

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



21 December 2006

**Document No.1**

**European Council of Police Trade Unions (CESP)  
v. France**  
Complaint No.38/2006

## **COMPLAINT**

Registered at the Secretariat on 20 October 2006



**Subject: Complaint lodged by the European Council of Police Trade Unions against France for the incorrect application of Article 4, paragraph 2 of the revised European Social Charter.**

## **I. Admissibility**

### **1. Applicability to France of the revised European Social Charter and the 1995 Protocol to the European Social Charter providing for a system of collective complaints**

France signed the European Social Charter of 1961 on 18 October 1968 and deposited its instruments of ratification on 9 March 1973. It signed the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints on 9 November 1995 and the revised European Social Charter on 3 May 1996 and ratified both on 7 May 1999.

### **2. Applicability to France of Article 4, paragraph 2 of the revised European Social Charter**

According to the declarations contained in the instrument of ratification of the revised European Social Charter of 1996 deposited by France on 7 May 1999, France considers itself bound by all the Articles in Part II of the revised European Social Charter.

### **3. Compliance by the European Council of Police Trade Unions with the requirements of the Additional Protocol**

#### **3.1. Compliance with Article 1(b) of the Additional Protocol of 1995**

The European Council of Police Trade Unions<sup>1</sup> is an international non-governmental organisation with participatory status with the Council of Europe and a member of the INGO Liaison Committee. It is included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints<sup>2</sup>.

#### **3.2. Compliance with Article 3 of the Additional Protocol of 1995**

The ECPTU's activities give it the necessary competence in the matters about which it is complaining.

Article 8 of its articles of association<sup>3</sup> provides as follows:

The aim of the ECPTU is:

1. to unite the police officers who are members of its constituent organisations;
2. to fight for the full exercise of trade union rights and against any unwarranted restriction on European police officers' fundamental and statutory rights by steadfastly opposing any breach thereof;
3. to take action to enhance and harmonise the work, pay and living conditions of European police officers;
4. to defend the pecuniary and non-pecuniary interests of its constituent organisations and their members in the European institutions and courts.

The ECPTU is also committed to carrying out any other lawful activity which may be of benefit to it or its members.

**It asks the Governments of its 16 member countries to take the necessary steps to sign, ratify and apply the revised European Social Charter and the additional protocol thereto.**

**In this connection, it calls for all European police officers to be protected from discrimination in respect of social and human rights** (Executive Committee meeting, Lille, France, November 1998)<sup>4</sup>.

The ECPTU takes an active part in INGO activities at the Council of Europe and is competent in areas of activity connected with social rights and the European Social Charter. It was the instigator of Collective Complaint no. 11/2001.

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<sup>1</sup> Referred to hereinafter as the ECPTU.

<sup>2</sup> Letter of 15 May 2006 to the President of the ECPTU from Mr Régis Brillat, Executive Secretary, DG II, Secretariat of the European Social Charter (Appendix I).

<sup>3</sup> Articles of association of the ECPTU (appendix 2);

<sup>4</sup> Lille final resolution (Appendix 3).

It is also a member of the INGO Groupings on Human Rights, Extreme Poverty and Social Cohesion and Civil Society and Democracy in Europe.

#### **4. Compliance with Rule 1 of the rules of procedure of the collective complaints system**

Article 25 of the ECPTU's articles of association states that the President is the legal representative of the ECPTU, representing it in all European and national, public and private authorities and institutions.

#### **II. Legislation and measures adopted by France with regard to the right to just conditions of work, fair remuneration and an increased rate of remuneration for overtime work**

As mentioned above, France is bound by Articles 2, paragraph 1, and 4, paragraph 2, of the revised European Social Charter, under which it acknowledges "...the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases".

#### **III. The practical situation of senior police officers with regard to French legislation on the payment of overtime**

##### **1. Decree No. 2005-716 of 29 June 2005**

Senior French police officers are members of the national, or state, public service. Decree No. 2005-716<sup>5</sup> of 29 June 2005 establishes the particular status of the national police operational "command" corps (*corps de commandement*).

