

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



12 February 2008

**Case document No. 1**

**European Council of Police Trade Unions (CESP) v. France**  
Complaint n° 54/2008

## **COMPLAINT**

**registered at the Secretariat on 3<sup>rd</sup> December 2008**





# European Council of Police Trade Unions (ECPTU)

International Non-Governmental Organisation with participatory status with the Council of Europe

**Subject: Complaint submitted by the European Council of Police Trade Unions against France in respect of a violation of Article 2, paragraphs 1 and 2, and Article 4, paragraph 2, of the revised European Social Charter.**

## **I. Admissibility**

### **1. Applicability to France of the revised European Social Charter and of the 1995 Additional 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 Additional Protocol of 1995 to the European Social Charter providing for a system of collective complaints on 9 November 1995, and ratified that Protocol on 7 May 1999. It signed the revised European Social Charter on 3 May 1996, and ratified it on 7 May 1999.

### **2. Applicability to France of Article 2, paragraph 1, and of Article 4, paragraph 2, of the revised European Social Charter**

In pursuance of 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 of Part II of the revised European Social Charter.

### **3. Compliance by the European Council of Police Trade Unions with the criteria 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 which holds participatory status with the Council of Europe. It is a member of the INGO Liaison Committee, and it appears on the list drawn up by the Governmental Committee of international non-governmental organisations entitled to lodge collective complaints<sup>2</sup>.

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

<sup>1</sup> Hereinafter referred to as the ECPTU.

<sup>2</sup> 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 (Appendix 1).

The activities of the ECPTU 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 senior 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 senior 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 the ECPTU or to 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 senior 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 plays 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.

It is also a member of the INGO Committees on Human Rights, Social Cohesion and Eradication of Poverty, and Civil Society and Democracy.

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

Article 25 of the articles of association of the ECPTU states that the President shall be the legal representative of the European Council of Police Trade Unions and shall represent 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**

As already mentioned, France is bound by Articles 2, paragraph 1, and 4, paragraph 2, of the revised European Social Charter, under which it acknowledges the right to:

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<sup>3</sup> Articles of association of the ECPTU (Appendix 2).

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

- "reasonable daily and weekly working hours" (Article 2) and to
- "an increased rate of remuneration for overtime work, subject to exceptions in particular cases" (Article 4).

### **III. The French legislation applicable to senior police officers**

#### **A. Legislation relating to working hours**

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

Senior police officers are public servants. They therefore, in principle, come under Decree No. 2000-815 of 25 August 2000 on the adjustment and reduction of working hours (ARTT) in the national public service.

Article 1 of the Decree stipulates that:

*"Effective working hours shall be 35 per week in state departments and public administrative establishments and in local public education establishments.*

*Working hours shall be calculated on the basis of a maximum effective annual working time of 1,607 hours, excluding any overtime that may be worked.*

*This annual working time may be reduced by an order of the Minister concerned, the Minister responsible for the public service and the Minister responsible for the budget, issued after an opinion has been obtained from a ministerial joint technical committee, and if appropriate that of the health and safety committee, in order to take account of the constraints associated with the kind of work and with the definition of the corresponding work schedules, particularly in the case of night work, Sunday work, shift work, team work, a significant change to the work schedule, or arduous or dangerous work."*

Article 3, paragraph 1 stipulates that:

*"I. The organisation of work shall offer the minimum guarantees set out hereunder. Effective weekly working time, including overtime, shall not exceed 48 hours in any single week, or an average of 44 hours in any period of 12 consecutive weeks, and the weekly rest period, in principle including Sunday, shall not be less than 35 hours.*

*Daily working time shall not exceed 10 hours.*

*Staff shall benefit from a minimum daily rest period of 11 hours.*

*The maximum length of the working day shall be 12 hours.*

*Night work shall at least include the period from 10 p.m. to 5 a.m. or any other period of seven consecutive hours between 10 p.m. and 7 a.m.*

*No period of daily work shall last for six hours without the staff members benefiting from a break lasting for at least 20 minutes."*

Paragraph II of this article provides that exceptions to the rules set out in the first paragraph may be organised in the following conditions: "*a. When the very purpose of the public service concerned so requires on a permanent basis, particularly for the protection of persons and of goods, by decree in the Conseil d'Etat, adopted after an opinion has been obtained from the health and safety committee if applicable, from the ministerial joint technical committee and from the supreme council of the public service, which shall define the compensation granted to the categories of staff concerned."*

Furthermore, the final paragraph of Article 4 of the decree provides for the introduction of compensatory time off or payment for the overtime worked by the staff subject to a system under which hours of overtime are counted: "*For those staff subject to a system under which hours of overtime are counted, these hours shall be taken into account as soon as the hours of work defined by the work schedule have been exceeded. They shall be the subject of compensatory time off within a time limit set by an order of the Minister concerned, the Minister responsible for the public service and the Minister responsible for the budget, after an opinion has been obtained from the ministerial joint technical committee. Failing which, payment shall be made for them."*

## **2. Decree No. 2002-1279 of 23 October 2002**

Organisation of the work of the operational members of the national police force, which includes senior police officers, is governed by Decree No. 2002-1279 of 23 October 2002 introducing exceptions to the minimum guarantees relating to working time and rest applicable to employees of the national police force.

