling pay claims and other major claims of the police are specified in the Appendix to the Scheme in the following manner:

"2. Ranks within the Garda Síochána may seek a review of their pay (or their pay and overall conditions of employment) at intervals of four years. This would not preclude claims for general increases in pay on behalf of all members of the Garda Síochána comprehended by the scheme.

3. A claim for a review of pay (or pay and overall conditions of employment) of any rank coming within the ambit of the Conciliation Council, or a claim on behalf of all ranks, will, unless otherwise agreed between the parties, after formal presentation and response at Conciliation Council, be referred to a sub-committee of Conciliation Council.

4. A claim for a review may be lodged one year in advance of the year in which a review of the pay (or pay and overall conditions) of the particular rank be sought. The two sides will, unless otherwise agreed between the parties, establish a sub-committee of the Conciliation Council with a view to making preparations for the review.

5. These preparations will involve a detailed examination of the factual basis put forward in support of the claim. Where the factual basis/data involved comparisons with current rates and conditions in other employments, it will be open to the official side, without prejudice to the validity or relevance of comparisons in general or any comparison in particular, to put forward alternative comparisons.

6. At the request of either side the relevant factual information assembled will be referred to an independent unit within the Labour Relations Commission.

7. The independent unit will be asked to confirm that the factual information provided constitutes an adequate and representative information base as an input to negotiations on the claim. The unit shall act in consultation with the appropriate Sub-Committee mentioned in paragraph 4 above, with a view to giving such confirmation, which could involve adding to the factual information referred to it. The totality of the information will constitute the report of the independent unit.

8. It will be open to the Labour Relations Commission, having consulted the Conciliation Council, to publish an appropriate synopsis of the report mentioned in paragraph 7 above.

9. The referral of the factual information to the unit and the issuing of a report by the unit will not:-

(1) preclude either side bringing forward arguments, other than those relating to comparisons with pay and conditions in other employments, which they deem appropriate to the consideration of the claim;

(2) prejudice the position of either side in relation to the validity or relevance of any comparison to the claim or to the criteria set out in paragraph 61 of the scheme.

10. In the event that the parties are unable to reach an agreement in direct discussions at the sub-committee of the Conciliation Council, the negotiations may, with the agreement of both sides, continue under the Facilitator who will be a person agreed between the official side and the staff side for that purpose. The Facilitator will act in support of the negotiation process.

11. If the claim is not resolved at that stage, it will be open to either side to refer the matter to the Board, subject generally to the provisions of the Scheme. The Agreed Report of the discussions will include a report of the negotiations conducted under the Facilitator.

12. A claim for a general increase in pay on behalf of all ranks comprehended by the scheme will, if it involves comparisons with general movements in pay elsewhere in the economy, be dealt with in accordance with paragraphs 6 to 11 above."

18. The Committee understands that when a claim concerning the revision of pay or other significant changes to the remuneration of the police is not agreed upon at the conciliation stage, it may be brought to arbitration. It is then dealt with by the responsible Ministers and eventually by the Parliament.

19. The Committee has previously made the following observations on the arbitration and adjudication machinery of the Scheme:

> "It notes that certain claims such as claims for adjustments of rates of pay and allowances in respect of leave and overtime may be referred from the Conciliation Council to an arbitration board. In order to be referred to the arbitration board, a claim must comply with the criteria set out in paragraph 33 of the scheme. A matter may be referred to arbitration by either the staff representatives or the Minister. The decision of the board is sent to the Minister who will then present it to the Parliament. If the Minister is in agreement with the findings of the report he will authorise the implementation of it, if not the report will be submitted to the government. The government will either authorise the implementation of the board's finding or introduce a motion in the Dáil recommending rejection of the finding or such modification as is thought fit." (Conclusions XIV-1 (1998), Ireland)."

20. Provisions on the re-organisation of the Irish Public Service with a view to maximising its efficiency and productivity have been issued in *the Croke Park Agreement* 2010-2014. A related *Garda Síochána Agreement* is published separately. According to the latest information provided to the Committee, negotiations for a revised agreement, *the Haddington Road Agreement*, have been terminated and draft collective agreements have been sent for consideration to the representative associations.

21. Finally, general provisions on employment-related dispute resolution are set out in Industrial Relations Act 1990. Section 8, paragraph 1 includes the following provision:

> "**8. — Definitions for Part II**
>
> In this Part, save where the context otherwise requires —
>
> […]
>
> "worker" means any person who is or was employed whether or not in the employment of the employer with whom a trade dispute arises, but does not include a member of the Defence Forces or of the Garda Síochána; […]."

RELEVANT INTERNATIONAL MATERIALS

I. The Council of Europe

22. Article 11 of the European Convention of Human Rights ("the Convention") provides as follows:

> "**Article 11 - Freedom of assembly and association**
>
> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

23. Trade-union freedom has been considered by the European Court of Human Rights ("the Court") as a form of the freedom of association. According to the Court, Article 11§2 clearly indicates the member states' obligation to respect this freedom of employees, subject however to the possible imposition of lawful restrictions on its exercise by members of, inter alia, the police (Swedish Engine Drivers' Union v. Sweden, Serie A no. 20, §37; Demir and Baykara v. Turkey, judgment of 12 November 2008 [GC], §§ 96, 109).

24. The duties and responsibilities inherent in the position of the police justify particular arrangements as regards their exercise of trade union rights (Trade Union of the Police in the Slovak Republic and Others v. Slovakia, judgment of 25 September 2012, §67). According to the Court, "The police has a primordial role in ensuring internal order and security and fighting crime, which is why a duty of loyalty and reserve assumes special significance for them, similarly as for other civil servants" (Trade Union of the Police in the Slovak Republic and Others v. Slovakia,

cited above, §69).

25. The Court has further concluded that any restrictions to the police's trade-union freedom must not impair the very essence of the right to organise. Moreover, they must have their basis in national law and not be arbitrary in nature. The member state in question is furthermore obliged to demonstrate the legitimacy of any restrictions. The margin of appreciation of the member states is this field is in any case a limited one and goes hand in hand with rigorous European supervision (*Demir and Baykara v. Turkey*, cited above, §§97, 98, 118, 119; Rekvényi v. Hungary, judgment of 20 May 1999, §§ 26, 43. Also Enerji Yapı-Yol Sen v. Turkey, judgment of 21 April 2009).

26. In Rekvényi v. Hungary (cited above), the Court held that a statutory prohibition on members of the police from becoming members of political parties amounted to a lawful and justified restriction upon their right to freedom of association. The Court accepted that in particular in light of the history of the state party in question, the aim of maintaining a politically neutral police force was a legitimate one. Having regard to the margin of appreciation availed to domestic authorities, as well as the fact that police officers remained free to take a certain amount of measures for the purpose of articulating their political preferences, the Court found the contested restriction to answer to a pressing social need.

27. Lastly, the Recommendation of the Committee of Ministers of the Council of Europe to member states on the European Code of Police Ethics (Rec(2001)10; adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies) includes the following provision:

> "**D. Rights of police personnel**
>
> 32. Police staff shall enjoy social and economic rights, as civil servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures, taking into account the particular character of police work."

II. The United Nations

a. The International Labour Organization

28. The Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise (adoption: 9 July 1948, entry into force: 4 July 1950; ratified by Ireland on 4 June 1955) includes the following provisions:

> "

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation."

"**Article 5**

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers."

"**Article 9**

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

[…]."

29. As concerns collective bargaining, the Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (adoption: 1 July 1949, entry into force: 18 July 1951; ratified by Ireland on 4 June 1955) provides as follows:

"**Article 4**

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation 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."

"**Article 5**

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

[…]."

30. The Committee observes that the above Conventions belong to the eight "core Conventions" of the ILO, setting out the most fundamental principles and rights at work.

b. The International Covenant on Economic, Social and Cultural Rights

31. The International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966; entry into force 3 January 1976, United Nations Treaty Series, vol. 993, p. 3; ratified by Ireland on 8 December 1989) includes the following provision:

"**Article 8**

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

[…]."

c. The International Covenant on Civil and Political Rights

32. Finally, the International Covenant on Civil and Political Rights (New York, 16 December 1966; entry into force 23 March 1976, United Nations Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407; ratified by Ireland on 8 December 1989) provides as follows:

"**Article 22**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

[…]."