On 1 April 2006, command corps salary points ranged from the grades of Police Lieutenant, step 1 (gross salary point 414), to Senior Operational Commander, step 2 (gross salary point 880).

This decree refers to Act No. 83-634<sup>6</sup> of 13 July 1983, as amended, on the rights and obligations of public servants, and Act No. 84-16<sup>7</sup> of 11 January 1984, as amended, laying down the rules governing the national public service.

##### **2. Regulations on the national public service**

###### **2.1. Decree No. 2000-815 of 25 August 2000**

This decree lays down the rules concerning working hours in the national public and judicial services.

Article 1, paragraph 2, states that "*working hours shall be calculated on the basis of a maximum real annual working time of 1 607 hours, excluding any overtime that may be worked*".

Article 4 states that "*for employees whose overtime is recorded on timesheets, extra hours shall be taken into account as soon as the limits set by the standard work period are exceeded. Compensation shall be granted in the form of time off within a time limit set by an order by the minister concerned, the minister responsible for the public service and the minister responsible for the budget, on the advice of a ministerial joint technical committee. Failing this, financial compensation shall be paid*".

###### **2.2. Decree No. 2002-60<sup>8</sup> of 14 January 2002**

This decree lays down the rules concerning hourly payments for overtime in the national public service.

Article 1 describes the field of application of the decree as follows: "*Civilian employees of the state and its public administrative services may be awarded hourly payments for overtime under the conditions and according to the procedures set by this decree*".

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<sup>5</sup> Appendix 4

<sup>6</sup> Appendix 5

<sup>7</sup> Appendix 6

<sup>8</sup> Appendix 8

Article 2-II provides as follows: “II. – Hourly payments for overtime may also be awarded to category-B public servants whose pay is above gross salary point 380 if they perform functions, belong to corps or grades or occupy posts that require them to work overtime, subject to compliance with the requirements of the second paragraph of Article 2-I above. A joint order of the ministers responsible for the budget and the public service and the minister directly concerned shall establish the list of corps, grades, posts and functions which satisfy these conditions”.

Article 7 makes the following provision for the payment of overtime:

*“If compensation is not provided in the form of a rest period, overtime payments shall be made as follows.*

*Hourly rates shall be determined solely on the basis of the gross annual salary of the employee concerned at the time when the work was carried out, plus any residence allowance paid. The amount thus obtained shall be divided by 1 820.*

*This hourly rate shall be multiplied by 1.07 for the first fourteen hours of overtime and by 1.27 for all subsequent hours”.*

Article 8 states that “overtime payments shall be increased by 100% when extra work is carried out at night and by two-thirds when it is carried out on a Sunday or public holiday. The two increases may not be combined”.

### **3. Regulations on the national police force**

#### **3.1. The General Employment Regulations of the national police force**

The order of 6 June 2006<sup>9</sup> on the General Employment Regulations of the national police force contains a section (Section 5) entitled “*Organisation of work*”.

Article 113-30 states that the principles relating to working hours and annual leave that apply in the national public service also apply to police officers.

It is also stated in Article 113-34 that officers performing additional services outside standard non-flexible working time (on call or standby, summons for duty or exceeding daily or scheduled working hours) are entitled: “*to a lump-sum payment under the conditions set by decree*”.

The decree referred to here is Decree No. 2000-194 of 3 March 2000.

#### **3.2. Decree No. 2000-194 of 3 March 2000**

Decree No. 2000-194<sup>10</sup> of 3 March 2000 sets out the conditions under which payments for overtime are awarded to national police officers.

Article 1 of the decree describes its field of application as follows: “*National police officers other than officers in the senior planning and management corps (corps de conception et de direction) may be granted overtime payments when required to perform additional services not eligible for compensatory time off*”.

Another article describes how this payment should be calculated: “*the hourly rate of this payment shall be calculated on the basis of the gross annual salary subject to pensions deductions corresponding to gross salary point 342, divided by 1 900*”.

