

Von: alimacoelho@yahoo.com  
Gesendet: Sonntag, 22. Januar 2006 00:58  
An: Hilde Craninx  
Cc: associação" sargentos; ACMP-CGPM Manu; Willie Webb PDFORRA  
Betreff: Re: Situation Portugal

Dear Hilde

In deed we have not being in touch for a little while and we have to apologize for. I hope that the troubled watters that all of us (EUROMIL family) had to cross are getting more quiet now. But about this subject we will have to talk latter and in person. It is to sensitive matter to be talked this way.

We have been quite busy with all the matters you already know. On the other hand we are having Presidential Elections next Sunday (tomorrow). As you may know, and according with our Constitution, the President of the Republic is also the Supreme Commander of the Armed Forces. We addressed a letter to all the candidates in order to inform us about their position, understanding and intentions concerning the right of association, representation, and how to be related with the professional associations. Unfortunately only two candidates sent us an answer. The ones who have the possibility to win the race didn't reply. They don't want to compromise themselves. During this campaign period we are not performing any visible action. We are having meetings with other unions (security forces, judges, etc) and we are preparing the national comemoration of the 31<sup>st</sup> of January 1891, Sargeants National Day, as we want to be recognized, in lots of different places around the country and during more than a week. We also asked for meetings with the different military chiefs of staff. Yesterday we have been in a meeting with the chief of staff of the Army. What a very tense, cold and difficult meeting! We are still waiting for the answer of the other two.

About the disciplinary procedures we have to inform you that the process against our vice president, José Pereira, was closed whitout punishment (exactly the same that happened with me five years ago, do you remember?). The appeal related to the other fifteen members are in its way as well as the appeal related to the three days detention of the APA president, Navy Caporal Luis Reis. We are still working on it, and we will not give up. However, in a very timid way, non official though, we were invited to attend a meeting in the MOD building concerning the changes in the health care system where we were able to confirm all the difficulties and confusion around the subject as we alerted in the beggining of last Summer, but nobody took care about our statements. Perhaps, if we had been in the working group since the beggining we might had help to find better ways...who knows? There we were told that we will be formally integrated in the next working group who is going to discuss the careers and wages matters. We have to see it in real, in witting! We are full of lies from different members of the government.

Meanwhile we have to tell you how touch we are with the support we are receiving from so many and good friends: Panos Mertikas from Greece, Han Busker and Win Van der Burg from Netherlands, RACO members from Ireland, Bernard Gertz, Manu Jacob (who, among other support and friendly words, sent us a copy of a letter from the Belgian Minister of Foreign Affairs), yourself Hilde Crannix, but a very special word goes to Willie Webb and all the members of PDFORRA, Ireland because of the way they received us, Luis Reis from APA and myself, in a working visit to Dublin. Following their actions we have been receiving copies of the answers from lots of different politicians concerning the "portuguese case". The

last one (I presume that Willie informed you as well) it's a letter from a member of the European Commission -Employment, Social Affairs and Equal Opportunities DG, Mr. Bernhard Jansen, who wrote to Willie Webb on behalf of President Barroso whom, after some argumentation, finishes saying that, and I quote "Therefore, I regret having to inform you that the European Commission cannot intervene in the present case.", unquote! Just for your information!

As you can see things are not stopped at all. We saw your suggestion to have somebody in Brussels to talk about the situation. We have to discuss it internally and decide if we have conditions to do it. We agree that it could be very helpful and important, but we have to see if we can manage it. How is the preparation to Athens going? Do you have already dates for the Spring event? And what about the Autumn meeting? If you can please give me some information about it. I am closing for now. If you need any other information just call me.

Best regards

Antonio Lima Coelho  
ANS - Portugal

--- Hilde Craninx <craninx@euromil.org> wrote:

Dear Antonio, Carlos, José,

First of all I wish you, your families and colleagues all a very happy 2006 in good health and hopefully with fully booked agenda's because of all the consultation meetings with your Government!

It has been a while since we last received an update on the situation. The political year is slowly starting in Brussels and we would like to know whether we should continue our lobby campaign now by addressing especially Portuguese members of the European Parliament on your case. If we do that, however, we need the latest correct and full information on what has been going on since your last report.

Moreover, we would like to propose that one (or more) of you would come to Brussels for a couple of days to explain your worries to the Portuguese Members of Parliament yourself.

I look forward to hearing from you soon!

