

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



1 August 2007

Case document No. 4

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

Complaint No.38/2006

**RESPONSE TO THE GOVERNMENT'S SUBMISSIONS ON
THE MERITS**

(translation)

Registered at the Secretariat on 1 August 2007



European Council of Police Trade Unions

International Non-Governmental Organisation registered with the Council of Europe

From
Mr Branko Prah
President of the
European Council of Police
Trade Unions

to

The Executive Secretary of the
European Social Charter
Council of Europe
Directorate General of Human
Rights and Legal Affairs
67075 STRASBOURG CEDEX

Lyon, 11 July 2007.

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.

Your Ref.: European Council of Police Trade Unions v. France – Complaint No. 38/2006

Dear Sir,

In a letter dated 12 June 2007, the European Committee of Social Rights forwarded us the observations of the French Government in response to our collective complaint of 20 October 2006, registered under the number 38/2006 and declared admissible in a decision of 19 March 2007.

You invited us to make submissions in reply to the arguments put forward by the Minister for Foreign Affairs on behalf of the French Government.

I – The alleged non-exhaustion of domestic remedies

The French Government argues that, because they were not raised in the domestic courts, our complaints are not admissible.

This argument is invalid, because:

- ✓ the French Government failed to refer to this ground of inadmissibility when it had the opportunity to do so;
- ✓ the collective complaint was declared admissible on 19 March 2007.

Furthermore, none of the provisions of the European Social Charter require domestic remedies to be exhausted before a case is brought before the Committee. In these circumstances, it is difficult to see how the hierarchy of norms and the constitution referred to by the French Government might justify this contention.

For all these reasons, this objection must be dismissed.

II. The practical circumstances of French senior police officers with regard to the Charter

1. On the situation in question

Following events in France in the first of half of 2006 prompted by protests against a bill to establish a new work contract, the Ministry of the Interior decided to pay overtime to the police officers concerned.

In a letter of 16 June 2006, the Director General of the National Police Force informed the Secretary General of the National Union of Senior Police Officers 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”.

No reference is made to the fact in this letter but the relevant departments of the Ministry of the Interior planned to calculate overtime payments on the basis of a flat rate of 9 euros (€) 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, complaining about the proposed method of compensation.

In a written reply of 27 July 2006, 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 € 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 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.

3.2. 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.

4. On the French Government's response

4.1. Preliminary comment on the Committee's position with regard to Article 4, paragraph 2

First of all, it should be emphasised that in the application of the Charter, Article 4, paragraph 2 is intrinsically linked to Article 2, paragraph 1, which guarantees the right to reasonable daily and weekly working hours. Employees working overtime must be paid at a higher rate than the normal wage rate (see Conclusions I, p.29).

However, the Committee has allowed exceptions to the principle of increased remuneration, particularly in the civil service, though the only exception that has been upheld applies exclusively to senior civil servants.

In this connection, it has been ruled that exceptions to a higher rate of overtime pay for all state employees or public officials irrespective of their level of responsibility (see Conclusions X-2, Ireland, p. 62) are not compatible with Article 4, paragraph 2 (Conclusions XV-2, Poland, pp. 419-420).

4.2. On the clear breach of Article 4, paragraph 2 of the Charter

4.2.1. - On the absence of “remuneration” of overtime

In its observations, the French Government completely ignores the real situation regarding overtime in the French National Police Force by readily implying that overtime is paid, though not at a higher rate.

Yet, this is not the case as only “*compensation*” is paid, at the same flat rate for all police officers, regardless of grade and step.

Clear evidence of this is provided by Article 4 of Decree No. 200-194 of 3 March 2000 (on which the Ministry of the Interior relied when paying for the overtime in respect of the demonstrations against the first employment contract), which requires that overtime be paid at a flat rate. This law makes no provision for any form of “remuneration”, as remuneration has to be linked to the grade of the officer concerned.

Under these circumstances, the conclusion has to be that this form of payment (flat-rate compensation) is prohibited by the Committee because it takes no account of the level of responsibility of the persons concerned (see Conclusions X-2, Ireland, p. 62, and Conclusions XV-2, Poland, pp. 419-420).

4.2.2. Reduced pay rates for overtime

In accordance with Article 4 of Decree No. 2000-194 of 3 March 2000, the Ministry of the Interior paid police officers in the operations corps (on basic or non-commissioned grades) and the command corps (senior police officers) at the same lump-sum rate of € 9.10 gross per hour of overtime.

If the French Government's argument that Decree No. 2000-194 is compatible with Article 4, paragraph 2 of the Charter were accepted, this would be tantamount to agreeing to police officers' being paid at a **lower** hourly rate for overtime.