THE LAW

ADMISSIBILITY

As to the admissibility conditions set out in the Protocol and the Rules of the Committee and the Government's first two objections

33. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Ireland on 4 November 2000 and entered into force with respect to this state on 1 January 2001, the complaint has been submitted in writing and concerns Article 5, 6 and 21 of the Charter.

34. It likewise observes that Article 5 and 6 are provisions accepted by Ireland upon its ratification of the Charter on 4 November 2000 and to which it is bound since the entry into force of this treaty in Ireland on 1 January 2001.

35. The Government maintains that the complaint fails to meet the conditions of admissibility laid down in Article 4 of the Protocol and should therefore be declared inadmissible in its entirety.

36. The Government firstly considers the complaint as inadmissible insofar as it relates to Article 21, a provision not accepted by Ireland. It further maintains that the complaint fails to properly identify the instances of the alleged unsatisfactory application of the Charter. This is the case in particular with regard to the claims concerning fair pay agreement discussions and access to the Labour Court.

37. The Committee observes that according to a declaration contained in the Irish instrument of ratification, Ireland does not, in accordance with Part III, Article A of the Charter, consider itself bound by Article 21 of the Charter. The Committee accordingly notes that the complaint does not, in so far as it concerns Article 21, relate to a provision of the Charter accepted by the party in question and must thus be declared inadmissible pursuant to Article 4 of the Protocol insofar as it concerns the said Article.

38. The Committee further notes that the grounds for the complaint are indicated. With regard to the second objection, it considers that the complaint sufficiently indicates the manner in which the state party allegedly has failed to ensure the satisfactory application of the provisions mentioned.

39. In accordance with Article 1 b) and 3 of the Protocol, EuroCOP is an international non-governmental organisation with consultative status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international non-governmental organisations entitled to lodge collective complaints before the Committee.

40. As concerns the particular competence of EuroCOP on the subject-matter of the complaint, the Committee notes that as an umbrella organisation for 35 European

police unions and staff organisations, EuroCOP represents the interests of more than half a million police officers in 27 countries. Having examined the EuroCOP Statutes, the Committee considers that the current complaint falls within EuroCOP's field of competence, which matter has not been challenged by the Government. The Committee therefore considers EuroCOP to have particular competence within the meaning of Article 3 of the Protocol on the subject-matter of the collective complaint.

41. Moreover, the complaint is signed by Anna NELLBERG, President of EuroCOP, who is competent to act in the name of the organisation in accordance with Article 5.7 of the organisation's Standing Orders. The Committee likewise takes note of the delegation of authority of 22 May 2012 issued to EuroCOP by AGSI for the purpose of lodging the complaint on its behalf.

As to the Government's third and fourth objection

42. The Government further argues that domestic remedies have not been exhausted with regard to each of the reported violations. It maintains that the restriction on affiliating with national umbrella organisations has not been challenged before domestic courts by AGSI on grounds of an alleged breach of its constitutional rights. Neither has the alleged lack of independency of the Constitutional Council's Chairperson been domestically argued. Even though the exhaustion of domestic remedies is not a condition of admissibility under the Charter, the Government considers the persuasiveness of the arguments of the complaint as to admissibility to be undermined by this background.

43. The Committee observes from the Protocol that collective complaints may be lodged regardless of whether domestic remedies have been exhausted (*Syndicat des Agrégés de l'Enseignement Supérieur* (SAGES) v. France, Complaint No. 26/2004, admissibility decision of 7 December 2004, §§11-12; European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, admissibility decision of 10 October 2005, §10).

44. In addition, the Government also argues that the subject matter of the collective complaint has not been raised within the system of periodic reporting either. With regard to this objection, the Committee observes that it is not necessary to raise the issue within the mechanism of periodic reporting before lodging a complaint (For situations where the subject matter of a collective complaint has been examined within the reporting system or will be examined again during subsequent supervision cycles, see International Commission of Jurists v. Portugal, Complaint No. 1/1998, admissibility decision of 10 March 1999, §10; International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, Complaint No. 49/2008, admissibility decision of 23 September 2008, §7). This argument of inadmissibility must thus be considered invalid.

45. On these grounds, the Committee declares the complaint admissible insofar as it concerns Article 5 and 6 of the Charter and declares the remainder of the complaint inadmissible.

MERITS

PART I: ALLEGED VIOLATION OF ARTICLE 5 OF THE CHARTER ON GROUNDS OF THE PROHIBITION AGAINST THE POLICE FROM ESTABLISHING TRADE UNIONS

46. Article 5 of the Charter reads as follows:

Article 5 – The right to organise

"Part I: All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests."

"Part II: 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 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."

47. Article G of the Charter provides as follows:

Article G - Restrictions

"1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed."

A – Arguments of the parties

1. The complainant organisation

48. EuroCOP alleges that the police in Ireland are not allowed to establish trade unions, in violation of Article 5 of the Charter. Section 18§3 of the Garda Síochána Act specifically bans members of the police from becoming members of trade unions or associations aiming to control or influence their pay, pensions or conditions of service.

49. It nevertheless emphasises that the current complaint has not been lodged for the purpose of forming a police trade union, since the representative associations of the police exist for the same purpose.

50. EuroCOP further maintains that the Assistant Garda Commissioner and higher police ranks are fully excluded from the scope of the right to organise.

51. It submits that the prohibition of establishing police trade unions constitutes an unnecessary and disproportionate limitation to the freedom of association of the members of the police force, in violation of Article 5.

2. The respondent Government

52. The Government observes, as background information, that on 31 August 2012, the Gardaí amounted to a total of 13,531 civil servants, of whom 11,123 were regular Gardaí officers; 1,930 Sergeants and 266 Inspectors. Above these ranks, the Garda Síochána consisted of Superintendents (156), Chief Superintendents (41), Assistant Commissioners (9), Deputy Commissioners (2) and a Commissioner.

53. It submits that according to Section 18§1 of the Garda Síochána Act, the police may form professional representative associations as long as they are not entitled trade unions. There may be one or more representative association, which may act for the benefit of all matters affecting the welfare and efficiency of one or more of the ranks of the police. Furthermore, pursuant to Section 18§4 of the Act, the responsible Minister is empowered to resolve whether a body or association is a trade union or association for the purposes of subsection 3. The determination of the Minister is final.

54. Four police representative associations have been established: the Garda Representative Association for the Gardaí; AGSI for the Sergeants and Inspectors; the Association of Garda Superintendents for the Superintendents and the Association of Chief Superintendents for the Chief Superintendents.

55. The Government accepts that police officers must pursuant to the Charter be able to enjoy the main trade union rights, namely to negotiate salaries and working conditions, access the working place, as well as enjoy the right of assembly and speech. The police must furthermore be able to join genuine organisations for the protection of their material and moral interests. Such organisations must be able to benefit from most trade union prerogatives (European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2000; decision on the merits of 21 May 2002, §§ 25-26, 40).

56. The Government further emphasises that the police organisations may be composed exclusively of members of the police, as well as be authorised to affiliate to police trade unions only (CESP v. Portugal, cited above, §§ 35, 37; Conclusions VIII (1984); Conclusions IX-1 (1985); Conclusions XIII – 3 (1997)).

57. It argues the situation in Ireland to be comparable to that of police associations in CESP v. Portugal, on the basis that the majority of trade union prerogatives have been granted to the associations. The only trade union prerogative denied under Article 5 is the entitlement to associate with national trade union organisations, a

matter which is not at issue under the first part of the complaint.

58. The Government accordingly submits that the police enjoy the freedom of association within the meaning of Article 5. The police are not, with the exception of ICTU membership, prohibited from joining associations and are allowed to establish police representative associations.

59. They are furthermore able to negotiate their salaries and working conditions. The police representative associations have access to two mechanisms for this purpose, namely the Scheme, as well as the successive Public Service Pay Agreements (see paragraphs 16 to 20).

60. Firstly, the Scheme is the procedure in place for the purpose of dealing with claims relating to the conditions of service and pay of the police. It is a negotiation mechanism aimed at seeking agreement without having to resort to dispute resolution.

61. Secondly, an old practice of concluding successive Public Service Agreements for all areas of the public service exists. These agreements are made binding also upon the police. The latest of the collective agreements are the *Croke Park Agreement* (2010-2014) and the *Haddington Road Agreement* (2013-2016; see paragraph 20).

