

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



29 August 2007

Case document No. 3

European Council of Police Trade Unions (CESP) v. France

Complaint No.38/2006

GOVERNMENT'S SUBMISSIONS ON THE MERITS
(translation)

Registered at the Secretariat on 29 August 2007

In a letter of 21 December 2006, the European Committee of Social Rights drew the Government's attention to the complaint lodged with it by the European Council of Police Trade Unions on 20 October 2006. This collective complaint was declared admissible on 19 March 2007. The Committee invited the Government to make written submissions on the merits of the complaint by 8 June 2007.

Firstly, with regard to the exhaustion of domestic remedies

The French Government notes that the main allegations made by the complainant trade union have not been examined in the French domestic courts. Pursuant to the constitutional principle of the precedence of treaties over law¹, the courts could have determined whether the contested decree before the Committee is compatible with the European Social Charter.

Accordingly, the French Government submits that the complainant organisation has failed to exhaust domestic remedies, thereby breaching a principle that is generally accepted by convention-based committees, namely the subsidiary nature of complaints made to them.

Opinion of the European Committee of Social Rights

The European Committee of Social Rights has already had occasion to express its opinion on the scope of Article 4§2. In its view, Article 4§2 requires that employees working overtime must be paid at a higher rate than the normal wage rate. Therefore, granting leave to compensate for overtime is compatible with Article 4§2 only on condition that this leave is longer than the overtime worked (see, in this connection, Conclusions XIV-2, Belgium, pp. 133-136).

The Committee also authorises exceptions to Article 4§2. In particular, it recognises that civil servants and senior managers may be treated as special cases (see, in this connection, Conclusions X-2, Ireland, p. 62).

In the former case, exceptions are only possible for senior civil servants. Derogations from the principle of increased pay for overtime without any distinction according to level of responsibility are not compatible with Article 4§2 (see, in this connection, Conclusions XV-2, Poland, pp. 419-420).

1. ¹ This principle is laid down by Article 55 of the Constitution in the following terms: "Treaties or agreements regularly ratified or approved have, from the time of publication, an authority superior to that of laws, provided, in the case of each agreement or treaty, that it is applied by the other party."

2.

The rules on overtime for police officers in French domestic law

To take account of the special nature of police officers' work, particularly the irregular hours they may be asked to work in times of exceptional disruptions of law and order, the regulatory authorities have decided to set up a special system for the payment of their overtime.

National police officers are covered by separate rules to those established by Decree No. 2002-60 of 14 January 2002. Under this decree all public servants are entitled to hourly payments for overtime where they are not entitled to a compensatory rest period (Article 7 of the decree). Furthermore, Article 5 of the decree of 14 January 2002 states: "*The hourly payments for overtime provided for in this decree shall not include flat-rate payments for overtime, payments received by teaching staff covered by special overtime rules or any other payment of a similar nature*".

It follows that staff entitled to compensatory rest periods or covered by special overtime rules will not be entitled to hourly payments for overtime.

In the present case, payment of overtime by national police officers is covered by two specific provisions. Article 22 of Decree no. 95-654 of 9 May 1995 provides: "*Under the conditions set by the employment regulations established by ministerial decree, members of the national police force may be asked to perform their duties, both during the day and at night, outside the limits of the standard working week. Duty performed beyond the standard working week shall be compensated by equal or equivalent rest periods, which must be granted at the earliest opportunity, subject to the needs of the service, or, under conditions established by decree, by a suitable overtime payment system*".

According to this provision, national police officers are entitled to compensation for overtime in the form of rest periods or payments. This overtime is subject to special rules, which differ from the general rules on public servants laid down by Decree no. 2000-194 of 3 March 2000. Under Article 1 of the Decree of 3 March 2000, these payments may be made to all national police officers other than those in the senior planning and management corps (*corps de conception et de direction*). Article 3 of the Decree of 3 March 2000 establishes the basis for calculating the hourly rate of this payment, which takes the form of a lump sum.

The complainant organisation's allegations

The European Council of Police Trade Unions complains that Decree No. 2000-194 of 3 March 2000 establishes a system of flat-rate payments for overtime and that the rate adopted, namely gross salary point 342, is lower than step 1 of grade 1 of the command corps.

The French Government's response

The civil service, to which national police officers belong, has a special status in French domestic law determined by legislation and the regulatory authorities. The different specialist groupings, or *corps*, of civil servants are governed by the general principles of civil service law contained chiefly in Act No. 83-634 of 13 July 1983 on the rights and obligations of public servants and by the specific rules relating to their *corps*, which are established, save in exceptional circumstances, by the regulatory authorities.

One of the principles of the civil service is the general rule that public servants will be paid on the basis of the so-called indivisible thirtieth. The basis of this rule is Article 1 of Decree No. 62-765 of 6 July 1962: "*Salaries and associated emoluments paid to employees of the state and other state bodies of an administrative nature covered by section 4 of Finance Act No. 61-825 of 29 July 1961 shall be paid on a monthly basis in arrears. Each month shall be deemed to contain thirty days irrespective of its actual number of days. Each twelfth of the annual allocation shall, accordingly, be divided by a thirtieth, and each thirtieth shall be indivisible.*"

According to this principle, public servants are paid not by the hour but by the day and each month is deemed to contain 30 days, irrespective of the month concerned. Strictly speaking therefore, the concept of an increased rate for any extra hours worked cannot be reconciled with the principles governing the civil service.