Article 1 provides that: "*For the purposes of the organisation of the work of operational members of the national police force, there shall be exceptions to the minimum guarantees mentioned in section I of Article 3 of the aforementioned decree of 25 August 2000 when the tasks entrusted to them in relation to public safety and public order, policing, intelligence and investigation, so require."*

Article 2 provides for the compensation for these exceptions: "*In compensation for the constraints resulting from Article 1, and irrespective of the specific advantages which they derive from their status, staff members shall benefit from a compensatory payment, from exemption to the effective annual working time of 1,607 hours, or from compensatory leave, equal or equivalent to the extra services performed, granted on an individual basis and in conditions laid down by an order of the Minister of the Interior. "*

## **3. The general regulations governing employment in the national police force (RGEPN)**

### **3.1 In the version prior to the order of 15 April 2008**

In an order of 6 June 2006, as amended by an order of 30 January 2008, the Minister of the Interior laid down the general regulations governing employment in the national police force (RGEPN).

Article 113-34 thereof determines the arrangements for the recovery of, or payment for, the overtime worked. These provisions refer:

- to the general instruction on work organisation in the national police force in respect of the conditions for the recovery of overtime worked;
- to Decree No. 2000-194 of 3 March 2000 in respect of payment for overtime.

In pursuance of Article 113-37 of these general regulations, only the public servants in the planning and management corps (*corps de conception et de direction*) of the national police force are excluded from the recovery of, or payment for, overtime. In contrast, the public servants in the command corps (*corps de commandement*), i.e. senior police officers, do benefit from this recovery or payment.

### **3.2. In its wording derived from the order of 15 April 2008**

In her order of 15 April 2008 (NOR: IOCC0804409A<sup>5</sup>), the Minister of the Interior amended the general regulations governing employment in the national police force, and Article 113-37 thereof in particular.

According to its new wording, with effect from 1 April 2008 senior police officers no longer receive compensation for their overtime.

In these conditions, *ipso facto*, the hours of work of senior police officers are no longer recorded or identified, since their overtime is no longer taken into consideration, as confirmed by the head of the private office of the Director General of the national police force, in a letter of 14 August 2008<sup>6</sup>.

## **4. The general instruction on work organisation in the national police force**

### **4.1 In its wording derived from the instruction of 18 October 2002**

In an instruction of 18 October 2002 (NOR INTCO200190C<sup>7</sup>), the Minister of the Interior laid down rules on the organisation of the work of operational members of the national police force, following the entry into force on 1 January 2002 of the provisions of Decree No. 2000-815 of 25 August 2000 on the adjustment and reduction of working hours in the national public service.

Paragraph 1.3.3 on overtime specifies that "*overtime shall be the hours of work done outside the regulation working time*".

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<sup>5</sup> Appendix 13.

<sup>6</sup> Appendix 14.

<sup>7</sup> Appendix 10.

Paragraph 1.3.6 on payment for overtime mentions the possibility, in certain conditions laid down by decree, of payment for the extra services performed by operational members of the national police force.

#### **4.2. In its wording derived from the instruction of 17 April 2008**

Instruction NOR INTC0200190C of 18 October 2002, however, has been supplemented by a new instruction, instruction NOR INTC0800092C, of 17 April 2008<sup>8</sup>.

The aim of this new instruction is to take account, where senior police officers are concerned, "*of the passage to managerial status, with effect from 1 April 2008, of the public servants in the command corps of the national police force*".

But this instruction, like aforementioned Decree No. 2008-340 of 15 April 2008, completely alters the overtime payment system applied to senior police officers.

The instruction specifies, under the heading "*arrangements for compensation or payment for extra services performed by members of the command corps of the national police force*":

*"In pursuance of the provisions of Article 113-37 of the RGEPN, for the members of the command corps of the national police force, irrespective of the working arrangements to which they are subject, the overtime resulting from work exceeding the daily working hours or the shift shall bring entitlement to no compensatory time off or specific payment."*

In short, the implementation with effect from 1 April 2008 of the general instruction on work organisation in the national police force entails, *ipso facto*, the absence of recording of the hours of work done by senior police officers, since they no longer receive compensation or payment for their overtime.

### **B. The legislation relating to payment for overtime**

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

Senior police officers are members of the national public service, and Decree No. 2005-716<sup>9</sup> of 29 June 2005 defines the specific status of the command corps of the national police force.

As at 1 April 2006, the gradings within the command corps extended from *Lieutenant de Police 1er échelon* (gross salary point 414) to *Commandant de Police à l'Emploi Fonctionnel* (gross salary point 880).