62. Moreover, individual members of the police have access to the Labour Relations Commission "in respect of a wide range of issues", namely those relating to the following legislation:

1) Terms of Employment (Information) Act 1994;
2) Maternity Protection Acts 1994—2004;
3) Adoptive Leave Acts 1995—2005;
4) Carer's Leave Act 2001;
5) Parental Leave Acts 1998 – 2006;
6) Payment of Wages Act 1991; and
7) Safety, Health and Welfare at Work Act 2005.

63. Individual members of the Gardaí may likewise appeal to the Labour Relations Commission in cases of harassment. Its mediation service is utilised by the Garda Síochána as a part of the police's Bullying and Harassment Policy.

64. Members of the police are also entitled to make claims before the Equality Tribunal pursuant to the Employment and Equality Acts 1998-2011.

65. The Government lastly argues that it promotes the participation of the police into associations through subventions paid as an annual grant to each representative association, as well as by seconding members of the police force with pay to serve full-time in certain representative associations. No other national association receives similar subventions, which are aimed at contributing towards costs of rent, telephone

and postage. In 2011, the joint overall amount of the subventions was 302,155.48 Euros.

66. The Government maintains that even though police trade unions may not be established, the Garda Síochána Act nevertheless fulfils the requirements of Article 5 of the Charter.

B – Assessment of the Committee

67. The Committee first takes note of the wording of Article 5 of the Charter, according to which the extent to which the guarantees provided for in the said Article apply to the police shall be determined by national laws or regulations.

68. In this connection, the Committee refers to the international materials mentioned above (see paragraphs 22, 28-29, 31-32) and notes that all of those instruments provide for the possibility that restrictions may be imposed upon the right of police personnel to form trade unions.

69. In particular, it notes that in *Demir and Baykara v. Turkey* (cited above, §105), it was confirmed by the Court that the few restrictions on the right of civil servants to join trade unions that will be in conformity with the requirements of Article 11 of the Convention relate to, *inter alia*, categories of personnel such as members of the police.

70. However, the Committee also recalls that restrictions on the right to form a trade union must not be applied to an excessively high proportion of senior civil servants (Conclusions 2010, Albania).

71. Furthermore, under Article 5, restrictions on the right to organise of civil servants and public service staff have been held permissible only insofar as they are in accordance with the provisions of Article G (Conclusions 2006, Romania; Conclusions 2002, Romania).

72. The Committee also observes that the police may not be entirely exempted from the safeguards provided for by the Article. It recalls having held in *CESP v. Portugal* that Article 5 permits states to restrict, but not to completely deny police officers' right to organise (cited above, §25).

73. As observed by the Government, police personnel must benefit from most trade union prerogatives. In practice, basic guarantees must be given to the police with regard to i) the constitution of their professional associations, ii) the trade union prerogatives that may be used by these associations; and iii) the protection of their representatives (CESP v. Portugal, cited above, §§ 26-27).

74. The right to constitute trade unions under Article 5 may furthermore be effectively implemented only if the creation of the representative body itself, the accession to an existing association, the hypothetical affiliation to other organisations, as well as its international organisation and internal operation are protected by appropriate guarantees. Police personnel must be able to form or join genuine organisations for the protection of their material and moral interests (CESP v. Portugal, cited above, §§ 28, 26).

75. As concerns the application of the above criteria to the circumstances of the current complaint, the Committee firstly notes, with regard to the constitution of the professional associations, that even though the establishment of police trade unions has been prohibited by Section 18§3 of the Garda Síochána Act, the police may establish their own representative associations as provided for in Section 18§1.

76. In determining whether these representative arrangements are compatible with Article 5, the Committee notes that it is not bound by the categorisation adopted by the national authorities of a representative body, or its official name (whether a "trade union" or a "representative association"), when determining whether the requirements of Article 5 have been fulfilled (see, *inter alia*, Conclusions 2006, France).

77. In the same vein, while certain of the international instruments refer in particular to trade unions, others generally mention organisations of workers and employers. The Committee observes that reference is made in Article 5 to "organisations" only. Therefore, the formal categorisation of a body adopted in national law does not necessarily establish whether the members of a representative organisation effectively enjoy or not the rights set out in Article 5. Instead, it is necessary to examine the concrete situation that forms the subject of this complaint in order to ascertain whether police personnel in Ireland enjoy these rights in practice.

78. With regard to the prohibition of the highest-ranking police officers from joining the representative associations, the Committee refers to the data provided by the Government and observe that all police ranks except for the Assistant Commissioner, Deputy Commissioner and Commissioner are allowed to establish a representative association for the benefit of their professional interests. In practice this means that out of the approximately 13,500 members of the Irish police force, 12 are prohibited from organising themselves professionally.

79. The Committee observes that this exclusion of the most senior police officers from the scope of the right to organise can be regarded as justified under the provisions of Article G. This limitation on their rights is established by law, namely by the Garda Síochána (Associations) Regulations in force, and pursues the legitimate objectives of public safety and national security by aiming to prevent situations where the most senior police personnel were unable to attend to their official duties and responsibilities due to their involvement in union activity. It is also narrowly tailored to achieve these objectives and therefore proportionate to them, as the restriction only

affects a limited number of very senior officers. The most stringent part of the restriction therefore fulfils the requirements of the Charter, while the great majority of the police are allowed to establish representative organisations.

80. As concerns the trade union prerogatives available to the associations, the Committee recalls having held the "basic trade union prerogatives" to mean the right to express demands with regards to working conditions and pay, the right of access to the working place, as well as the right of assembly and speech (CESP v. Portugal, cited above, §40).

81. As concerns the two latter sets of rights, the Committee observes that no allegations on interference by the domestic authorities have been made.

82. With regard to the right to express demands concerning working conditions and pay, the Committee observes that, as a whole, the representative associations are able to express such demands under the Scheme. In this connection, it recalls having previously found that the Scheme, as applied to the police as a special category *vis à vis* Article 5, did not raise problems with regard to the said Article (Conclusions XIV-1 (1998), Ireland).

83. In this connection, the Committee considers that regardless of the discretion given to states parties under Article 5 with regard to the police in particular, their right to organise cannot be defined independently of the requirements of Article 6. Even though it is possible to grant only the majority of trade union prerogatives to the police under Article 5, the right to express demands on working conditions is in parallel guaranteed under Article 6§2 as part of the right to bargain collectively. Therefore, the domestic legislation and practice must also satisfy the requirements of Article 6. It will accordingly be made subject to another evaluation in light of the requirements of the latter Article (see paragraphs 159 and 201).

84. Finally, the Committee observes that the adequacy of the protection of the police association representatives against outside interference has not been contested by either party. The matter will consequently not be examined by the Committee.

85. The Committee accordingly considers that the police representative associations enjoy the basic trade union rights within the meaning of Article 5 of the Charter. It holds that there is no violation of the said Article on grounds of the prohibition against the police from establishing trade unions.

PART II: ALLEGED VIOLATION OF ARTICLE 5 OF THE CHARTER ON GROUNDS OF THE PROHIBITION AGAINST POLICE REPRESENTATIVE ASSOCIATIONS FROM JOINING NATIONAL EMPLOYEES' ORGANISATIONS

A – Arguments of the parties

1. The complainant organisation

86. EuroCOP claims that the police representative associations, AGSI more specifically, are denied the possibility to join national umbrella organisations of employees, such as the Irish Congress of Trade Unions ("ICTU").

87. Pursuant to Section 18§2 of the Garda Síochána Act, police representative associations must be independent and not associated with any outside body or person. According to Section 18§5 of the same Act, the responsible Minister is however empowered to resolve whether such association may exceptionally be authorised.

88. EuroCOP claims that pursuant to this legislation, the police representative associations are denied membership of the ICTU and are thus not able to attend the national negotiations ICTU conducts on*, inter alia, the* salaries within the public service.

89. It observes that police representative associations have been allowed to join the international representative body for police, EuroCOP. EuroCOP is a member of the European Trade Union Confederation ("ETUC"), the representative body for trade unions in Europe. Because ICTU is a member of ETUC as well, EuroCOP considers the prohibition against AGSI from joining ICTU as a fully arbitrary one in nature.

90. In view of EuroCOP, the contested situation amounts to a limitation to the right to organise in violation of Article 5 of the Charter.