Kind regards,

Hilde

Officer for Fundamental Rights and Social Affairs  
EUROMIL  
Av. Général de Gaulle 33  
1050 Brussels  
Tel: +32 2 626 06 84  
Fax: +32 2 626 06 99

**Re: Answer of the Lead Association Legal Advice about whether the non-application of Article 2 of the Portuguese "Organic Law No. 3/2001" and the disciplinary measures against Portuguese servicemen contravene Article 6 of the EU Treaty.**

Article 6 normalises the fundamental principles of law which characterise the European Union. With regard to basic rights, Article 6 Subsection 2 stipulates that the Union shall observe basic rights as they are guaranteed in the EHRC and as they result from the constitutional principles of the member states. The EU Treaty contains no catalogue of basic rights. There is, to be sure, the "EU Charter of Fundamental Rights". This, however, as things stand at present, is not part of the EU Treaty and accordingly not binding. In the draft version of the new Constitution Treaty it was in fact planned to include the Charter of Fundamental Rights in the EU Treaty to serve as a European catalogue of fundamental rights. But also according to the Draft Constitution Treaty, these fundamental rights should be guided by the rights established in the European Human Rights Convention and the limits thereto. It results from this that the Union Institutions and the Member States are indeed obliged to guarantee the basic rights specified in Article 6 of the EU Treaty. These, however, do not exceed the rights of the European Human Rights Convention. To interpret the rights of the EHRC, and to ascertain for example what exactly is to be understood by freedom of association pursuant to Article 11 of the EHRC, one must fall back upon the decisions of European Court of Human Rights.

So ultimately the point once again is whether Article 11 of the EHRC is infringed or not. The question is whether freedom of association for the armed forces can be completely excluded on the grounds of the exception provided for in Article 11 Subsection 2 of the EHRC. Portuguese law, however, does not entirely exclude the armed forces from this right. This means, at all events, that the law itself does not violate Article 11 of the EHRC. The disciplinary measures could contravene Article 11 of the EHRC and consequently Article 6 of the EU Treaty, if as a result of them it was no longer possible for servicemen to exercise the freedom of association actually due to them. This would have to be tested in a particular case and would require more detailed knowledge of the facts and the grounds for the measures. According to the law, restrictions are possible, the conditions for which are not precisely defined but leave room for interpretation (indefinite concepts such as "trade-union nature", "harmony and discipline of the armed forces"). The courts must decide whether these concepts have been correctly interpreted in a particular case. This cannot be judged beforehand. Moreover, a possible infringement of Article 6 of the EU Treaty by the Portuguese authorities cannot be referred to the European Court of Justice, as there is no direct possibility of appeal in this respect to the European Court of Justice for individuals or associations.

Silke Flemming

Von: Silke.Flemming@dbwv.de

Gesendet: Donnerstag, 22. Dezember 2005 16:17

An: Hilde Craninx

Cc: MartinJBerg@bmv.g.bund400.de; andreas.gronimus@dbwv.de

Betreff: Portugal

Hallo Hilde,

ich komme zurück auf Deine e-mail mit der Frage, ob die Nichtanwendung des Art. 2 des portugiesischen "Organic Law No. 3/2001" und die Disziplinarmaßnahmen gegen die portugiesischen Soldaten gegen Art. 6 EUV verstoßen. Art. 6 normiert die fundamentalen Rechtsprinzipien, die die Europäische Union prägen. Hinsichtlich der Grundrechte wird in Art. 6 Abs. 2 festgelegt, dass die Union die Grundrechte achtet, wie sie in der EMRK gewährleistet sind und wie sie sich aus den Verfassungsgrundsätzen der Mitgliedsstaaten ergeben. Der EU- Vertrag hat keinen Grundrechtskatalog. Zwar gibt es die "EU- Grundrechtecharta". Diese ist aber bisher nicht Teil des EU- Vertrages und daher bisher nicht bindend. In dem Entwurf des neuen Verfassungsvertrages war ja geplant, die Grundrechtecharta als eigenen Grundrechtekatalog in den EUV aufzunehmen. Aber auch laut Verfassungsvertragsentwurf sollen sich die Grundrechte an den in der EMRK festgelegten Rechten und deren Grenzen orientieren. Daraus ergibt sich, dass die Unionsorgane und die Mitgliedsstaaten zwar verpflichtet sind, die in Art. 6 EUV genannten Grundrechte zu achten. Diese gehen aber nicht über die Rechte der EMRK hinaus. Zur Auslegung der Rechte der EMRK, um also z. B. zu ermitteln, was unter der Vereinigungsfreiheit aus Art. 11 EMRK genau zu verstehen ist, wird auf die Rechtsprechung des EGMR zurückgegriffen.