The said decree refers to Law No. 83-634<sup>10</sup> of 13 July 1983, as amended, on the rights and obligations of public servants, as well as to Law No. 84-16<sup>11</sup> of 11 January 1984, as amended, on matters of status relating to the national public service.

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<sup>8</sup> Appendix 11.

<sup>9</sup> Appendix 4.

<sup>10</sup> Appendix 5.



## **2. The regulations relating to the national public service**

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

This decree determines the arrangements for working time in the national public service and the national legal service.

Article 1 (2) specifies that "*Working hours shall be calculated on the basis of a maximum effective annual working time of 1,607 hours, excluding any overtime that may be worked*".

Article 4 specifies that, "*for those staff subject to a system under which hours of overtime are counted, these hours shall be taken into account as soon as the hours of work defined by the work schedule have been exceeded. They shall be the subject of compensatory time off within a time limit set by an order of the Minister concerned, the Minister responsible for the public service and the Minister responsible for the budget, after an opinion has been obtained from the ministerial joint technical committee. Failing which, payment shall be made for them.*"

### **2.2 Decree No. 2002-60<sup>12</sup> of 14 January 2002**

This decree defines the arrangements for compensatory time off for overtime in the national public service.

Article 1 specifies the scope of the decree, stating that "*Civilian staff of the central government and its public administrative establishments may receive payments per hour of overtime worked in the conditions, and according to the arrangements, laid down in the present decree*".

Part II of Article 2 states that: "*Payments per hour may also be made for extra work, provided that the staff concerned are performing duties, or are employed in corps, grades or posts where the tasks to be performed involve the effective performance of overtime work, to public servants in category B whose remuneration is above the level which corresponds to gross salary point 380, subject to compliance with the condition in paragraph 2 of part I above. A joint order of the Ministers responsible for the budget and the public service and the Minister concerned shall determine the list of corps, grades, posts and positions for which these conditions are fulfilled.*"

Article 7 provides for overtime to be paid, specifying:

*"Where compensation is not provided in the form of compensatory leave, the overtime done shall be paid in the following conditions:*

*Hourly remuneration shall be determined on the sole basis of the amount of the gross annual salary of the staff member concerned at the time at which the work was done, to which shall be added, if applicable, the residence allowance. The amount thus obtained shall be divided by 1,820.*

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<sup>11</sup> Appendix 6.

<sup>12</sup> Appendix 8.

*This hourly remuneration shall be multiplied by 1.07 in respect of the first 14 hours of overtime and by 1.27 for any subsequent hours."*

Article 8 states that: *"Each hour of overtime shall be paid at a rate 100% higher when it is done at night, and two-thirds higher when it is done on a Sunday or a public holiday. The two higher rates shall not be combined."*

### **3. The regulations relating to the national police force**

#### **3.1 The order of 3 May 2002 (NOR : INTC0200160A)**

The inter-ministerial order of 3 May 2002<sup>13</sup> was adopted in order to apply to the national police force Articles 1, 4, 5 and 10 of Decree No. 2000-815 of 25 August 2000 on the adjustment and reduction of working hours in the national public service.

In its initial wording, Article 4 stated that:

*"In accordance with the provisions of paragraph 5 of Article 4 of the aforementioned decree of 25 August 2000, for those staff of the national police force subject to a system under which hours of overtime are counted, these hours shall be taken into account as soon as the hours of work defined by the work schedule applicable to them have been exceeded.*

*When they are not paid in application of the regulations in force, the said hours of overtime shall be compensated by equal or equivalent rest periods, on conditions laid down by order of the Minister of the Interior.*

*Subject to the needs of the service, compensatory leave for the overtime worked by members of the national police force shall be taken in the calendar year during which it was granted.*

*Any such rest periods which, in the light of the needs of the service, have been unable to be taken by the deadline thus set remain due.*

This order was amended by an inter-ministerial order of 15 April 2008 (NOR: IOCC0804580A)<sup>14</sup>

Article 4 was rewritten to read as follows:

*"In accordance with the provisions of paragraph 5 of Article 4 of the aforementioned decree of 25 August 2000, for those staff subject to a system under which hours of overtime are counted, these hours shall be taken into account as soon as the hours of work defined by the work schedule applicable to them have been exceeded.*

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<sup>13</sup> Appendix 16.

<sup>14</sup> Appendix 17.