2. The respondent Government

91. The Government argues that even though the police representative organisations are prohibited from affiliating to national trade unions, this is in line with the requirements of Article 5 of the Charter.

92. It observes that one formal request to join the ICTU has been made by AGSI to the responsible Minister in March 2008, following which consultations were held from March to June 2008 between AGSI, the responsible Government departments, the management of the Gardaí, the Garda Commissioner, the other police representative associations and ICTU itself.

93. According to the Government, "it was apparent from the submission that AGSI's primary concern was to gain better access to national wage negotiations" and

affiliation with ICTU was suggested as a means for improving the situation. The outcome of the consultations was to provide more regular exchanges of information and views on the national negotiation process, which in the Government's opinion have solved the issue of access to the national negotiations. Affiliation with ICTU was not granted, as it was ultimately concluded by the Minister that no valid case for this had been made.

94. The Government submits that the police representative associations are in any case entitled to affiliate with international police organisations.

95. It reiterates its argument that it follows from the well-established case law of the Committee read together with the wording of Article 5 that the extent to which the guarantees of that Article are applicable to the police is determined by national laws or regulations.

96. The Government observes that the contested restriction is based on Section 18§2 of the Garda Síochána Act, according to which police representative associations "must be independent and not associated with anybody or person outside the Garda Síochána". It is therefore prescribed by law.

97. Referring to the judgment of the Court in the case of *Rekvényi* (see paragraph 26), the Government further observes that prohibition of political party membership of police officers has been held to not violate Article 11 of the Convention. In the opinion of the Government, the restriction contested in the current complaint is significantly narrower in scope than the one accepted in *Rekvényi* and should accordingly be allowed.

98. The Government maintains also that more rights relating to the freedom of association have been granted to the police in Ireland than in other member states with a similar police force.

99. It likewise reiterates its assertion that the obligation of the states parties under Article 5 solely extends to ensuring that police representative associations benefit from most trade union prerogatives (see paragraphs 57, 73).

100. The Government also considers the contested restriction as necessary in a democratic society for the protection of national security, as well as for the protection of other public interests and public health and morals.

101. In light of the role of the police in the maintenance of national security, it argues that it is crucial for police representative associations to remain unbound by decisions of such outsider entities as ICTU, which do not need to consider similar factors in their decision-making as the police does.

102. In the opinion of the Government, the necessity argument is further strengthened by the multiple roles of the Irish police: being a single police force, it remains in charge of not just general policing, but also of state security, as well as of immigration control. It is moreover imperative not to undermine the public perception on the impartiality of the police force.

103. In light of the above, the Government maintains that the restriction imposed on the freedom of association of the police is a minimal one in nature and sufficiently precise in scope in order to meet the requirements of Article G.

104. It accordingly concludes that the prohibition on police representative associations from affiliating with national employees' organisations is not in breach of Article 5 of the Charter.

B – Assessment of the Committee

105. The Committee recalls that Article 5 requires that domestic legislation, regulation or administrative practice must not impair the freedom of workers from either forming or joining their respective national or international organisations (CESP v. Portugal, cited above, §§29,31). This requirement applies to all employees, but is followed by the exception clause concerning the police (see paragraph 67).

106. The right of police associations to affiliate to national and international federations or confederations of trade unions may moreover be made conditional upon whether the latter organisations are considered to be pursuing similar goals as the police associations (CESP v. Portugal, cited above, §§35-36, 38).

107. In parallel with this interpretation, the Committee takes note of Article 8§§1(b) and 2 of the ICESCR, specifically safeguarding the right of trade unions to establish national federations or confederations, subject nevertheless to the authorisation upon states parties to impose lawful restrictions on the exercise of that right by the members of the police (see paragraph 31).

108. Likewise, the Committee has regard to the provision in the relevant Recommendation by the Committee of Ministers (see paragraph 27), providing that while enjoying their social and economic rights to the fullest extent possible, police staff shall either have the right to organise themselves or to participate into existing representative organisations.

109. Taking into consideration the special position of the police under the international instruments referred to above (see paragraphs 22, 28-29, 31-32), all of which provide for the possibility of restricting the freedom of association of police personnel, the Committee considers that states may choose to regulate the right to organise of the police through a mechanism applicable only to the police force. However, this may not deprive police representative associations from expressing their demands on working conditions and pay in an appropriate and effective manner.

110. With regard to the current complaint, the Committee observes that the police representative associations are prohibited from joining national organisations of trade unions. National umbrella organisations of employees may be observed to often possess more significant bargaining power in national negotiations, which is why their membership may amount to one of the primary means of conducting pay negotiations. This is all the more relevant for an organisation operating under several restrictions on its trade union rights.

111. Under the circumstances of the complaint, the contested restriction adds to the fact that the police representative associations have both been denied trade union status and excluded from the scope of the right to strike. Against this background, it is imperative to maintain the remaining trade union prerogatives of the associations as fully as possible.

112. Even though alternative negotiation mechanisms have been made available to police personnel in Ireland, a specific justification is required for excluding the means to effectively negotiate through national umbrella organisations. As such a prohibition in principle runs contrary to the guarantees enshrined in Article 5, it can be validly applied only when it meets the preconditions of a permissible restriction and can be shown to be objectively justified.

113. It is undisputed that the trade union prerogatives enjoyed by the Gardaí have been restricted in this manner by national law, namely by Section 18§§2 and 3 of the Garda Síochána Act. The restriction therefore fulfils the requirement of having been established by law.

114. The Government argues that the restriction should be accepted to fall within the margin of appreciation of the state party due to the fact that states parties are obliged to guarantee only the majority of trade union prerogatives to the police. The scope of certain other prerogatives may arguably be restricted accordingly or the police fully excluded from their scope of application.

115. The Government further argues that preventing individual police representative associations from joining national umbrella organisations and being represented by them in national negotiations is necessary on the basis that the latter organisations are not obliged to take into account the specificities pertaining to public safety in their negotiation processes. However, the Committee notes that no concrete examples have been given of this concern being a problem in other contexts. It also has not been established why issues of public safety cannot be discussed in the course of national negotiations by the Government and police representatives, should the latter be members of a national umbrella organisation, such as ICTU in the Irish context.

116. The restriction is moreover justified by the Government on the basis that it advances other important public interests, in particular because it applies to a police force which is in charge of not only policing in the narrow meaning of the term, but the prevention of threats to national security and public safety. While these considerations may be relevant to the scope of a state's margin of appreciation under Article 6§4 of the Charter when prohibiting strike action, the Committee considers that a prohibition on police associations from becoming members of a national organisation of trade unions has no inherent connection with enhancing public safety and other important public interests within the meaning of Article 5.

117. The Government further suggests that the restriction is justified on the basis that it maintains public morals, as it serves to maintain the perception of the impartiality of the police force. The Committee nevertheless considers that the impartiality of the police force would be unlikely to be affected by their membership of a national umbrella organisation alongside with other civil servants, who are likewise required to fulfil public service obligations in a strictly impartial manner.

118. An additional explanation for the Government's interest in restricting the trade union rights of the police is offered by the legal basis of the restriction itself: pursuant to the wording of Section 18§3 of the Garda Síochána Act, the Gardaí may not be or become members of any outside association with the objective of controlling or influencing their pay, pensions or conditions of service.

119. This allows the conclusion that the right of Gardaí members to affiliate to national employees' organisations has firstly and foremostly been restricted for the purpose of disallowing them to negotiate on pay, pensions and service conditions represented by national organisations.

120. In general, evaluated against the framework of trade union rights applicable to the Gardaí, the Committee considers that the contested restriction is not proportionate as it exploits in an undue manner the difference between police associations and trade unions established under national legislation.

121. Moreover, as the restriction has the factual effect of depriving the representative associations of the most effective means of negotiating the conditions of employment on behalf of their members, it cannot be considered as a proportionate measure for achieving its purposes.

122. Lastly, with regard to the alleged comparability of the restriction with the one accepted by the Court in *Rekvényi*, the Committee notes that the said judgment concerns restrictions upon political activities of police personnel, an issue not covered by the Charter (*Rekvényi v. Hungary*, cited above, §§ 39, 41).

123. On these grounds, the Committee holds that there is a violation of Article 5 of the Charter on grounds of the prohibition against police representative associations from joining national employees' organisations.