#### **3.3. Instruction NOR INTCO200190C of 18 October 2002**

Instruction NOR INTCO200190C of 18 October 2002<sup>11</sup> from the Ministry of the Interior, Internal Security and Local Freedoms lays down the new rules on the organisation of the work of national police officers as a consequence of the entry into force on 1 January 2002 of Decree No. 2000-815 of 25 August 2000 on the adjustment and reduction of working hours in the national public service.

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<sup>9</sup> Appendix 7

<sup>10</sup> Appendix 9

<sup>11</sup> Appendix 10

Paragraph 1.3.3 on overtime provides that “*overtime is work carried out outside the standard work period*”.

Paragraph 1.3.6 on compensation for and payment of overtime states that compensation may be paid for additional services performed by national police officers under certain conditions set by decree.

#### **IV. Reports by the French Government on the application of the revised European Social Charter**

In the second report on the application of the revised European Social Charter submitted by the French Government (for the period from 1 January 1999 to 31 December 2000), the following replies were given concerning the application of Article 4, paragraph 2 to the French public service:

##### Question A:

*“Please mention what provisions apply according to legislation and collective agreements as regards overtime pay, the method used to calculate the increased rates of remuneration and the categories of work and workers to which they apply.*

*Please specify what provisions apply in respect of overtime pay on Saturdays, Sundays and other special days or hours (including night work)”.*

##### Answer A: Rules on overtime

###### ➤ Public service

Decree No. 2000-815 of 25 August 2000 on the adjustment and reduction of working hours in the national public service provides that “for employees whose overtime is recorded on timesheets, extra hours shall be taken into account as soon as the limits set by the standard work period are exceeded. Compensation shall be granted in the form of time off within a time limit set by an order by the minister concerned, the minister responsible for the public service and the minister responsible for the budget, on the advice of a ministerial joint technical committee. Failing this, financial compensation shall be paid”.

A reform of overtime payments has just been adopted, the main aim being to bring the system into line with the new legislation on the adjustment and reduction of working hours.

The new rules are as follows:

Decree No. 2002-60 of 14 January 2002 on hourly overtime payments states that overtime is work carried out at the request of a head of department outside the limits of the standard work period. A joint order establishes the list of category-B and C corps, grades and posts whose tasks involve the performance of overtime eligible for hourly payments. Category-A staff – in the senior planning and management corps – are subject to a mandatory lump-sum system (see below).

Payment of overtime also requires the establishment of automated control mechanisms (or a verifiable record of declarations in departments with under ten employees or itinerant employees) so that overtime can be calculated accurately.

Overtime can be offset in whole or in part by a compensatory rest period. The same period of overtime cannot give rise both to a compensatory rest period and to overtime payment.

Overtime must not exceed 25 hours a month, save for a limited period in exceptional circumstances (such as a natural disaster) on a decision by the authorities, of which staff representatives must be informed immediately, or by an interministerial order with regard to certain functions whose nature justifies such a decision (to which safeguards on working hours and rest periods still apply).

Where compensation is not provided in the form of a rest period, hourly payments are calculated on the basis of the gross annual wage of the employee concerned, plus any residence allowance paid. The amount thus obtained is divided by 1820.

##### **Overtime rates are as follows:**

- For the first 14 hours: hourly pay multiplied by 1.07;
- from the 15<sup>th</sup> hour onwards: hourly pay multiplied by 1.27;
- overtime pay is increased for work at night (by 100%) and on Sunday and public holidays (by 2/3).  
The two increases may not be combined.

Staff not covered by the hourly payments system are awarded lump-sum payments for overtime.

Staff who are not paid an hourly rate for overtime in accordance with the arrangements described above (particularly category A staff – in the senior planning and management corps) are covered by Decree No. 2002-62 on the lump-sum payment for overtime (IFTS) in central government or Decree No. 2002-63 of 14 January 2002 on the lump-sum payment for overtime in decentralised services.