*When they are not paid in application of the regulations in force, the said hours of overtime shall be compensated by equal or equivalent rest periods, on conditions laid down by order of the Minister of the Interior.*

*Subject to the needs of the service, and without prejudice to the provisions relating to leave savings accounts in the national police force, compensatory leave for the overtime worked by members of the national police force, other than those who are members of the command corps, shall be taken in the calendar year during which it was granted.*

*Any such rest periods which, in the light of the needs of the service, have been unable to be taken by the deadline thus set remain due.*

*Compensatory leave for overtime done by the members of the command corps of the national police force shall, subject to the needs of the service, be taken within seven days of the end of the extra service in respect of which it was granted. If the needs of the service prevent this time from being taken by the stipulated time limit, that time limit shall be increased to eight weeks. If this time off has not been taken, for any reason whatsoever, by the end of this maximum time limit of eight weeks, the said compensatory leave shall be lost. The provisions of this paragraph shall nevertheless apply without prejudice to those relating to leave savings accounts in the national police force."*

### **3.2 The general regulations governing employment in the national police force (RGEPN)**

The order of 6 June 2006<sup>15</sup> containing the general regulations governing employment in the national police force contains a section (Section 5) entitled "Work organisation".

Article 113-30 thereof states that the principles in force in the national public service relating to working time and to annual leave shall apply to the operational members of the police force.

Similarly, Article 113-34 thereof states that extra service (stand-by duty, time spent on call, time worked when recalled to duty, hours worked in excess of the working day or the shift) performed beyond the regulation working time (whole hours only) entitle staff to "a flat-rate payment in conditions laid down by decree".

The decree mentioned above is Decree No. 2000-194 of 3 March 2000.

However, by an order of 15 April 2008<sup>16</sup>, Article 113-37 was amended with effect from 1 April 2008.

In its wording derived from the aforementioned order, Article 113-37 excludes, for senior police officers, compensatory time off for hours worked in excess of the working day or the shift, and even for periods spent on call or on stand-by in certain conditions. This absence of compensation, the Ministry of the Interior claims, is connected with the payment system which applies to senior police officers; this is not the case.

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<sup>15</sup> Appendix 7.

<sup>16</sup> Appendix 13.

In fact, it states that:

*"(...) On account of the particular responsibilities which are theirs and the specific constraints inherent to the duties that they carry out (heads of public security districts, of departments or of self-contained units), especially in terms of availability and attendance, the members of the command corps of the national police force who come under the provisions of Article 10 of the aforementioned decree [No. 2000-815] of 25 August 2000 shall be excluded from the taking into account, for the purposes of compensatory time off, of recalls to duty, hours worked in excess of the working day or the shift, and periods which they have spent on call.*

*The payment system which applies to them shall compensate them in the form of a flat-rate payment for their exclusion from the benefit of such compensatory time off. It shall exclude the compensatory time off and the specific remuneration for which provision is made in, respectively, Decree No. 2000-194 of 3 March 2000 and Decree No. 2002-819 of 3 May 2002, as amended.*

*These staff members shall, on the other hand, benefit from the taking into account of stand-by duty with a view to compensatory time off therefor.*

*They shall also benefit from an annual credit of ARTT (adjustment and reduction of working hours) days in the conditions for which Article 6 of the aforementioned order of 3 May 2002 provides, and in accordance with the arrangements specified in the general instruction on work organisation in the national police force. Three of these days shall be worked, and thus payment shall be made for them by the payment system which covers them.*

*The provisions of aforementioned Article 113-32 (paragraphs 2, 3 and 4) apply to the annual credit of ARTT days from which the members of the command corps of the national police force placed in this situation benefit.*

*The members of the command corps of the national police force who are not covered by the provisions of Article 10 of the aforementioned decree [No. 2000-815] of 25 August 2000 shall also be subject, because of their membership of this corps, to a specific obligation in terms of availability and attendance. They shall therefore be excluded from the taking into account for the purposes of compensatory time off of their recalls to duty and of the hours worked in excess of the working day or the shift.*

*The compensatory scheme applicable to them shall compensate them in the form of a flat-rate payment for their exclusion from the benefit of such compensatory time off. It shall exclude the compensatory time off for which Decree No. 2000-194 of 3 March 2000, as amended, provides.*

*These staff members shall, on the other hand, shall benefit from the taking into account of the stand-by duty that they perform for the purposes of compensatory time off therefor, as well as, subject to the provisions of Article 4 of Decree No. 2002-819 of 3 May 2002, as amended, from specific remuneration for their periods on call or, failing any such remuneration, of compensatory time off therefor.*

*According to the working arrangements to which they are subject, they shall be awarded an annual credit of ARTT days or hours in the ordinary-law conditions for which Articles 113-32 and 113-33 of the present general regulations on employment provide.*

*In accordance with the provisions of Article 4 of the order of 3 May 2002, as amended with a view to application to the national police force of Articles 1, 4, 5 and 10 of Decree No. 2000-815 of 25 August 2000 on the adjustment and reduction of working hours in the national public service, compensatory leave (or compensatory time off) for overtime worked during stand-by duty by the members of the command corps of the national police force shall, subject to the needs of the service, be taken within seven days of the end of the said stand-by duty. If the needs of the service prevent this time from being taken by the stipulated time limit, that time limit shall be increased to eight weeks. If this time off has not been taken, for any reason whatsoever, by the end of this maximum time limit of eight weeks, the said compensatory time off shall be lost. The compensatory leave granted for on-call service shall, in the absence of remuneration, be taken at the earliest time compatible with the needs of the service.*

*The provisions of the previous paragraph shall, however, apply without prejudice to those relating to leave savings accounts in the national police force."*

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

Decree No. 2000-194<sup>17</sup> of 3 March 2000 lays down the conditions for the granting of a payment for extra services to operational members of the national police force.