PART III: ALLEGED VIOLATION OF ARTICLE 6§2 OF THE CHARTER ON GROUNDS OF RESTRICTED ACCESS OF POLICE REPRESENTATIVE ASSOCIATIONS INTO PAY AGREEMENT DISCUSSIONS

124. Article 6 of the Charter provides as follows:

> **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;
>
> 3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;
>
> […]."

A – Arguments of the parties

1. The complainant organisation

125. EuroCOP argues that the police representative associations are unable to take part into national pay agreement discussions, in violation of Article 6 of the Charter.

126. It maintains that AGSI has no bargaining rights with regard to general pay increases, which are negotiated by ICTU on behalf of all public servants. Even though members of AGSI may not join ICTU, the negotiated outcome is made binding upon AGSI members.

127. After the finalisation of a national pay agreement between the ICTU and the Government, an "agenda of change" is appended to the agreement, providing for the requirements for the agreed pay increases.

128. A separate agenda is drafted for the Gardaí. It is scrutinised by an implementation body for the police ("the GIB"), which also verifies that the said requirements are met by the police.

129. EuroCOP further maintains that the over-all access of the police representative associations to bargaining mechanisms in matters concerning the terms and conditions of employment is insufficient, likewise in breach of Article 6.

130. In this regard, it observes that the Scheme is available for all public service employees. As concerns the police, it is used to solve day-to-day issues, such as those concerning allowances, accommodation and promotion.

131. If AGSI were to seek a general pay increase through the Scheme, however, it would have to make a claim for a pay increase at the Conciliation Council. EuroCOP maintains that this alternative would not be effective in practice as the claim would be answered in the negative by referring to the general pay agreement discussions.

132. Moreover, in EuroCOP's opinion, the Scheme is a slow mechanism, where postponements of claims affect the length of the negotiations. Moreover, the responsible minister is not obliged to accept a negotiated outcome, which is why some disputes are left unresolved altogether.

133. It nevertheless admits that several claims on, *inter alia*, allowances have been agreed upon. According to EuroCOP, the time for reaching agreement has varied between 12 and 60 months. The Conciliation Council meets twice per year.

134. EuroCOP further alleges that because the Conciliation Council of the Scheme is chaired by a civil servant employed by the Ministry of Justice, it is ultimately not an independent and impartial mechanism. The Labour Relations Commission ("the LRC"), on the other hand, is chaired by an external chairperson.

135. Most civil servants have access to the LRC and to the Labour Court, which thus are commonly used for dispute resolution. Certain categories of civil servants have nevertheless been excluded by law from their scope, namely those employed by the army, the police and the prison service.

136. EuroCOP maintains that the LRC would be a fairer and more independent dispute resolution mechanism and considers that the requirements of Article 6 would be fulfilled, should the police be granted access to the LRC and the Labour Court.

137. It finally observes that for the first time in 35 years, it was granted access to the LRC in connection with the *Haddington Road Agreement* negotiations in 2013. Pursuant to a public withdrawal by AGSI from the process, direct negotiations on remuneration were conducted with the police. The subsequent agreement has been subjected to a ballot within the AGSI membership.

138. Regardless of the recent developments, it considers the above situation to amount to a limitation to the police representative association's right to bargain collectively in violation of Article 6 of the Charter.

2. The respondent Government

139. The Government argues that various mechanisms have been made available for the purpose of negotiating pay and other conditions of service of police personnel.

140. In line with the requirements of Article 6§1, permanent bodies and arrangements have been established for the purpose of promoting joint consultation between workers and employers. These are the Conciliation Council, the Arbitration Board and the Adjudicator, which jointly constitute the Scheme. It is applicable to all ranks of the police, up to and including the rank of Chief Superintendent.

141. The Government refers to the aim of the Scheme as stated in Section 1 thereof, namely to provide means for the determination of claims and proposals on the conditions of service, as well as to secure the fullest co-operation between the state and the police. Matters within its mandate are exclusively dealt with within the Scheme.

142. Claims are discussed in the Conciliation Council or its sub-committee for the purpose of finding agreement through negotiation.

143. In line with the provisions of the Scheme, it submits that at the Conciliation stage, a matter is usually dealt with as follows: "the claim is lodged by either side and then formally presented at the next Council meeting, where the other side is given an opportunity to make an initial response. In normal practice the matter would then be adjourned so that full consideration can be given to the submission. At the next Council meeting the other side may respond to the claim, or raise queries in relation to the claim. If the query is complex, one side can adjourn the claim and make a response to the query at the next Council. Depending on the claim and queries this process can be repeated, and in some cases where there is a cost analysis involved or further research on the issue the length of time to reach a conclusion can vary".

144. The Government moreover observes that certain unresolved matters may be referred to adjudication or arbitration.

145. As concerns the alleged partiality of the Chairperson of the Conciliation Council, the Government considers the Scheme to be founded on the principle of equality, which matter is not affected by the fact that the Chairperson is nominated by the relevant ministers. The Chair may furthermore not be appointed without the agreement of the representative associations.

146. The Chairperson is a very senior civil servant with the function of facilitating discussion, as well as recording agreement or disagreement. He or she is not empowered to determine the merits of matters discussed at the Council, but has the authority to decide on the issues brought to discussion.

147. Referring to the case law of the Committee (Conclusions V (1970), Statement of interpretation on Article 6§1), the Government further argues that employees and employers are equally represented in the joint consultations within the meaning of the said provision. It maintains in this connection that questions of admissibility have thus far been resolved in equal measure in favour of the employee (one issue) and employer side (one issue). It also maintains that a liberal and flexible attitude has been adopted by the official representatives to any requests of staff representatives to bring forward additional subjects for discussion.

148. As concerns Article 6§2 of the Charter, in particular, the Government maintains that the importance of collective agreements is promoted by the Scheme and further evidenced by the Public Service Agreements, to which the police representative associations are parties.

149. The Government maintains that the pay and other conditions of service of the police have last been negotiated in the discussions on the *Croke Park Agreement*, as well as on the *Haddington Road Agreement*. The police have been fully involved in these discussions.

150. It observes that the implementation of the latest collective agreements is overseen by the GIB, which looks after the implementation of an action plan specially drafted for the Gardaí, as well as reports annually to the Government on the achieved progress and savings. Composed of the chairperson of the National Implementation Body, two representatives from each police representative associations, two from the Gardaí management, as well as from the responsible Ministry, the GIB overseeing the *Croke Park Agreement*'s implementation met at least every two months.

151. The Government maintains that also the argument on the excess length of proceedings should be considered ill-founded. A dispute may be resolved in three months when both sides are in agreement. In cases with less agreement between the parties the proceedings take longer. An agreed claim will be implemented in full, where as a disagreed one will not be implemented. Disagreed claims may however, where appropriate and at the request of the claimant, be brought forward to arbitration and adjudication.

152. Pursuant to a list of claims made within the Scheme in recent years, the Government observes that none of the claims have concerned pay increase requests, but rather allowances or conditions in the workplace. It moreover emphasises that none of the disagreed claims on the list have been forwarded to arbitration or adjudication by the police representative associations.

153. It likewise maintains that the length of proceedings is not indicative of the success of the negotiation process, as it is also possible to make a claim for the purpose of discussing it at a later date.

154. The Government finally argues that access to the LRC and the Labour Court is not necessary for compliance with Article 6 of the Charter. The requirements of the Article are sufficiently fulfilled by the existing recourse mechanisms.

155. Both the Scheme and the LRC mechanisms are voluntary in nature and provide for consensus-based solutions, which may be reached through negotiation or by means of agreements facilitated between the parties. The Government therefore contests the argument that access to the LRC and the Labour Court would constitute a better mechanism for safeguarding the right to collective bargaining of the police.

156. It further recalls that individual members of the police have access to the Labour Relations Commission in respect of a broad range of issues (see paragraphs 62-64).

157. Lastly, with regard to promoting the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes within the meaning of Article 6§3, the Government submits that also disputes are resolved within the Scheme. It is the procedure enacted for the purpose of resolving conflicts between the public administration and its employees.

158. The Government accordingly holds that the access of the police representative associations to sufficient collective bargaining mechanisms in general and to pay negotiations in particular has been effectively guaranteed within the meaning of Article 6 of the Charter.