Im Endeffekt geht es also wieder um die Frage, ob Art. 11 EMRK verletzt ist oder nicht. Fraglich ist ja, ob aufgrund der Ausnahmeregelung in Art. 11 Abs. 2 EMRK die Vereinigungsfreiheit für die Streitkräfte auch ganz ausgeschlossen werden kann. Die portugiesischen Gesetze schließen die Streitkräfte aber von diesem Recht nicht gänzlich aus. Das heißt, das Gesetz selbst verstößt jedenfalls nicht gegen Art. 11 EMRK. Die Disziplinarmaßnahmen könnten gegen Art. 11 EMRK und damit Art. 6 EUV verstoßen, wenn sie dazu führen, dass es den Soldaten nicht mehr möglich ist, die ihnen eigentlich zustehende Vereinigungsfreiheit auszuüben. Dies muss im Einzelfall geprüft werden und ist nur bei genauer Kenntnis der Sachverhalte und der Begründungen der Maßnahmen möglich. Nach dem Gesetz sind Einschränkungen möglich, deren Voraussetzungen nicht genau definiert sind, sondern Auslegungsspielraum lassen (unbestimmte Begriffe wie "trade-union nature", "harmony and discipline of the Armed Forces"). Die Gerichte haben zu prüfen, ob diese Begriffe im Einzelfall richtig ausgelegt wurden. Dies kann von hier aus nicht bewertet werden. Man kann eine eventuelle Verletzung von Art. 6 EUV durch portugiesische Behörden übrigens auch nicht beim EuGH geltend machen, da es für einzelne Personen oder einen Verband insoweit keine direkte Klagemöglichkeit beim EuGH gibt.

Ich hoffe, ich konnte damit behilflich sein. Falls Du noch Fragen hast, kannst Du Dich gerne noch einmal an mich wenden.

Ich wünsche Dir und dem ganzen "Brüsseler Team" schöne Weihnachten und einen guten Rutsch ins neue Jahr!

Mit freundlichen Grüßen

Silke Flemming

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PRISIDENCIA DO CONSELHO DE MINISTROS  
Gabinete do Primeiro Ministro

Data 24  
Ent.º 16265 2005  
A.02.02.01 10173/05

EUROMIL

2005

EUROMIL  
Att. Mr Bauke Snoep  
President  
33, av. Général de Gaulle  
B-1050 BRUXELAS  
BÉLGICA

Dear Sir

The Prime Minister Mr. José Sócrates, has asked me to acknowledge receipt of your letter dated the 17<sup>th</sup> November and inform that due attention was given to the issues mentioned therein

Yours sincerely

Luís Manuel Patrão  
The Head of the Cabinet

answ

## **Note on the meeting with Hendrik Hansen, Political Consultant Rasmussen, MEP**



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Participants: Hendrik Hansen, Andreas Prüfert and Hilde Craninx  
Place: Restaurant COCO (Place Luxembourg)  
Time and date: 08.12.2005 – from 13h00 to 14h00

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### **Background**

Hendrik Hansen is the political consultant of MEP Poul Nyrup Rasmussen, who took the initiative to bring the case of the Slovak police officers to the attention of the European Commission (See E-mail of 1/12/2005 "EP debate on violation of fundamental rights of police officers in Slovakia").

I arranged a meeting with Hansen to inform him on the situation of the Portuguese military personnel, which has certain similarities compared to the Slovak situation. The purpose of the meeting was to find out, whether Rasmussen would be willing to take up the "Portuguese case" and especially to give us advice on how to proceed with the lobbying.

### **Main outcome of the meeting**

- After having been informed on the details of the Portuguese situation and on all actions already undertaken by EUROMIL towards the Portuguese Government, Council of Europe, the European Commission (EC) and the European Parliament, Hansen recommended writing directly to the **Commissioner Franco Frattini** and to refer to the case by EuroCOP;
- With regard to our efforts to mobilise the EP to raise this matter to the European Institutions, he mentioned that we first had to get the **support of the Portuguese MEPs** in order to start an initiative towards the EC. He mentioned that without the support of all Slovak MEP's of all political group but the Christian Democrats, Rasmussen would never have been able to bring the case before the European Commission;
- Moreover he mentioned that it would be difficult for Mr Rasmussen to do anything for us unless the Portuguese members of the Socialist Group would support EUROMIL, which is unlikely as the Portuguese Government is social democrat. (In the case of the Slovak police officers, the Christian Democrats refrained from making any public statements);
- Hansen furthermore suggested getting **a legal opinion** on the question whether one could claim that there is a violation of Art. 6 of the EU Treaty;
- Finally Hansen suggested following up the matter of the **"investigation committee"** which will be installed by LIBE to look into the matter of the CIA flights and detention centres in Europe. This committee might get a broader mandate, as some MEPs suggested to extend the mandate of the committee to "fundamental rights questions related to terrorism". He felt that if EUROMIL can prove that the fundamental rights of military personnel have been negatively affected after 9/11, EUROMIL could bring this issue into LIBE and therewith the investigation committee. The MEP to address on the issue is Glyn Ford.

