

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



25 May 2007

Case document No. 2

**European Council of Police Trade Unions (CESP)
v. Portugal**
Complaint n° 37/2006

**WRITTEN SUBMISSIONS FROM THE GOVERNMENT ON
THE MERITS**

TRANSLATION

Registered at the Secretariat on 25 May 2007

Submissions by the Portuguese authorities

In reply to the request made in the relevant letter, I would like to make the following submissions:

Under section 62, para. 1 of Legislative Decree No. 275-A/2000 of 9 November 2000 (the Criminal Police Act – *LOPJ*), criminal police personnel other than manual and auxiliary staff form a senior and special branch of the public service.

Furthermore, the criminal police are required to offer a permanent service (section 79, para. 1 of the *LOPJ*).

For these reasons among others, officials working in the criminal investigation and criminal investigation support branches have higher salary scales than other public officials, comprising, in particular, the specific pay scales set out in the tables appended to the *LOPJ* (see section 16 of Legislative Decree No. 184/89 of 2 June 1989) and a supplement to compensate for the requirement to be permanently available for duty.

Section 79, para. 6, of the *LOPJ* stipulates that this bonus corresponds to 25% of the basic remuneration detailed in the tables referred to in the paragraph above.

It is clear therefore that, under the legislation, the bonus is not paid separately; instead it is included in the basic remuneration received every month. The bonus is therefore already integrated into the pay scales.

There can be no doubt about this fact, as the statutory text which sets it out is clear and unambiguous.

What this means is that if the bonus did not have legislative force, these officials would receive a lower level of basic remuneration.

In short, the complainants' demand that a so-called reduction in remuneration be rectified is totally unjustified since the bonus is already paid as an integral part of police remuneration and of their salary scale and, as a result, the recipients already benefit from a higher level of remuneration than they would if their entitlement to a bonus was not enshrined in law.

It is for this reason that the complainants are wrong to claim, as they do in the paragraph just before the conclusion to the complaint, that while their demand for a bonus to compensate for the fact that they are permanently on call has been satisfied, there has actually been a reduction in remuneration – which would imply that the entitlement to a bonus is no more than a legal device and hence purely a paper victory.

As to the manner in which the entitlement to the bonus is enshrined in law – a question which is of particular relevance to this complaint because the complainants have constructed their case on the theory that the bonus is not paid, having ultimately acknowledged that the law satisfies the requirements of the Charter – it has to be conceded that the legal arrangement adopted departs somewhat from the standard model for a pay system.

Under section 15, para. 1 of Legislative Decree No. 184/89 of 23 December 1989, the remuneration system comprises basic remuneration, social benefits, meal allowances and additional allowances.

In other words, salary bonuses must be distinguished from basic remuneration and not included in it.

This principle is reflected in section 5 of Legislative Decree No. 353-A/89 of 16 October 1989, in which it is stated that basic pay comprises “category” and “duty” remuneration, to which bonuses may be added.

At all events, the fundamental issue raised by the complainants – the entitlement to payment of a bonus to compensate for being permanently on call – has not been called into question by the way in which this right has been given legislative force, for, as we saw above, the bonus is well and truly paid, without fail or interruption.

At the most, it could be argued that there has been a breakdown in proper legislative method, deriving from the miscategorisation and the failure to separate out a bonus, as required by the general rules on the remuneration system. However, the error cannot be rectified by creating a new bonus which would replicate or duplicate one which is already paid by means of an increase in basic remuneration.

Lastly, as is stated in the preamble to the *LOPJ* itself, the *LOPJ* was drawn up in accordance with Act 23/98 of 26 May 1998 on the exercise of collective bargaining rights and employee participation in the public service. Consequently, the allegation of a failure to comply with paragraphs 1 and 2 of Article 6 in Part II of the European Social Charter should also be refuted.

Yours faithfully

The National Director
(Alípio Ribeiro)