Article 3 thereof defines the method to be used for calculating this payment, specifying that "*the hourly rate of this payment shall be calculated on the basis of a 1,820th of the gross annual salary on which pension deductions are levied accruing to gross salary point 342. This hourly remuneration shall be multiplied by 1.25.*"

Until Decree No. 2008-340<sup>18</sup> of 15 April 2008 came into force, the provisions of Decree No. 2000-194 of 3 March 2000 applied to the members of the command corps, namely senior police officers.

However, **since 1 April 2008**, the scope of the payment for extra services has been limited, since members of the command corps are henceforth excluded from the benefit of this payment.

In fact, Article 1 of Decree No. 2000-194 of 3 March 2000, in the wording deriving from Decree No. 2008-340 of 15 April 2008, specifies that: "*Operational members of the national police force, **with the exception** of members of the planning and management corps and **of the command corps**, may, when they are required to perform extra services unable to give rise to recovery, benefit from a compensatory payment for extra services*".

### **3.4 The general instruction on work organisation in the national police force**

#### **3.4.1 Instruction NOR INTCO200190C of 18 October 2002**

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<sup>17</sup> Appendix 9.

<sup>18</sup> Appendix 12.

Instruction NOR INTCO200190C<sup>19</sup> of 18 October 2002, issued by the Minister of the Interior, Internal Security and Local Freedoms, lays down the rules on the organisation of the work of the operational members of the national police force, as a consequence of the entry into force, with effect from 1 January 2002, of the provisions of Decree No. 2000-815 of 25 August 2000 on the adjustment and reduction of working hours in the national public service.

Paragraph 1.3.3 on overtime specifies that: "*overtime shall be the hours of work done outside the regulation working time...*".

Paragraph 1.3.6 on compensation and payment for overtime mentions the possibility, in certain conditions laid down by decree, of compensation for the additional services performed by operational staff of the national police force.

### **3.4.2 Instruction NOR INTC0800092C of 17 April 2008**

However, instruction NOR INTCO200190C of 18 October 2002 has been supplemented by a new instruction, instruction NOR INTC0800092C of 17 April 2008<sup>20</sup>.

The aim of this new instruction is to take account, where senior police officers are concerned, "*of the passage to managerial status of the public servants in the command corps of the national police force*".

This instruction, like aforementioned Decree No. 2008-340 of 15 April 2008, completely alters the compensation system for overtime worked by senior police officers.

Instruction NOR INTC0800092C of 17 April 2008 specifies, under the heading "*arrangements for compensation or compensatory payments for extra services performed by members of the command corps of the national police force*":

*"In respect of the arrangements for compensation or compensatory payments for extra services performed by members of the command corps of the national police force, the following provisions supersede the provisions of the general instruction on work organisation in the national police force, dated 18 October 2002:*

#### *Stand-by duty*

*In pursuance of the provisions of Article 113-37 of the RGEPN, the members of the command corps of the national police force shall, in every case in which they are required to perform stand-by duty (during compensatory leave, on a Sunday, on a public holiday or at night), benefit from compensatory time off.*

*This compensatory time off shall be set at 100% of the duration of this stand-by duty, as laid down in the regulations.*

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<sup>19</sup> Appendix 10.

<sup>20</sup> Appendix 11.

*Any amount of time by which this duration may be exceeded shall not be the subject of any compensatory time off or of any specific compensatory payment.*

#### *Recalls to duty*

*In pursuance of the provisions of Article 113-37 of the RGEPN, for the members of the command corps of the national police force, irrespective of the working arrangements to which they are subject, the overtime resulting from recalls to duty shall bring entitlement to no compensatory time off or specific compensatory payment.*

#### *Work exceeding the daily working hours or the shift*

*In pursuance of the provisions of Article 113-37 of the RGEPN, for the members of the command corps of the national police force, irrespective of the working arrangements to which they are subject, the overtime resulting from work exceeding the daily working hours or the shift shall bring entitlement to no compensatory time off or specific compensatory payment."*

#### *Time spent on call*

*In pursuance of the provisions of Decree No. 2002-819 of 3 May 2002, as amended, relating to the arrangements for remuneration and compensation for the time spent on call by staff of the national police force, no specific remuneration or compensatory time off shall be granted in respect of the periods that they spend on call to either operational staff who are in receipt of the service allowance (allocation de service) or those operational staff who, although they are not in receipt of the said allowance, nevertheless benefit from essential worker accommodation.*

*Consequently, the members of the command corps of the national police force who come into neither the first nor the second of the aforementioned two categories of staff shall be remunerated for the time that they spend on call.*