The special nature of this system explains the special features pertaining to payment of overtime in the civil service. Overtime in the civil service may be compensated in the form of hourly payments for staff in grades B and C and flat-rate payments for staff in grade A.

It follows from this that national police officers are covered by special rules in conformity with Article 4§2 of the Charter and the case-law of the Committee. As pointed out previously, national police officers can be considered to be covered by rules that comply with the case-law of the European Committee of Social Rights, provided that they are entitled to compensatory rest periods or payment for overtime. Rest periods are, of course, granted according to the needs of the service, which means that they are not always longer than the actual overtime worked. However, this exception to the provisions of Article 4§2 is in keeping with others that the Committee has already made with regard to public servants.

Where it is not possible to organise compensatory rest periods, particularly because of their scale, national police officers are paid for overtime worked. This option, established by Decree No. 2000-194 of 3 March 2000, was applied to officers of the mobile state security police units (*compagnies républicaines de*

sécurité – CRS) for the overtime they worked during the exceptionally large street demonstrations in the first three months of 2006.

Under the Decree of 3 March 2000, it is possible to award national police officers who do not belong to the senior planning and management corps a flat-rate payment at a rate based on gross salary point 342. Opting for a flat-rate payment places officers, including those with a salary point higher than that adopted in the decree of 3 March 2000, on an equal footing regardless of salary point. This does not mean that the French government fails to comply with its obligations under Article 4§2 as the payments established by the Decree of 3 March 2000 are reserved for those sections of the national police which are not involved in planning or management tasks and hence a clear distinction is made according to levels of responsibility in accordance with the Committee's established case-law.

It should also be pointed out that national police officers' overtime is paid at a flat rate because overtime payments are an exceptional measure, the more usual means of offsetting overtime being compensatory rest periods.

In practice, the decision to adopt a single rate, with which the complainant organisation takes issue, can be considered to result in no real increase in the payment of national police officers, firstly because a fairly low rate was chosen and secondly because it was below the actual salary point of some of the officers concerned. However, this cannot in itself be considered to amount to a violation of Article 4 paragraph 2 of the revised Social Charter.

Bearing in mind that hourly rates do not exist in the civil service, the notion of an increased rate for overtime cannot strictly speaking be applied.

It should also be noted that Article 4 of the Social Charter allows for exceptions to the principle of increased rates for overtime "in particular cases".

In its case-law on the revised European Social Charter, the European Committee of Social Rights has confirmed the existence of exceptions to the principle of increased pay for overtime in accordance with Article 4, paragraph 2, under which the parties undertake to pay increased rates for overtime "*subject to exceptions in particular cases*".

For example, in Conclusions X-2 on Ireland (p. 62), dated 1 January 1988, the Committee noted that "*by virtue of the legislation and regulations in force, collective agreements and established practice, increased rates of remuneration were actually paid for overtime work in the public and private sectors, except to senior officials, management and workers for whom there are*

no arrangements for overtime” and that “in the absence of any of the provisions above, or in case of dispute, a worker [could] also bring an action before the Labour Court which [could] make an order granting wage increases for overtime” and held therefore that “Ireland complies with this provision of the Charter”.

Through this decision the Committee clearly indicated that it acknowledged that the Charter allowed states not to pay increased overtime rates to certain types of public servant, particularly senior public servants and managers.

Consequently, even if the Committee should consider in the present case that the system for increased payment for overtime applied to the command corps might lead in practice to a very small increase or even to none at all compared to their standard pay, it would still be obliged to find, in the light of the aforementioned case-law, that this situation did not entail a violation of the Charter.

The Committee will also note that the second condition established by its case-law for allowing exceptions to the principle of increased pay for overtime is met by the French government in this case, as civil servants objecting to their pay may appeal to the administrative courts for a full review of their case (*recours de plein contentieux*), a remedy through which they can obtain not only the setting aside of contested decisions relating to their career but also the reimbursement of any loss of earnings they consider themselves to have sustained.

With regard to the case that the complainant organisation specifically highlights, namely that of the operational command corps, it will be clear to the Committee that since this corps forms part of the police force’s management staff, it is not covered by Decree No. 2000-90 as cited above (see in this connection, Article 1 of the Decree). This corps therefore runs no risk of being paid at a salary point “*considerably lower than that used for step 1 of grade 1 of the command corps*” as the complainant organisation claims. On this point, the French Government wishes to draw the Committee’s attention to the fact that the complainant organisation itself acknowledges on page 7 of its submissions that Decree No. 2005-716 “*places the [command] corps in category A of the national public service*”

In the light of the foregoing comments, the French Government concludes that the complaint of a violation of Article 4§2 of the European Social Charter is unfounded and asks the European Committee of Social Rights to dismiss the complaint by the European Council of Police Trade Unions.

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