B – Assessment of the Committee

159. The Committee first observes that nothing in the wording of Article 6 of the Charter entitles states parties to enact restrictions on the right to bargain collectively on part of the police in particular. Article 6 differs in this regard from Article 5 (see paragraphs 67, 105), as any restrictions are exclusively limited by Article G.

160. It recalls having previously discussed the issue of pay negotiations under Article 6§2 of the Charter, which obliges the States parties to promote, where necessary and appropriate, machinery for voluntary negotiations on, *inter alia*, the regulation of terms and conditions of employment (CESP v. Portugal, cited above, §§51, 63).

161. Furthermore, the Committee reiterates having specified the scope of Article 6§2 with regard to the police sector (CESP v. Portugal, cited above, §§ 58 to 68). It accordingly examines under the said paragraph whether, based on practical examples, the police trade union has effectively been consulted and its opinions taken into account (Conclusions XVII-1 (2005), Poland).

162. It reiterates that the extent to which ordinary collective bargaining applies to officials may be determined by law. Officials nevertheless always retain the right to participate in any processes that are directly relevant for the determination of procedures applicable to them (CESP v. Portugal, cited above, § 58).

163. Firstly, the Committee observes that Ireland has enacted the Scheme, as well as put in place other arrangements aimed at the effective exercise of collective bargaining within the meaning of Article 6§2. These mechanisms apply to the police representative associations.

164. The Committee nevertheless observes also that the Public Service Agreements are the mechanisms through which the general issues relating to conditions of service of the police are factually negotiated.

165. It observes that in practice, the agreements are collective agreements made at the national level, aimed at reducing the costs and entitlements of the public sector primarily by obliging employees to refrain from all collective bargaining for the term of the agreement. For the same period, under paragraph 1.27 of the *Croke Park Agreement*, *inter alia*, the parties have agreed to make or process no "cost-increasing claims by trade unions or employees for improvements in pay or conditions of employment".

166. It likewise takes note of the EuroCOP's argument that the police representative associations have not been granted direct access to these negotiations even though the results are subsequently applied also to members of the police. The Committee observes that this has not been contested by the Government.

167. With regard to the efficiency of the alternative means available for the purpose of negotiating pay and other conditions of service, moreover, the Committee firstly takes note of the arguments on the central role of the Scheme.

168. It further considers that the issue of the length of proceedings under the Scheme inevitably affects the evaluation of efficiency under Article 6 of the Charter.

169. The Scheme is meant to provide the primary means for the determination of claims and proposals relating to the conditions of service, including pay. The fact that pay negotiations of the police fall within its scope of application is evidenced by them being specifically listed as one of the issues appropriate for discussion by the Conciliation Council, as well as by, in particular, the Appendix of the Scheme, providing for the specific procedures to be followed in the handling of pay claims.

170. In light of the data on the claims lodged before the Conciliation Council during the recent years, the Committee nevertheless observes that the factual collective bargaining on pay is not conducted within the Scheme.

171. Furthermore, pursuant to the wording of the Scheme and its Appendix, as well as the descriptions by the parties on its practical application, the mechanisms made available for the purpose of pursuing pay claims through the Scheme seem time-consuming. They also offer possibilities of halting a pending claim and leaving it unresolved. The Committee accordingly considers that the Scheme does not constitute a sufficiently effective alternative for the collective bargaining conducted at the Public Service Agreement negotiations.

172. No information has been provided on any additional means of the police to effectively negotiate on the matters discussed within the collective agreement negotiations.

173. Under Article 6§2, states parties are obliged to promote machinery for voluntary negotiations only when this is necessary and appropriate. The Committee notes that while it may fall within a state's margin of appreciation whether or not to offer cost-increases to the parties to collective bargaining at times of financial hardship, it has nevertheless not been provided with any information as to why the practical exclusion of the police from the scope of direct pay negotiations would be either necessary or appropriate within the meaning of the provision.

174. It has furthermore been established that the police should always maintain their right to take part into such processes that are directly relevant for the procedures applicable to them. The Committee considers that the issues negotiated under a public sector collective agreement will undisputedly be of relevance for the police personnel.

175. It reiterates that based on the submissions of the parties, only one practical example has been provided on direct consultations with a police representative association concerning this issue. As no information on the final outcome of these consultations has been made available to the Committee, such consultations do not represent a reasonable alternative to the bargaining process.

176. The Committee therefore observes that a mere hearing of a party on a negotiated outcome will not satisfy the requirements of efficiency inherent in Article 6§2 of the Charter. To the contrary, it is imperative to regularly consult all parties during the process of collective bargaining and thereby offer a possibility to affect the contents of the negotiated outcome.

177. Especially in a situation where the trade union rights of a police representative association have been restricted, it must maintain its ability to argue on behalf of its members through at least one effective mechanism. Moreover, in order to satisfy this requirement, the mechanism of collective bargaining must be such as to genuinely provide for a possibility of a negotiated outcome in favour of the workers' side.

178. In light of the above, the nearly total exclusion of the police representative associations from the direct negotiations concerning the conditions of service is not necessary under Article G of the Charter.

179. As for the allegations concerning the background of the Chairperson of the Conciliation Council, the Committee considers that the issue could be unproblematic in terms of the requirements of Article 6, should an effective negotiation mechanism be provided to the police.

180. It recalls having previously stated, under Article 6§1, that:

> "[I]n some states, consultation takes place within the framework of joint bodies in which the government representative often acted as chairman. This form of joint consultation was deemed to comply with the requirements as set out in Article 6, paragraph 1." (Conclusions V (1970), Statement of interpretation on Article 6§1).

181. In the circumstances of the present complaint however, the Committee considers that the situation where the Chairperson is the employee of one of the negotiating parties may serve to further enforce the perception on the inefficiency of the existing negotiation mechanism under Article 6§2. It emanates directly from the applicable legislation that he or she has to be employed by a party to the negotiations (see paragraph 16).

182. Furthermore, as concerns the possibility of the police representative associations to access the LRC and the Labour Court, the Committee considers that access to a particular dispute resolution mechanism cannot be required for the fulfilment of the requirements of Article 6.

183. As concerns the possibility of individual members of the police to seize the LRC, the Committee considers that because of the collective nature of the trade union rights at issue, it may not rule upon the compliance with the requirements of Article 6 on the basis of the complaint opportunities of individual members of the representative associations alone. Such mechanisms may exist but will not substitute for the need to make available to trade unions or representative associations an effective recourse to a dispute resolution body for the pursuance of the joint interests of their members.

184. Finally, with regard to the operation of the Scheme as a mechanism for solving the daily matters it is also used for, the Committee considers that the particular issue has not been made the subject-matter of the complaint.

185. In view of the above, it follows that the police representative associations are not provided with a means to effectively represent their members in all matters concerning their material and moral interests.

186. Taking note of the essential role of pay bargaining for the purposes of Article 6, the Committee considers that the legislation and practice fails to ensure the sufficient access of police representative associations into pay agreement discussions. The Committee consequently holds that there is a violation of Article 6§2 of the Charter.

PART IV: ALLEGED VIOLATION OF ARTICLE 6§4 OF THE CHARTER ON GROUNDS OF THE PROHIBITION AGAINST THE RIGHT TO STRIKE OF MEMBERS OF THE POLICE

187. Article 6 of the Charter provides as follows:

> **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:
>
> […]
>
> 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."

188. The following provision is included into Annex, Part II, of the Charter:

> "**Article 6, paragraph 4**
>
> It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G."

A - Arguments of the parties

1. The complainant organisation

189. EuroCOP finally argues that the prohibition against the right to strike of police representative associations amounts to a violation of the right to collective action under Article 6§4 of the Charter.

190. According to the information provided by EuroCOP, the police are permitted to strike either without restrictions or upon certain conditions in various Council of Europe member states. It has thus been demonstrated that granting the police the right to strike does not cause adverse effects on public safety.

191. In view of the foregoing, EuroCOP submits that the exclusion of the police representative associations' from the scope of the right to collective action amounts to an unnecessary restriction to their rights under Article 6§4 of the Charter.

2. The respondent Government

192. The Government affirms that the police representative associations are indeed excluded from the scope of the right to strike, as the Industrial Relations Act 1990, setting out the general right to collective action, does according to its Section 8 not apply to the police (see paragraph 20).

193. The Government nevertheless argues that the restriction does not amount to a breach of Article 6§4, as it follows from the well-established case law of the Committee that certain categories of workers, such as the police, may be excluded from the scope of the right to strike or that this right may be restricted on part of these categories (Conclusion I, Statement of Interpretation on Article 6§4).