*When funds are unavailable, compensatory time off (or compensatory leave) shall replace this remuneration.*

*In respect of any given period spent on call, remuneration and compensatory time off shall be mutually exclusive.*

#### *Remuneration*

*€ 121 per full week on call, made up of:*

- o € 66.12 per seven nights on call (9 p.m. to 6 a.m.), i.e. € 9.44 per night;*
- o € 21.82 per day, i.e. € 10.91 per half-day, for time spent on call during compensatory leave (on a Saturday or, in certain cases, a Monday);*
- o € 33.06 per day, i.e. €16.53 per half-day, for time spent on call during a statutory rest period or on a public holiday."*

In short, the situation as a result of all of these texts has been, since 1 April 2008:

1. Compensatory payment for overtime is excluded in all cases, except for stand-by duty not exceeding working hours and for time spent on call, where the police officer concerned benefits from neither the service allowance nor accommodation.
2. Where compensation is paid for time spent on call, that compensation is paid at a flat rate.
3. When compensatory time off is provided for, it is subject to the goodwill of the administrative authority, for it is explicitly stated that: "*compensatory leave (or compensatory time off) for overtime worked in the form of stand-by duty by the members of the command corps of the national police force shall, subject to the needs of the service, be taken within seven days of the end of the said stand-by duty. If the needs of the service prevent this leave from being taken by the stipulated time limit, that time limit shall be raised to eight weeks. If this compensatory leave has not been taken, for any reason whatsoever, by the end of this maximum time limit of eight weeks, the said leave shall be lost.*". Consequently, if the compensatory leave has not been taken eight weeks later, because of the needs of the service, that time off is lost. In practice, if the administrative authority so decides, citing the needs of the service, it can prevent senior police officers from benefiting from their compensatory rest periods.



#### **IV. The situation of French senior police officers in practice, in the light of the revised European Social Charter**

##### **A. In respect of working time**

###### **1. The practical situation of senior police officers**

On 17 June 2004, a memorandum of understanding relating to reform of national police force corps and careers was officialised between the Minister of the Interior and the representative trade union organisations. Reference is made, where senior police officers are concerned, to "managerial status".

Basing herself on this memorandum, the Minister of the Interior introduced with effect from 1 April 2008 new employment arrangements for this category of public servants. An indirect effect of these arrangements was the cessation of the recording of hours of work, as the time worked is not identified.

In this context, several texts have been amended or supplemented, including Decree No. 2000-194 of 3 March 2000, the general regulations governing employment in the national police force, of 6 June 2006, as amended by the instruction of 17 April 2008, and the general instruction on work organisation in the national police force of 18 October 2002, which has been supplemented.

This absence of recording (a direct effect of the absence of compensation for overtime) means that it is no longer possible to ensure that senior police officers benefit from the guarantee under Article 2, paragraph 1, of the revised European Social Charter, since no monitoring is possible of the time worked.

These are the conditions in which the European Council of Police Trade Unions decided to lodge the present complaint.

###### **2. The lawfulness in the light of Article 2, paragraph 1, of the legislation relating to the national police force**

Article 2 of the revised European Social Charter states that:

*"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:*

*1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit".*

Although the provisions of Decrees Nos. 2000-815 of 25 August 2000 and 2002-1279 of 23 October 2002 introducing annual working time totalling 1,607 hours have not been repealed by the French authorities, the implementation of the general regulations governing employment in the national police force, in their wording as it results from the order of 15 April 2008 and the general

instruction on work organisation in the national police force, has entailed the cessation of the counting of hours, since overtime is no longer recorded.

In a letter of 14 August 2008, the head of the private office of the Director General of the national police force confirmed to the Secretary General of the *Syndicat National des Officiers de Police* (National Union of Senior Police Officers) that the hours of work done by senior police officers have no longer been recorded since 1 April 2008<sup>21</sup>.

This being so, since these provisions began to be implemented, the limitation of working time has necessarily been abolished.

It is considered by the Committee that, in order to be deemed in conformity with the Charter, legislation and regulations should meet three criteria:

- They should prevent daily or weekly working time from being unreasonable. The maximum daily and weekly hours referred to above should not be exceeded in any circumstances;
- They should be established within a legal framework which provides adequate guarantees. Flexible working time schemes should operate in a precise legal framework which clearly delimits employers' and employees' room for manoeuvre in relation to any amendment, by collective agreement, of working time;
- They should provide for reference periods of a reasonable length for the calculation of average working time. The reference periods should not exceed six months. They may be of a maximum of up to one year in exceptional circumstances.

In its resolution, adopted on 4 May 2005 (Resolution ResChs(2005)7) following the collective complaint lodged by the *Confédération Française de l'Encadrement* against France (No. 16/2003), the Committee of Ministers had to rule on the lawfulness, in the light of the provisions of Article 2, paragraph 1, of the Charter, of the provisions on managers' working time contained in Law No. 2003-47 of 17 January 2003, and particularly on the annual working days system.