In reality, this lump-sum payment per hour of overtime amounts to only a percentage of the "standard" hourly wage, varying according to the grade and step of the officer concerned and ranging from 36.87% (for senior operational commanders on step 2) to 89.04% (for cadet police lieutenants). The following comparative table clearly highlights this situation:

Grade	Step	I.M. (3)	Salary		Difference (2)		Overtime rate as percentage of hourly rate
			Annual	Hourly rate (€) (1)	€	%	
Senior Operational Commander	2	729	€ 39 666.00	24.68	- 15.58	- 63.13 %	36.87 %
Senior Operational Commander	1	696	€ 37 869.96	23.56	- 14.46	- 61.38 %	38.62 %
Operational commander	5	687	€ 37 380.96	23.26	- 14.16	- 60.88 %	39.12 %
Operational commander	4	659	€ 35 856.96	22.31	- 13.21	- 59.21 %	40.79 %
Operational commander	3	623	€ 33 897.96	21.09	- 11.99	- 56.85 %	43.15 %
Operational commander	2	590	€ 32 103.00	19.97	- 10.87	- 54.43 %	45.57 %
Operational	1	547	€ 29	18.52	- 9.42	- 50.86	49.14 %

commander			763.00			%	
Captain	Excep.	642	€ 34 932.00	21.73	- 12.63	- 58.12 %	41.88 %
Captain	5	615	€ 33 462.96	20.82	- 11.72	- 56.29 %	43.71 %
Captain	4	586	€ 31 884.96	19.84	- 10.74	- 54.13 %	45.87 %
Captain	3	559	€ 30 416.04	18.92	- 9.82	- 51.90 %	48.10 %
Captain	2	529	€ 28 784.04	17.91	- 8.81	- 49.19 %	50.81 %
Captain	1	505	€ 27 477.96	17.09	- 7.99	- 46.75 %	53.25 %
Lieutenant	8	552	€ 30 035.04	18.69	- 9.59	- 51.31 %	48.69 %
Lieutenant	7	528	€ 28 728.96	17.87	- 8.77	- 49.08 %	50.92 %
Lieutenant	6	502	€ 27 314.04	16.99	- 7.89	- 46.44 %	53.56 %
Lieutenant	5	479	€ 26 063.04	16.21	- 7.11	- 43.86 %	56.14 %
Lieutenant	4	454	€ 24 702.96	15.37	- 6.27	- 40.79 %	59.21 %
Lieutenant	3	436	€ 23 723.04	14.76	- 5.66	- 38.35 %	61.65 %
Lieutenant	2	408	€ 22 200.00	13.81	- 4.71	- 34.11 %	65.89 %
Lieutenant	1	369	€ 20 078.04	12.49	- 3.39	- 27.14 %	72.86 %
Lieutenant	Trainee	334	€ 18 173.04	11.30	- 2.20	- 19.47 %	80.53 %
Lieutenant	Cadet	302	€ 16 431.96	10.22	- 1.12	- 10.96 %	89.04 %

(1) – The hourly rate was calculated by dividing the gross annual salary by the standard working hours per year for a civil service post, i.e. 1 607 hours.

(2) – The difference was calculated by subtracting the gross lump-sum payment for CPE-related hours , i.e. € 9.10.

(3) – Adjusted salary point.

Applying these provisions inevitably results in lower overtime pay whereas Article 4, paragraph 2 requires it to be higher.

Under these circumstances, there can be no doubt that the provisions referred to in the collective complaint fail to comply with Article 4, paragraph 2 of the Charter.

4.2.3. On the need for an increased pay rate for overtime

Furthermore, contrary to what the French Government claims, the exception to increased pay rates for overtime which the Committee allows in respect to the civil service cannot be applied to the members of the Command Corps, since under no circumstances can these police officers be considered “*senior civil servants*” as understood by the Committee.

Clear evidence for this is provided by the fact that the Command Corps is not the French National Police Force's highest-ranking body, being a step below the police superintendents' corps, the Senior Planning and Management Corps.

* * *

Accordingly, there can be no doubt that in order to comply with Article 4, paragraph 2 of the Charter, overtime pay for police officers must be based on increased wages, not a flat-rate compensatory payment, paid at an equal rate to all officers regardless of their grade and step.

VI - Conclusion

Under these circumstances, the collective complaint lodged by the European Council of Police Trade Unions and declared admissible on 19 March 2007 is clearly well founded in law and in fact.

It must be acknowledged that the laws relating to payment for overtime by police officers (Decree No. 2000-194 of 3 March 2000 and Decree No. 2002-60 of 14 January 2002) are incompatible with Article 4, paragraph 2 of the Charter.

Consequently, France must be found to have violated this provision.

France should also be asked to bring its regulations on overtime for police officers into line with Article 4, paragraph 2.

The French Government's arguments must therefore be dismissed.

Branko Prah

President of the ECPTU