



Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

JCC Circular 34 of 2014

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Dear Colleague

The Gardaí winning the 'right to strike' - Information

Most members will have seen the considerable news coverage this subject received, often under a headline similar to that laid out above. Understandably this has led to numerous enquires as to why this is not being pursued in either Scotland or across the wider UK.

The newspaper headlines and wider media reporting are a simplification of the judgement and do not readily translate as being applicable to police federations in the UK. The reasons for this are many and indeed complex but the main issues are these.

Background

Police Officers in Ireland (Gardaí) were denied the right to sit down and negotiate on their pay and wider conditions of service. This issue became more stark during the period since the financial crisis when widespread reductions to pay, pension and other conditions of service were being applied across the whole of the public sector. The Irish Government negotiated with the Irish Trade Union Congress (ITUC) but not with the representative Gardaí bodies. The Gardaí staff associations were not permitted by law to join the ITUC.

On behalf of the Association of Garda Sergeants and Inspectors (AGSI) the European Confederation of Police (EuroCOP) raised a collective complaint¹ under an additional protocol of the European Social Charter (ESC) with the European Committee on Social Rights (ECSR). This complaint was multi-faceted but in simple terms contained allegations that police officers in Eire were denied the right to join trade unions and the right to strike.

Ruling

The ECSR rejected the complaint the Gardaí were unable to join trade unions but did uphold that the prohibition on the AGSI joining the ITUC was disproportionate.

The ECSR also upheld the complaint that in denying the AGSI the right to collectively bargain that "the police representative associations had not been provided with a means to effectively represent their members in all matters concerning their moral and material interests".

The ECSR further upheld the complaint (by a 6/5 majority) that the absolute prohibition on the right to strike could not be justified as the Irish Government had failed to demonstrate that there was a pressing social need for an absolute prohibition, and that they had not established that national security could not be maintained by lesser restrictions on the right to strike, such as an alternative mode and form of industrial action, rather than only by an absolute prohibition.

¹ European Social Charter Collective Complaint No 83/2012

Points of law

A decision of the ECSR is not a legal judgment. Its reports and recommendations are ultimately a matter for consideration by the Council of Ministers which may make recommendations to be addressed by individual states. By way of example, for quite some time, the ECSR has issued reports to the effect that the UK is in violation of certain provisions of the ESC.

Beyond requesting that states explain what they are doing to deal with the violations, there appears to be no enforcement mechanism open to the ECSR or indeed to the Committee of Ministers. The recommendations, whether or not endorsed by the Committee of Ministers, are not legally binding in the sense that they must be acted upon and give rise to sanctions. The ECSR itself is limited to expressing its view on whether the state whose actions are challenged has or has not complied with its obligations under the ESC and has no express power to enforce its own determinations.

It is important to understand that whilst both the UK and Ireland are signatories to substantial parts of the ESC, the UK did not sign up to the additional protocol allowing the pursuance of collective complaints through the ECSR. Ireland signed up to the additional protocol in 1995. Accordingly the ability to raise a collective complaint of a similar nature is not available to the UK police federations. The ESC does not provide a mechanism whereby the SPF (or any other UK based police federation) could complain about the matters complained of by EuroCOP on behalf of the Garda.

Considerations

Whilst the ECSR findings have considerable political significance, the legal implications are somewhat less dramatic. Clearly the decision will be reviewed by all governments and all police unions, associations and federations but does not compel any compliance. The Home Secretary has made it clear the police officers in the UK will never be afforded the right to strike. The UK (as the member state) cannot be compelled to do anything following this ruling. Employment legislation is a matter reserved to the UK Government.

That being said political pressure is far from worthless. The ability to cite a judgement such as this is a tremendous asset and one which further reinforces the unique nature of what it is to be a police officer and the restrictions placed upon us.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Steele', with a horizontal line drawn through the middle of the signature.

Calum Steele
General Secretary