In paragraph 41, the Committee expresses the view that: "*... the situation of managerial staff in the annual working days system constitutes a violation of Article 2§1 of the revised Social Charter given the excessive length of weekly working time permitted and the absence of adequate guarantees*".

In this particular case, it has to be said that:

- the new regulations implemented by the Ministry of the Interior do not meet the criteria set by the Committee of the European Social Charter, since it does not make possible, in the absence of the recording of hours, verification of whether daily or weekly working time is reasonable;
- if the Committee of Ministers took the view that the annual working days system introduced for managers by Law No. 2003-47 of 17 January 2003, did not offer guarantees, it will have to take the view that the new system set up by the Minister of the Interior for senior police officers offers even fewer guarantees than the system introduced for managers by the aforementioned law.

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<sup>21</sup> Appendix 15.

In these conditions, there is no doubt that the regulations (general regulations governing employment in the national police force and general instruction on work organisation in the national police force) do not comply with the provisions of Article 2, paragraph 1 of the revised European Social Charter.

The violation of that paragraph is thus established.

## **B. In respect of overtime**

### **1. The situation of French senior police officers in practice, in the light of the revised European Social Charter**

On the basis of a memorandum of understanding of 17 June 2004 on reform of the corps and careers in the national police force, referring to a "*managerial status*" for senior police officers, the Minister of the Interior introduced, with effect from 1 April 2008, new working arrangements for this category of public servants. The main feature of these new arrangements is the cessation of payments or compensation for overtime.

In this context, several basic texts have been amended or supplemented, including Decree No. 2000-194 of 3 March 2000, the inter-ministerial order of 3 May 2002, the general regulations governing employment in the national police force, of 6 June 2006 and the general instruction on work organisation in the national police force, of 18 October 2002, which has been supplemented.

For the sake of completeness, it should be pointed out that the European Committee of Social Rights, in its report to the Committee of Ministers dated 3 December 2007, following complaint No. 38-2006<sup>22</sup>, expressed the view that the flat-rate payments deriving from Article 3 of Decree No. 2000-194 of 3 March 2000 were contrary to Article 4 § 2 of the revised Charter.

*What is actually stated is that "The Committee considers that the system of flat-rate payments for overtime established by Article 3 of Decree No. 2000-194 – resulting from the fact that, for national senior police officers, all such pay is determined with sole reference to salary point 342 – has the effect of denying the proper increase required by Article 4§2 of the Revised Charter to officers who cannot be excluded from entitlement to increased remuneration because of the nature of their duties. In particular, the functions of senior officers and commanders do not always equate to planning and management tasks."*

These are the conditions in which the European Council of Police Trade Unions decided to lodge the present complaint.

### **2. The lawfulness of the legislation governing the national police force in the light of Article 4, paragraph 2**

#### **2.1 The absence of compensation for overtime in general**

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<sup>22</sup> Appendix 14.

It is quite clear that, while the Committee, in its report of 3 December 2007, already took the view that the flat-rate payment provided for by Decree No. 2000-194 of 3 March 2000 infringed the provisions of Article 4, paragraph 2, of the revised Charter, the provisions of the regulations which abolish all compensation for overtime (with some exceptions) performed by senior police officers, necessarily violate the provisions of Article 4, paragraph 2 of the said Charter.

In practice, these texts are intended to eliminate the very principle of compensation, whereas Article 4, paragraph 2, of the Charter provides for higher remuneration for overtime.

In these conditions, there is no doubt that the provisions of Article 4, paragraph 2 of the revised Charter are violated by:

- Decree No. 2000-194 of 3 March 2000, in its wording derived from Decree No. 2008-340 of 15 April 2008;
- the general regulations governing employment in the national police force, of 6 June 2006, in its wording derived from order NOR IOCC0804409A of 15 April 2008 issued by the Minister of the Interior;
- Instruction NOR INTC0800092C of 17 April 2008.

## **2.2 Flat-rate payment for overtime spent on call**

In the light of the general regulations governing employment in the national police force and of Instruction NOR INTC0800092C of 17 April 2008, when overtime is taken into consideration in respect of time spent on call – if, that is, the police officer concerned is not in receipt of the service allowance and does not benefit from accommodation - payment for these hours is at a flat rate. It is quite clear that this flat rate, which is below the hourly rate of remuneration of senior police officers, is contrary to the provisions of Article 4, paragraph 2 of the revised Charter.

In fact, the Minister of the Interior, in Instruction NOR INTC0800092C of 17 April 2008, again includes the same payment mechanism as that for which Decree No. 2000-194 of 3 March 2000 provides, a mechanism which the Committee considered, in its aforementioned report of 3 December 2007, to have been adopted in violation of the provisions of Article 4, paragraph 2 of the revised Charter.