Although it is a lump sum, the amount of the IFTS varies according to the amount of extra work done and the precise nature and extent of the duties performed by the individuals concerned.

The two different types of overtime payment (hourly and lump-sum) may not be combined. State employees whose duties require them to be provided with accommodation are not entitled to the IFTS.

Two orders – one relating to central government authorities and the other to decentralised services – set the amount of the IFTS according to the employee's grade or category.

#### Question B:

“Please mention any special cases for which exceptions are made. Please indicate, where appropriate, whether measures permitting derogation from legislation in your country regarding daily and weekly working hours (see Article 2 para. 1) have an impact on remuneration or compensation of overtime”.

#### **Answer B: Exceptional measures**

**There is no statutory provision for extra increases in rates for overtime carried out beyond the legal limits. The standard rules on increased rates and the award of compensatory rest periods apply. However, where these exceptions are made in accordance with a collective agreement, compensation, including financial compensation, may be provided for in the agreement.**

**Furthermore, where the daily rest period is reduced from 11 to 9 hours, employers are bound by the law to grant a rest period at some later stage to compensate for the lost time.**

In the public service, any work performed outside the weekly limits set by the standard work period gives the right to compensation in the form of time off or pay.

#### **V. The practical circumstances of French senior police officers with regard to the revised European Social Charter**

Analysis and comments:

##### **1. On the situation in question**

Following events in France in the first half of 2006 prompted by protests against a bill on the establishment of a new work contract, the Ministry of the Interior decided to arrange for payment for the overtime carried out by police officers as a result of these events.

In a letter of 16 June 2006<sup>12</sup>, the Director General of the National Police Force informed the Secretary General of the National Union of Senior Police Officers<sup>13</sup> of this decision, stating as follows:

*“The national police force was heavily mobilised from the end of January to April 2006 to deal with the disruptions to public order brought about by the movements opposed to the first employment contract (contrat de première embauche – CPE).*

*The task of policing demonstrations, clearing public buildings and stopping and questioning suspected offenders required an intense and lasting police presence, particularly for uniformed officers and the mobile state security police units (compagnies républicaines de sécurité – CRS).*

*This excessive workload resulted in a large amount of overtime for national police officers and new budget appropriations have been agreed to pay for the extra hours worked so that they will not have to be offset by absences.*

*The extra pay will be added to police officers' salaries for the month of July 2006”.*

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<sup>12</sup> Appendix 12

<sup>13</sup> Founding member of the ECPTU in 1998, referred to hereinafter as the SNOP.

No reference is made to the fact in this letter but the Ministry of the Interior plans to calculate overtime payments on the basis of a flat rate of 9 euros (EUR) gross per hour of overtime, irrespective of the grade or salary point of the police officer concerned.

In the light of this situation, the Secretary General of the SNOP wrote to the Director General of the National Police on 7 July 2006<sup>14</sup>, complaining about the proposed method of compensation.

In a written reply of 27 July 2006<sup>15</sup>, the Director General pointed out that the proposed compensation for overtime would be in accordance with Decree No. 2000-194 of 3 March 2000.

As a result, in accordance with Decree No. 2000-194, all the payments for overtime carried out as a result of the events of the first half of 2006 were based on a flat rate of EUR 9.10 gross per hour of overtime, regardless of grade or salary point.

These are the circumstances which prompted the ECPTU to file the current complaint.

## **2. On the compliance of public service law with Article 4, paragraph 2**

An analysis of the statutes applicable to the national public service reveals that, under Decree No. 2002-60 of 14 January 2002 (see Articles 1 et seq.), the French state grants French public servants the right to payment for additional services if they exceed the standard work period.

Overtime payments are made if compensation is not provided in the form of a rest period (see Article 7).

It should be noted that the basis on which these payments are calculated (under Articles 7 and 8) seems to comply with Article 4, paragraph 2 of the revised Charter as hourly wages are increased for overtime and the increase is calculated on the basis of the gross annual wage of the person concerned.

