

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



28 May 2009

Case document No. 1

European Council of Police Trade Unions (CESP) v. France
Complaint n° 57/2009

COMPLAINT

registered at the Secretariat on 7 May 2009



European Council of Police Trade Unions

International Non-Governmental Organisation within the Council of Europe

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. FRANCE 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⁽¹⁾ is an international non-governmental organisation which has participatory status with the Council of Europe. It is on the list, drawn up by the Governmental Committee, of international non-governmental organisations entitled to lodge complaints⁽²⁾.

¹ - Referred to hereinafter as the ECPTU.

² - 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).

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

The ECPTU's activities give it the necessary competence regarding the matters of which it complains.

Accordingly, Article 8 of its articles of association⁽³⁾ 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)⁽⁴⁾.

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 Complaints nos. 11/2001, 37/2006, 38/2006, 40/2007 and 54/2008.

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 before all European and national, public and private authorities and institutions.

II. Legislation and measures adopted by FRANCE regarding 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*".

³ - Articles of association of the ECPTU (Appendix 2).

⁴ - Lille final resolution (Appendix 3).

III. Practical situation of senior police officers under the French legislation on payment of overtime

1. Situation prior to Complaint no. 38/2006 of 20 October 2006

In a complaint of 20 October 2006 registered under number 38/2006, the complainant submitted that the regulations on payment of overtime to French police officers were contrary to the provisions of Article 4, paragraph 2 of the revised European Social Charter.

For a proper understanding of the present complaint, it is important to recapitulate the legislation and regulations applicable in 2006 when Complaint no. 38/2006 of 20 October 2006 was lodged.

1.1. 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⁽⁵⁾ 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 rank 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⁽⁶⁾ of 13 July 1983, as amended, on the rights and obligations of public servants, and Act No. 84-16⁽⁷⁾ of 11 January 1984, as amended, laying down the rules governing the national public service.

1.2. Regulations on the national public service

1.2.1. Decree No. 2000-815 of 25 August 2000

This decree lays down the rules on 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 once 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*”.

1.2.2. Decree No. 2002-60⁸ 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 laid down by this decree*”.

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:

⁵ - Appendix 4.

⁶ - Appendix 5.

⁷ - Appendix 6.

⁸ - Appendix 8.

“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”.*

1.3. Regulations on the national police force

1.3.1. The General Employment Regulations of the national police force

The order of 6 June 2006⁽⁹⁾ 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 serving 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 established by decree”.

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

1.3.2. Decree No. 2000-194 of 3 March 2000

Decree No. 2000-194⁽¹⁰⁾ of 3 March 2000 lays down 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: *“Serving 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”*.

Article 3 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”*.

1.3.3. Instruction NOR INTCO200190C of 18 October 2002

Instruction NOR INTCO200190C of 18 October 2002⁽¹¹⁾ from the Ministry of the Interior, Internal Security and Local Freedoms regulates 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.

Paragraph 1.3.3 on overtime provides that *“overtime is any hours of work performed in excess of standard working time”*.

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 prescribed by decree.

⁹ - Appendix 7.

¹⁰ - Appendix 9.

¹¹ - Appendix 10.

2. Action taken by the French Government pursuant to the Committee of Ministers resolution of 23 April 2008 (CM/ResChS(2008)6)

In response to Complaint no. 38/2006 of 20 October 2006 the European Committee of Social Rights, in an opinion of 3 December 2007, unanimously concluded that the French system for the payment of overtime worked by national police officers was in breach of Article 4, paragraph 2 of the revised Charter.

At the 1019th meeting of the Ministers' Deputies on 27 February 2008, the Deputy for FRANCE stated that in order to bring the situation into line with the decision delivered by the European Committee of Social Rights, an interdepartmental reform was in progress, with the aim of effecting a 25% increase in overtime compensation rates compared to the current rates.

In its resolution adopted on 23 April 2008 at the 1024th meeting of the Ministers' Deputies, the Committee of Ministers took note of the French Government's declaration that FRANCE undertook to bring the situation into line with the revised Charter by implementing measures to reassess the compensation rate for the payment of overtime worked by national police officers and by amending Decree No. 2007-194 of 3 March 2000 and adopting Decree No. 2007-1430 of 4 October 2007.