Under no circumstances do these regulations comply with the commitments entered into by the French State vis-à-vis Article 4, paragraph 2, of the revised European Social Charter.

## **2.3 The absence of effective compensation**

The inter-ministerial order of 3 May 2002, as amended by the inter-ministerial order of 15 April 2008, restricted the conditions in which senior police officers obtain compensatory rest periods.

In practice, the new wording of Article 4 of that inter-ministerial order states that:

*"(...) Compensatory leave in respect of overtime done by the members of the command corps of the national police force shall, subject to the needs of the service, be taken within seven days of the*

*end of the additional service in respect of which it was granted. If the needs of the service prevent this leave from being taken by the stipulated time limit, that time limit shall be increased to eight weeks. If this compensatory leave has not been taken, for any reason whatsoever, by the end of this maximum time limit of eight weeks, the said leave shall be lost. The provisions of this paragraph shall nevertheless apply without prejudice to those relating to leave savings accounts in the national police force."*

This is a new provision which violates the provisions of Article 4, paragraph 2, of the European Social Charter.

In practice, the Committee accepts that overtime can give rise to compensatory rest periods in lieu of remuneration.

However, it is necessary for such compensatory rest periods to be effective.

It is not effective in the present case, since the possibility of effectively taking it is at the sole discretion of the administrative authority.

In practice, if a rest period has not been taken within eight weeks, even if this is because of the needs of the service, it is lost for the police officer concerned. *A contrario*, the needs of the service, which depend solely on the administrative authority, may prevent recovery of the overtime worked.

Such a provision is contrary to the provisions of the European Social Charter, since overtime will not give rise to any remuneration in the event that compensatory rest periods are lost.

Under no circumstances does this text comply with the commitments entered into by the French State vis-à-vis Article 4, paragraph 2 of the revised European Social Charter.

\* \* \*

The violations highlighted by the present complaint are established on two points:

- the criticised texts abolish compensation (with very few exceptions) for overtime;
- the basis for payment of the said overtime when it is taken into consideration is a flat rate below the hourly rate earned by senior police officers;
- when the possibility of compensation in the form of rest periods does exist, this compensation is by no means effective.

## **VI. Conclusion**

Thus the present complaint, lodged by the European Council of Police Trade Unions, is intended to lead the Committee to declare that France:

- by the general regulations governing employment in the national police force, of 6 June 2006, in their wording derived from order NOR IOCC0804409A of 15 April 2008 issued by the Minister of

the Interior, and by Instruction NOR INTC0800092C of 17 April 2008, is in violation of the provisions of Article 2, paragraph 1 of the revised European Social Charter;

- by Decree No. 2000-194 of 3 March 2000, in its wording derived from Decree No. 2008-340 of 15 April 2008, by the inter-ministerial order of 3 May 2002, in its wording derived from the inter-ministerial order of 15 April 2008, by the general regulations governing employment in the national police force, of 6 June 2006, in their wording derived from order NOR IOCC0804409A of 15 April 2008 adopted by the Minister of the Interior, and by Instruction NOR INTC0800092C of 17 April 2008, is in violation of the provisions of Article 4, paragraph 2 of the revised European Social Charter;
- should bring the said regulations into conformity with the provisions of Article 4, paragraph 2 of the revised European Social Charter, so that operational members of the command corps of the national police force may benefit from a restriction of their working time and from compensation for the overtime that they perform.

## Appendices to the complaint

- Appendix 1: 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 2: Articles of association of the European Council of Police Trade Unions
- Appendix 3: ECPTU final resolution (Lille, 1998)
- Appendix 4: Decree No. 2005-716 of 29 June 2005
- Appendix 5: Law No. 83-634 of 13 July 1983, as amended
- Appendix 6: Law No. 84-16 of 11 January 1984, as amended
- Appendix 7: order of 6 June 2006, containing the general regulations governing employment in the national police force
- Appendix 8: Decree No. 2002-60 of 14 January 2002 on time compensation for overtime in the national public service
- Appendix 9: Decree No. 2000-194 of 3 March 2000 setting the conditions for compensation for overtime for operational members of the police force
- Appendix 10: Instruction NOR INTCO200190C of 18 October 2002, issued by the Minister of the Interior
- Appendix 11: Instruction NOR INTC0800092C of 17 April 2008, issued by the Minister of the Interior
- Appendix 12: Decree No. 2008-340 of 15 April 2008 of the Minister of the Interior amending Decree No. 2000-194 of 3 March 2000
- Appendix 13: order IOCC0804409A of 15 April 2008 of the Ministry of the Interior amending the order of 6 June 2006
- Appendix 14: report of the European Committee of Social Rights dated 3 December 2007
- Appendix 15: letter from the head of the private office of the Director General of the national police force, dated 14 August 2008
- Appendix 16: inter-ministerial order of 3 May 2003, in its initial wording
- Appendix 17: inter-ministerial order of 3 May 2003, as amended by the inter-ministerial order of 15 April 2008