However, these rules relate only to certain categories of "*civilian employees of the state*" as payments are restricted to "*category-C and category-B public servants if their pay is no higher than gross salary point 380*" (see Article 2) and to other "*category-B public servants*".

Measures of this sort cannot be applied to the senior police officers comprising the operational command corps of the national police force, since Decree No. 2005-716 of 29 June 2005 places the corps in category A of the national public service.

Clear evidence of this is provided by the salary scale of the corps in question, which ranges from the grade of Police Lieutenant, step 1 (gross salary point 414) to that of Senior Operational Commander, step 2 (gross salary point 880), and by the academic qualifications required of such officers on recruitment (at least 3 years of higher education).

Consequently, in this respect, France fails to comply with Article 4, paragraph 2 of the revised European Social Charter.

## **3. - On the compliance of the law on the national police force with Article 4, paragraph 2**

### **3.1. On the failure to apply Decree No. 2002-60 of 14 January 2002**

When considering payment for the overtime resulting from the protests against the government in the first of half of 2006, it is important to note that the departments of the Ministry of the Interior responsible for the command corps of the national police force applied the relevant provisions of Decree No. 2000-194 of 3 March 2000 without taking any account of those of Decree No. 2002-60 of 14 January, as cited above.

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<sup>14</sup> Appendix 11

<sup>15</sup> Appendix 13



## **2.2. Decree No. 2000-194 of 3 March 2000**

This decree sets out the conditions under which payments for overtime are awarded to national police officers.

Under Article 4 of this decree, the hourly rate is “*calculated on the basis of the gross annual salary subject to pensions deductions corresponding to gross salary point 342, divided by 1 900*”.

In no respect does this decree satisfy the undertakings entered into by the French state under Article 4, paragraph 2 of the revised European Social Charter.

The violation is flagrant in two respects:

- it establishes a flat rate of pay regardless of grade and step;
- the basis on which payments are calculated, i.e. gross salary point 342, is considerably lower than that used for step 1 of grade 1 of the command corps – gross salary point 414.

## **VI - Conclusion**

Accordingly, this complaint, lodged by the European Council of Police Trade Unions, asks the Committee to find that there has been a violation by France of Article 4, paragraph 2, of the revised European Social Charter and asks France to bring the situation into conformity by applying Decree No. 2002-60 of 14 January 2002 to the national police officers of the command corps, particularly as regards payment for the overtime worked as a result of the demonstrations in France in the first half of 2006.

*The President of the ECPTU*  
Branko Prah



## **Appendices to the complaint**

Appendix 01: Letter of 15 May 2006 to the President of the European Council of Police Trade Unions from Mr Régis Brillat, Executive Secretary, DG II, Secretariat of the European Social Charter (appended to the complaint).

Appendix 02: Articles of association of the European Council of Police Trade Unions (ECPTU).

Appendix 03: Final resolution of the ECPTU (Lille, 1998).

Appendix 04: Decree No. 2005-716 of 29 June 2005.

Appendix 05: Act No. 83-634 of 13 July 1983, as amended.

Appendix 06: Act No. 84-16 of 11 January 1984, as amended.

Appendix 07: Order of 6 June 2006 on the General Employment Regulations of the national police force.

Appendix 08: Decree no. 2002-60 of 14 January 2002 on hourly overtime rates in the national public service.

Appendix 09: Decree No. 2000-194 of 3 March 2000 on the conditions for the payment of overtime to national police officers.

Appendix 10: Instruction NOR INTCO200190C of 18 October 2002 from the Ministry of the Interior, Internal Security and Local Freedoms.

Appendix 11: Letter from the SNOP to the Director General of the National Police Force (DGPN) (Ref. BN/JMB/2006 No. 200) of 7 July 2006;

Appendix 12: Letter from the DGPN to the SNOP (Ref. PN/CAB/No. CPS 06-14671) of 16 June 2006;

Appendix 13: Letter from the DGPN to the SNOP (Ref. DAPN/AGF/RR1 No. 2079) of 27 July 2006.