194. Moreover, the Government argues that according to its perception, the right to strike of the police has been limited in various states parties.

195. The Government furthermore refers to Article 9§1 of the ILO Convention no. 87 (see paragraph 28), providing that the extent to which the guarantees of freedom of association and protection of the right to organise as guaranteed in the Convention apply to the police is determined by national laws or regulations.

196. Referring to an ILO General Survey from 1994 moreover, the Government argues that "it is not uncommon for members of the police to be subject to an exception from the Convention on the basis of their responsibility for the external and internal security of the Contracting State".

197. Pursuant to these arguments, the Government submits that the prohibition against the right to strike of the police may be justified in line with the requirements of Article 6§4 and G of the Charter. Firstly, the prohibition is prescribed by law, namely by Section 8 of the Industrial Relations Act.

198. Secondly, it pursues a legitimate aim as the police is charged with tasks affecting the rights of others, national security or public interest (see paragraph 102). The prohibition aims to ensure that strike action by the police does not endanger national security.

199. Finally, the prohibition of collective action on part of the police is, in the opinion of the Government, necessary as Ireland does not rely upon its police force only for policing itself, but also for state security and immigration control. Unlike certain other member states, it does not have multiple police forces that may be relied upon in the event of a strike of the Gardaí. The contested restriction is therefore a strictly necessary one. Even in the member states with more than one police force, the right to strike has not been extended to cover all categories of the police.

200. The Government accordingly argues that the contested restriction fulfils the requirements of Article 6§4 of the Charter.

B - Assessment of the Committee

201. The Committee first observes that the right to strike is intrinsically linked to the right to collective bargaining, as it represents the most effective means to achieve a favourable result from a bargaining process. It is therefore of specific relevance to trade unions. Consequently, restrictions on this right may be acceptable only under specific conditions.

202. The Committee likewise recalls having held that restrictions on the right to strike of the police may be in conformity with Article 6§4 of the Charter (Conclusions XVIII-1 (2006), Croatia). As held on some occasions, states enjoy a wide margin of appreciation when it comes to restricting the right of police personnel to strike (Conclusions XIV-1 (1998), Norway; Conclusions XIV-1 (1998), Denmark; Conclusions I (1969), Denmark). In this regard, the Government explicitly refers in its submissions (pages 35-36) to Conclusions I (1969), Statement of Interpretation on Article 6§4, pp. 38-39, in which the Committee observed as follows: "*—As regards the right of public servants to strike, the Committee recognises that, by virtue of Article 31 [now Article G of the Revised Charter], the right to strike of certain categories of public servants may be restricted,* ***including members of the police and armed forces, judges and senior civil servants****. On the other hand, the Committee takes the view that a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter."*

203. The Committee has, in the context of the diversity of the legal systems in this area, also taken note of the evolution towards the expansion of the right to strike to police officers. For example, in Conclusions XIV-1, 1998, Norway, the Committee held that: "[a]s for restrictions on the right of public employees to strike, the report states that senior state civil servants and the military are denied the right to strike. Police officers were guaranteed the right to strike in February 1995". In Conclusions XIX-3 (2010), Croatia, the Committee held: "[t]he report states in this context that, although Article 60 of the Constitution allows the right to strike to be restricted in the armed forces, the police, the public administration and the public services, the legislator has not made use of this authorisation with respect to employees in public administration and the public services who therefore have an unrestricted right to strike in accordance with the provisions of the Labour Act".

204. In this context, the members of the police force may clearly be considered as public officials exercising public authority. Their right to collective action may thus be restricted. Such a restriction may nevertheless only be compatible with the Charter if the requirements of Article G are met, i.e. if the restriction is established by law, pursues a legitimate aim and is objectively necessary in a democratic society, that is to say proportionate to the aim pursued.

205. The Committee firstly observes that the restriction at issue in this complaint is based on Section 8 of the 1990 Industrial Relations Act and is therefore established by law.

206. The restriction furthermore pursues a legitimate aim in that it seeks to maintain public order, national security and the rights and freedoms of others by ensuring that the police force remains fully operational at all times.

207. Accordingly, the Committee is called upon to resolve the question of whether a prohibition on the right to strike by members of the police force, as a means of pursuing a legitimate aim such as those outlined in the previous paragraph, is necessary in a democratic society. The Committee notes that the states parties adopt different approaches on this issue. This reflects the diversity of the internal regimes in force in those states, where the functions and tasks of the police vary, as do the national practices with regard to the manner of and frequency in which the right to strike is made use of. The effects of granting the right to strike to the police upon the public interest may equally vary according to the internal legal systems. For these reasons, it falls to states, within their margin of appreciation, to decide, in light of the circumstances of a given national system, whether a restriction upon the right to strike of the police for a certain part of the police force is truly necessary with a view to achieving the legitimate objective pursued.

208. From this perspective, in its submissions (pages 37-38) the respondent Government intends to justify that “precluding the Gardaí from striking is strictly necessary in pursuit of legitimate purposes”, by arguing that Ireland “has only one police force”, that it “relies upon the Gardaí to perform functions that might not be performed by the police force in other jurisdictions in the context of immigration control” and that it “relies upon the Gardaí for policing and for state security more generally”.

209. The Committee however observes that, in spite of the specific internal organisation of the police force and the “integral role” of the Gardaí in national security mentioned above, the reasons provided by the Government do no demonstrate the existence of a concrete pressing social need. Indeed, the Government has not justified that the legitimate purpose of maintaining national security may not be achieved by establishing restrictions on the exercise of the right to strike (such as requirements relating to the mode and form of industrial action) rather than by imposing an absolute prohibition.

210. From this point of view, Section 8 of the Industrial Relations Act not only amounts to a restriction but to a complete abolition of the right to strike. In this regard, the Committee has held that "[…] national legislation which prevents a priori the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards would not be in conformity with Article 6§4 of the Charter, as it would infringe the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers. In this context, within the system of values, principles and fundamental rights embodied in the Charter, the right to collective bargaining and collective action is essential in ensuring the autonomy of trade unions and protecting the employment conditions of workers." (Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012; decision on the admissibility and merits of 3 July 2013, §120).

211. Since this applies in respect of restrictions on the exercise of the right to strike for the purpose of improving conditions of work beyond a given minimum level, it *a fortiori* applies also for every absolute prohibition of the right to strike established *a priori* by law. In other words, the Committee holds that restrictions on human rights must be interpreted narrowly. As a consequence, in the context of the regulation of the collective bargaining rights of police officers, states must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified in the specific national context in question, as distinct from the imposition of restrictions as to the mode and form of such strike action.

212. Thus, in this case, the margin of appreciation of the state party is restricted, because the abolition of the right to strike affects one of the essential elements of the right to collective bargaining, as provided for in Article 6 of the Charter, and without which the content of this right becomes void of its very substance and is therefore deprived of its effectiveness.

213. In the situation at issue in this complaint, the Government as previously noted has not presented such a compelling justification for the imposition of the absolute prohibition on the right to strike set out in Section 8 of the 1990 Industrial Relations Act. As a result, the Committee considers that this statutory provision is not proportionate to the legitimate aim pursued and, accordingly, is not necessary in a democratic society.

214. The Committee consequently holds that the prohibition of the right to strike of members of the police force amounts to a violation of Article 6§4 of the Charter.

CONCLUSION

For these reasons, the Committee:

- unanimously declares the complaint admissible as far as it concerns Article 5 and 6 of the Charter and declares the remainder of the complaint inadmissible;

and concludes:

- by 10 votes to 1, that there is no violation of Article 5 of the Charter on grounds of the prohibition against the police from establishing trade unions;

- unanimously, that there is a violation of Article 5 of the Charter on grounds of the prohibition against police representative associations from joining national employees' organisations;

- unanimously, that there is a violation of Article 6§2 of the Charter on grounds of restricted access of police representative associations into pay agreement discussions;

- by 6 votes to 5, that there is a violation of Article 6§4 of the Charter on grounds of the prohibition against the right to strike of members of the police.