By Decree No. 2008-199 of 27 February 2008, the French Prime Minister amended the terms of Article 3 of Decree No. 2000-194 of 3 March 2000 laying down the conditions of award of compensation for additional services to national police officers.

This provision is now worded as follows:

“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 1 800. This hourly remuneration shall be multiplied by 1.25.

The salary on which this is calculated shall in all cases be that corresponding to the aforementioned index applicable when the additional services were performed.”

These regulations came into force with effect from 1 January 2008.

IV. Practical situation of French police officers with regard to the revised European Social Charter

It should be recalled beforehand that in its report of 3 December 2007 the European Committee of Social Rights, responding to the complaint lodged by the complainant and registered under number 38/2006, considered 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 police officers, all such pay is determined with reference to **the one salary point 342** – had the effect of withholding the real increase required by Article 4, paragraph 2 of the revised Charter from officers who, given the nature of their duties, could not permissibly be denied this increase.

Despite the undertakings made by the French Deputy at the 1019th meeting of the Ministers' Deputies on 27 February 2008, the French regulations on payment of overtime worked by national police officers do not comply with the provisions of Article 4, paragraph 2 of the revised Charter.

A comparative analysis of the versions of Article 3 of Decree No. 2000-194 of 3 March 2000 laying down the conditions of award of compensation for additional services to national police officers reveals that the provisions of Article 4, paragraph 2 of the revised Charter are not fulfilled.

Version prior to Decree No. 2008-199	Version subsequent to Decree No. 2008-199
<p><i>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.</i></p> <p><i>The salary on which this is calculated shall in all cases be that corresponding to the aforementioned index applicable when the additional services were performed.</i></p>	<p><i>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 1 800. This hourly remuneration shall be multiplied by 1.25.</i></p> <p><i>The salary on which this is calculated shall in all cases be that corresponding to the aforementioned index applicable when the additional services were performed.</i></p>

On no account does the new wording of the relevant article of this decree fulfil the undertakings made by the French Government in respect of Article 4, paragraph 2 of the revised European Social Charter.

This violation is characterised by the simple fact of instituting – irrespective of rank and step – a flat-rate payment system.

Merely to raise the hourly rate by 25 % **without altering the basis of the hourly rate - a fixed rate corresponding to gross salary point 342** – is to disregard the real increase stipulated by Article 4, paragraph 2 of the revised Charter since, **irrespective of a police officer's rank or step, the hourly rate is the same.**

In these circumstances, particularly for police officers of a rank carrying a salary above point 342, in no respect can a real increase be deemed to exist.

V - Conclusion

Accordingly, the object of this complaint lodged by the European Council of Police Trade Unions is that the Committee find a violation by FRANCE of Article 4, paragraph 2, of the revised European Social Charter and that FRANCE ensure conformity by having the payment of overtime for national police officers in France applied to their advantage, in accordance with the provisions of Article 4, paragraph 2 of the revised European Social Charter, that is having regard to the salary point of each police officer concerned.


Branko PRAH

Président du CESP

Appendices to the complaint

- Appendix 01: 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 (appended to the complaint);
- Appendix 02: Articles of association of the European Council of Police Trade Unions;
- Appendix 03: ECPTU final resolution (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 concerning hourly payments for overtime in the national public service;
- Appendix 09: Decree No. 2000-194 of 3 March 2000 laying down the conditions under which payments for overtime are awarded to national police officers, in the version applicable in 2006;
- Appendix 10: Instruction NOR INTCO200190C of 18 October 2002 from the Ministry of the Interior, Internal Security and Local Freedoms;
- Appendix 11: ECPTU complaint of 20 October 2006 registered under number 38/2006;
- Appendix 12: Report by the Committee of the European Social Charter of 3 December 2007;
- Appendix 13: Committee of Ministers Resolution of 23 April 2008;
- Appendix 14: Decree No. 2000-194 of 3 March 2000 laying down the conditions of award of compensation for overtime to national police officers, in the version applicable since 1 January 2008.
- Appendix 15: Decree No. 2008-199 of 27 February 2008 on payment of overtime to certain police officers.