



LUNDS
UNIVERSITET

The European Social Charter

PROF. DR. BIRGITTA NYSTRÖM



The Social Charter

- Council of Europe
- The Social Charter adopted 1961, Revised Charter 1996
- 31 Articles, 96 different paragraphs
- À la carte system



Monitoring the Charter

- The European Committee of Social Rights, 15 independent experts, the legal assessment
- Ordinary reporting system
- Collective complaints procedure (from 1995, only 15 states have accepted)
- The Governmental Committee and the Committee of Ministers can issue a recommendation to a State



Collective complaints

- Initiated against a State for non-compliance
- Possible to use without exhausting national remedies
- Trade unions, employers' organisations, NGO:s may lodge complaints
- Totally about 150 decisions



Article 5 The right to organise

- All workers and employers have the right to organise
- National law shall not impair or be applied to impair this freedom
- The extent to which this shall apply to the police shall be determined in national law
- The principle governing the application to members of the armed forces of this right and the extent to which it shall apply shall be determined by national law



Article 6 the right to bargaining collectively

- All workers and employers have the right to bargaining collectively
- The States shall promote joint consultation between workers and employers, 6 § 1
- when necessary promote machinery for voluntary negotiations between employers´ and workers´ organisations with a view to collective agreements, 6 § 2
- Promote machinery for conciliation and voluntary arbitration, 6 § 3



Article 6 § 4

- With a view to ensuring the effective exercise of the right to bargaining collectively
- The right of workers and employer to collective action in cases of conflicts of interests, including the right to strike
- Each State may regulate the exercise of the right to strike by law, provided that restrictions can be justified under Article G



Article G Restrictions

The rights and principles in the Charter shall not be subject to restrictions

Except: prescribed by law, 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



Complaint 83/2012 (decision 2013)

- **European Confederation of Police v. Ireland**
- A violation of Article 5 – prohibition against police representative associations from joining national employees' organisations
- A violation of Article 6 § 2 – no means to effectively represent their members, legislation and practice fails to ensure sufficient access of police representative associations into pay agreement discussions



Complaint 83/2012, continued

- A violation of Article 6 § 4 - the absolute prohibition on the right to strike for members of the police force is not proportionate to the legitimate aim pursued and, accordingly, is not necessary in a democratic society



Complaint 112/2014 (decision 2017)

- **European Organisation of Military Associations (EUROMIL) v. Ireland**
- Violation of Article 5 – prohibition against military representative associations from joining national employees' organisations
- Violation of Article 6 § 2 – military representative associations are consulted in a parallel process to the public service agreements, but not directly involved in the negotiations



Complaint 112/2012, continued

fails to ensure sufficient access of military representative associations to pay agreement discussions

- No violation of Article 6 § 4 – the right to strike is intrinsically linked to the right to collective bargaining, restrictions are acceptable only under specific conditions. There is evolution towards expansion of the right to strike of police officers. Concerning armed forces the restriction pursues a legitimate aim in that it seeks to maintain public order, national security, rights and freedoms of others by ensuring that the armed forces remain fully operational all times



Complaint 112/2012, continued

Specific nature of the tasks carried out by members of the armed forces, special circumstances , operate under a system of military discipline, industrial action could threaten national security

The statutory restriction is proportionate to the legitimate aim pursued and can be regarded as necessary in a democratic society



Complaint 140/2016 (decision 2019)

- **Confederazione Generale Italiana del Lavoro (CGIL) v. Italy**
- Violation of Article 5

Guardia di Finanz Corps constitutes a police force subject to the code of military organisation having general competence in economic and financial matters

The establishment of trade unions is subject to consent of Minister of Defence, no remedies against arbitrary refusal



Complaint 140/2016 (continued)

The Military Code restricts the right to organise in a manner that is not necessary in a democratic society for the protection of national security within the meaning of Article G

- Violation of Article 6 § 2

The procedure does not present the characteristics of a real negotiation between two parties, but rather a mere consultation



Complaint 140/2016 (continued)

The representative bodies of employees are not provided with means to effectively negotiate terms and conditions of employment, including remuneration

- Violation of Article 6 § 4

Prohibition to strike by law

The abolition of the right to strike effects one of the essential elements of the right to collective bargaining

The Guardia di Finanza is subject to military discipline applicable to the army



Complaint 140/2016 (continued)

States have a wide margin of appreciation on how they restrict the right to strike of the armed forces

Restrictions of fundamental rights must be interpreted narrowly and comply with Article G

The absolute prohibition of the right to strike imposed on members of the Guardia is not proportionate to the legitimate aim pursued and, therefore, not necessary in a democratic society





LUNDS
UNIVERSITET