Luis **JIMENA QUESADA**
President and Rapporteur

Régis BRILLAT
Executive Secretary

In accordance with Rule 35§1 of the Rules of the Committee, a separate dissenting opinion of Luis JIMENA QUESADA and a separate dissenting opinion of Monika SCHLACHTER, joined by Birgitta NYSTRÖM and Marcin WUJCZYK, are appended to this decision.

PARTLY DISSENTING OPINION OF LUIS JIMENA QUESADA

1. I agree with the majority of the Committee in concluding that there is a violation of Article 5 of the Charter on grounds of the prohibition against police representative association from joining national employee's organisations as well as of Article 6§2 (on grounds of restricted access of police representative associations into pay agreement discussions) and Article 6§4 of the Charter (on grounds of the prohibition against the right to strike of members of the police). However, I am unable to subscribe to the majority conclusion of the Committee that there is no violation of Article 5 on grounds of the prohibition against the police from establishing trade unions. The reasons of my dissent, which basically focus on paragraphs 67 to 85 (and in particular on paragraph 77), concern both procedural and substantial aspects.

2. From a procedural point of view, I feel that the majority of the Committee has gone beyond the submissions of the parties themselves in breach of the *non ultra petita* principle, insofar as it has not been consistent with the *petitum* of the complaint, which explicitly indicates that the aim of the complaint "is not to form a trade union". It is paradoxical from this perspective that the Committee itself acknowledges that EuroCOP "emphasises that the current complaint has not been lodged for the purpose of forming a police trade union" (paragraph 49). Under this angle, the most logical approach was to abstain from deciding such an issue not included in the complaint.

3. Furthermore, from a substantial point of view, once the Committee has decided to assess this aspect not included in the submissions, I think that it has exercised a restrictive jurisdictional choice which, in addition, is not consistent with its approach concerning the concrete three claims on the merits at stake:

3.1. First of all, the Committee has decided to adopt a literal interpretation of Article 5 of the Charter (paragraph 77) by giving priority to the most restrictive wording of its English version, whose heading of the provision says "right to organise", whereas the French version refers to "droit syndical". Such a restrictive position does not take into account the *favor libertatis* option (in favour of the less restrictive linguistic version between English and French) which has been correctly exercised in other occasions by the Committee (e.g. *Conclusions VI*, 1979, United Kingdom, concerning the difference between the wording of the French and English texts of paragraph 4.b) of Article 8 of the 1961 Charter) or by the Court (e.g. already in the "Belgium linguistics case" of 23 July 1968 in relation to Article 14 of the European Convention on Human Rights).

3.2. Secondly, the Committee states in this paragraph 77 that "while certain of the international instruments refer in particular to trade unions, others generally mention organisations of workers and employers. The Committee observes that reference is made in Article 5 to 'organisations' only". This also means a restrictive systematic interpretation which is not in the line of the most favourable standard imposed by Article H ("The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected").

3.3. Thirdly, the Committee operates a complex balance when holding in paragraph 77 that “the formal categorisation of a body adopted in national law does not necessarily establish whether the members of a representative organisation effectively enjoy or not the rights set out in Article 5”. By contrast, the exam of the present complaint has in my view demonstrated that the difference between the general legal regime of one “association” or “organisation” on the one hand, and the most specific legal regime of one “trade union” on the other hand, is not a matter of a mere rhetorical label, but it implies a distinction of nature with important consequences in terms of level of effective enjoyment or not of the rights set out in Article 5 of the Charter.

3.4. Finally, the last sentence of paragraph 77 illustrates a kind of contradiction in the legal reasoning of the Committee. In particular, when holding that without prejudice of the “formal categorisation”, it is necessary “to examine the concrete situation that forms the subject of this complaint to ascertain whether police personnel in Ireland enjoy these rights in practice”, the practical exam of the Committee has precisely led to the three conclusions of violation in relation to the three real substantial claims at stake. In other terms, these three concrete illustrations (violation of Article 5 - on grounds of the prohibition against police representative association from joining national employee’s organisations -, violation of Article 6§2 - on grounds of restricted access of police representative associations into pay agreement discussions - and violation of Article 6§4 - on grounds of the prohibition against the right to strike of members of the police) are consistent with an evolutive interpretation which, on the contrary, is incomprehensively excluded from the assessment of the right to constitute trade unions under Article 5 of the Charter.

4. For these reasons, I consider that the Committee would have had to conclude that there was no basis for its assessment concerning the right to form a trade union or, in making such an assessment, that there was a violation of Article 5 of the Charter.

DISSENTING OPINION OF MONIKA SCHLACHTER, JOINED BY BIRGITTA NYSTRÖM AND MARCIN WUJCZYK

concerning the Collective Complaint No.83/2012, fourth conclusion on the merits: that there is a violation of Article 6 § 4 of the Charter

The current Conclusion on Article 6 § 4 is based on the fact that Ireland exempts police personnel from the right to strike, provided to public service in general. That such an exemption in itself amounts to a severe restriction to a core Charter right is undisputed. The question nevertheless remains whether restrictions to such rights can be justified at all. The Conclusion indicates that no justification may be provided for prohibiting one category of public servants from striking. This approach, in my view, goes clearly beyond the interpretation of the right to strike as it hitherto has been applied not only by the ECSR (compare: Conclusions XVIII-1 Volume 1, Croatia; Conclusions XIV-1 Volume 2, Norway; Conclusions XIV-1, Denmark; Conclusions XII-2 Malta), but also by other international bodies. Also the Court has not objected to restricting the right to strike of public officials exercising public authority (compare: *Demir and Baykara v. Turkey*, judgment of 12 November 2008, §§ 140- 144).

Any change to a long standing interpretation may be appropriate under compelling circumstances; but these are lacking in the present case. Quite the contrary: exceptions to even the most important Charter provisions are in principle provided for by Article G, as none of the guarantees under the Charter are construed as absolute rights. Their importance is instead reflected in the strict conditions for justifying such restrictions. For Article 6 § 4 this amounts to limiting restrictions to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, public interests or essential services in the strict sense of the term (Conclusions 2010, Azerbaijan). Members of the police force, being public officials whose functions are directly related to national security and to the protection of rights and freedoms of others, clearly exercise public authority even in the narrowest sense of the term. If a state decides to treat such public officials differently from other public servants, this is due to the very function that the police force has to fulfill.

The current Conclusion refers to the decision on the merits of Complaint No. 85/2012 (Swedish Trade Union Confederation v. Sweden) arguing that as the right to strike may not be limited to the obtaining of a mere minimum level of working conditions, a total exemption from the right to strike would obviously be even less acceptable. This reference does not really represent the argument in question: as the Complaint No. 85/2012 concerns regular workers but not the police force, it simply does not take a stance on creating special conditions for public officials exercising public authority.
Whether a specific exemption clause meets the condition of being necessary in a democratic society, as provided for by Article G, depends on there being equivalent, but less intrusive means to obtain the legitimate goals of protecting national security and the rights and freedoms of others. Several states apply the practice of exempting only parts of the police force from the right to strike, thereby providing not for a total, but a partial ban. When applying the proportionality principle, states only have to resort to alternative means for pursuing their legitimate aims if these can meet the

legitimate goals in an equally effective manner. In this perspective, only prohibiting some members of the police force from engaging in strike action may or may not suffice to protect the said legitimate objectives, - depending on the social and political circumstances or the industrial relations in the given country.

Functions and duties of the police force vary between states, together with the national practice when engaging in industrial action. Some states divide the functions of the police into civil, criminal or administrative police functions, as well as to quasi-military functions; some states include border protection or terrorism prevention. Collective bargaining systems and collective action traditions vary even more between states. Accepting an unrestricted or only partially restricted right to strike for the police force will consequently create different effects on the protection of public interests. Therefore, prevailing differences between systems of collective labour relations will have to be respected by granting states a wide margin of appreciation. Consequently, under particular circumstances, excluding certain categories of public officials whose functions are directly related to national security and to the protection of rights and freedoms of others is justified under Article G.

In the concrete case of Ireland it has been stated by the Government and not contested by the complainant that the Irish police has been assigned all kinds of duties connected not only to public order and crime prevention, but also to national security. The maintenance of public authority in potential times of crises, as has earlier been the case in Ireland, might be considered vital for the proper administration of public security in this country. Therefore a statutory prohibition of the right to strike for police personnel under such circumstances constitutes a proportionate means to guarantee that their service is fully operational at all times. It therefore does not constitute a violation of Article 6 § 4 of the Charter.