### **Closing remark:**

It was a fruitful meeting. We had taken into account in advance that MEP Rasmussen would probably not be able to support us as he belongs to the same party-political group as the Portuguese Government. Our main purpose was therefore to get advice on how to proceed best in order to be successful. Hansen is certainly a serious and positive contact partner for EUROMIL for any future AFET-related affairs.



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE, FREEDOM AND SECURITY

Directorate C : Civil justice, rights and citizenship  
Unit C3 : Citizenship and fundamental rights

14 DEC. 2005

Brussels,  
DG JLS-C3/AG/bh/ D(2005) 13978

EUROMIL  
19. Dez. 2005

Mr Andreas Prüfert  
Secretary General  
European Organisation of Military  
Associations  
33, Av. Général de Gaulle  
B-1050 Bruxelles

Sir,

Thank you for your letter of 5 December 2005 in which you complain about what you consider being a violation of the fundamental right of association of military personnel in Portugal.

I would like to stress that the European Commission has no general competence to intervene in favour of EU citizens' fundamental rights. Its competence can only be founded where the European Union law is at stake. In fact the questions related to the right of association of the militaries in Portugal is without any European Community law dimension. As such, it should be resolved by the competent national authorities.

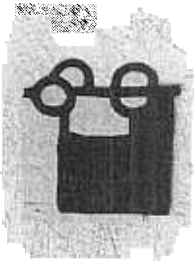
However, I would like to remind to you that, if a person considers that his or her fundamental rights have been violated, the possibility of appealing to the European Court of Human Rights, after the exhaustion of all domestic remedies, offers him guaranteed protection as the ultimate means.

If you want to have a more detailed discussion on the possibilities and limits of action of the European Commission in this particular area, I would suggest you to call Mr Aristotelis Gavriiadis (tel. 02 29 91 053) member of our team, in order to fix an appointment.

Yours Sincerely,

Alain BRUN





EUROMIL  
OFFICE OF THE COMMISSIONER  
FOR HUMAN RIGHTS

22. Dez. 2005

BUREAU DU COMMISSAIRE  
AUX DROITS DE L'HOMME



COUNCIL OF EUROPE  
CONSEIL DE L'EUROPE

Pr 21

HC

ZK u. ZDA Portugal

22 Dez. 2005  
EUROMIL

Bauke SNOEP  
President of EUROMIL  
33, avenue du Général de Gaulle  
B - 1050 Bruxelles

Reference: CDH 146/05

Strasbourg, 16 December 2005

Dear Sir,

With some delay, the Office of the Commissioner for Human Rights of the Council of Europe has received your communication and instructed me to reply on his behalf.

The Commissioner for Human Rights is an independent organ of the Council of Europe entrusted with the tasks of promoting the effective observance and full enjoyment of human rights in Europe. To this end, the Commissioner addresses reports, recommendations and opinions to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe as well as to the authorities of the 46 member States of the Council of Europe.

In accordance with his mandate, the Commissioner is not empowered to take up individual complaints. Therefore, he is unable to take individual actions concerning the disciplinary charges brought against certain Portuguese soldiers.

However, the Commissioner has taken note of the information concerning the right of association for military personnel in Portugal and he will consider the possibility of raising this issue in his future contacts with the Portuguese authorities.

Yours sincerely,

Manuel LEZERTUA  
Director

*Council of Europe*  
*The Secretary General*

Strasbourg, 29 December 2005

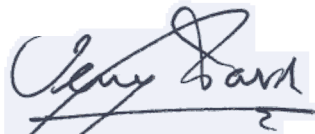
Dear Mr Snoep,

Thank you for your letter of 29 November about the situation of Portuguese military personnel.

You raise several issues about the consultation rights of representative organisations of the professional staff of the armed forces as well as the freedoms of association and expression of individual members of these forces.

As you may be aware, independent human rights mechanisms exist within the Council of Europe with competence to examine allegations of this type. I would draw your particular attention to the collective complaints procedure under the European Social Charter and to the right of individual application under the European Convention on Human Rights. In these circumstances, I do not consider it appropriate for me to comment on the substance of the allegations set out in your letter.

Yours sincerely,



Terry Davis

Mr Bauke Snoep  
President  
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