

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



12 February 2010

**Case document No. 2**

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

**SUBMISSIONS BY THE GOVERNMENT  
ON THE MERITS AND RESPONSES TO THE COMMITTEE'S  
QUESTIONS**

**registered at the Secretariat on 21 January 2010**

# Part one: Government's observations on the merits of the complaint



**MINISTRY  
OF  
FOREIGN AND EUROPEAN  
AFFAIRS**

Paris, 30 November 2009

---  
**DIRECTORATE  
OF LEGAL AFFAIRS**

The Ministry of Foreign Affairs

---  
*Sub-directorate of human rights*

to

---  
The Executive Secretary of the European Social Charter

Author: Diarra Dime Labille  
Telephone: 01-53-69-36-28  
Fax: 01-53-69-36-74  
diarra.dime-labille@diplomatie.gouv.fr

Council of Europe  
Directorate General of Human Rights

No. DJ/DDL

**Subject: collective complaint no. 57/2009: European Council of Police Trade Unions (CESP) v. France**

In a letter of 4 November 2009, the European Committee of Social Rights informed the Government of the complaint submitted by the European Council of Police Trade Unions on 7 May 2009. The latter maintained that the arrangements for overtime payments introduced by amended Decree 2000-194 of 3 March 2000, setting the conditions for compensation for overtime for operational members of the police force, were in breach of Article 4§2 of the revised European Social Charter of 3 May 1996.

The complaint was declared admissible on 7 September 2009. The Committee asked the Government to submit its observations on the merits by 30 November 2009.

The Government wishes to make the following comments on the case.

## **The facts of the case**

The principle of financial compensation for overtime worked by police officers is embodied in article 22 of amended decree 95-654 of 9 May 1995, which lays down the following general arrangements:

*"Subject to the conditions laid down in employment regulations established by ministerial order, operational members of the national police force may be required to perform their duties, day or night, outside the limits set for the normal working week.*

*Hours worked in excess of the normal working week shall be compensated by equal or equivalent rest periods that must be granted as soon as is compatible with the needs of the service, or by an appropriate allowance system, under conditions laid down in a decree."*

Article 1 of the implementing decree, no. 2000-194 of 3 March 2000, specifies the following conditions for such overtime payments:

*"Operational members of the national police force, with the exception of members of the senior planning and management corps and of the command corps, may, when they are required to perform extra services the time spent on which cannot be recovered, benefit from a compensatory payment for extra services".*

The CESP has already submitted a complaint to the European Committee of Social Rights, no. 38/2006 of 20 October 2006, challenging decree 2000-194 of 3 March 2000 setting the conditions for compensation for overtime for operational members of the police force, in connection with the right of workers to an increased rate of remuneration for overtime work in Article 4§2 of the revised Charter:

*"Article 4 – The right to a fair remuneration*

*With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: (...)*

*to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases".*

In this first complaint the CESP argued that the system of flat-rate payments for overtime worked by police officers based on a single salary point, established by Decree No. 2000-194 of 3 March 2000, was incompatible with Article 4§2 of the revised Charter.

In a decision of 3 December 2007, the Committee found that Complaint 38/2006 was admissible and well-founded, and that the French system for the payment of overtime worked by national police officers was in breach of Article 4§2 of the Revised Charter, because:

*"the system of flat-rate payments for overtime established by Article 3 of Decree No. 2000-194 .... 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".*

However, it must be pointed out that this decision has to be seen in the very specific context of overtime payments to police resulting from an exception wave of demonstrations in 2006, and also, and above all, that it no longer reflects the situation of senior or, more generally, other police officers eligible for overtime payments.

Following the Committee's decision of 3 December 2007 on Complaint 38/2006 substantial changes were made to these overtime payments, which were raised by 25% and made completely tax exempt.

The European Council of Police Trade Unions is now asking the Committee to find that decree 2000-194 of 3 March 2000 setting the conditions for compensation for overtime for operational members of the police force, as interpreted in decree 2008-199 of 27 February 2008 on

overtime payments to certain public officials, is in breach of Article 4§2 of the revised Charter, on the grounds that these regulations institute a flat-rate payment system for overtime, irrespective of the rank and step of the police officers eligible for such payments.

The complainant union therefore asks for overtime payments to members of the supervision and enforcement corps (urban police and lower ranks, hereafter referred to as "ordinary police officers") to be made "having regard to the salary point of each police officer concerned".

### **Failure to exhaust domestic remedies**

As it is entitled to under its rules of procedure, the European Committee of Social Rights declared the European Council of Police Trade Unions' complaint admissible, without asking the French Government for its observations on its admissibility.

Nevertheless, the Government considers that there are grounds for arguing that the complaint is inadmissible, based on failure to satisfy the principle that domestic remedies must be exhausted.

Since it was unable to present these arguments before the complaint's admissibility was examined, the French Government now wishes to do so before setting out its observations on the merits.

The European Committee of Social Rights apparently considers that it is not required to take account of the exhaustion of domestic remedies rule before ruling on complaints' admissibility, because the revised Charter has nothing to say on the subject.

However, the conditions governing the admissibility of complaints should be based on the principles of international law. The requirement to exhaust domestic remedies is a recognised and established precondition of international customary law, as acknowledged in particular by the International Court of Justice in its judgment of 21 March 1959 in the *Interhandel* case, and other international courts and committees that hear complaints of violations of international conventions.

In this case, there has been a flagrant breach of the domestic remedies requirement, since the disputed provisions of decree 2000-194 of 3 March 2000 setting the conditions for compensation for overtime for operational members of the police force, as interpreted in decree 2008-199 of 27 February 2008 on overtime payments to certain public officials, have not been challenged in the domestic courts.

### **The merits of the case**

The CESP maintains that the flat-rate payment system for overtime established by these regulations is in breach of Article 4§2 of the revised Charter, which provides for "an increased rate of remuneration for overtime worked", in accordance with the right to a fair remuneration.

In support of its claim, it states that in its decision of 3 December 2007 on complaint 38/2006, the Committee found that the flat-rate payment system for overtime laid down in article 3 of decree 2000-194 of 3 March 2000, in the version in force in 2006, was in breach of Article 4§2 of the revised Charter.

This statement does not stand up to examination.

**I. The Committee's decision of 3 December 2007 is no longer applicable because of recent changes in the arrangements for paying overtime to police officers.**

In its decision of 3 December 2007 on complaint 38/2006 the Committee concluded that "the system of flat-rate payments for overtime established by Article 3 of Decree No. 2000-194 ... 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", but there have since been substantial changes to the overtime payment arrangements, as will be demonstrated below.

Thus, the hourly rate of payment for overtime worked by ordinary police officers has been raised significantly.

It is also worth pointing out that the decision of 3 December 2007 has to be seen in the particular context of the police overtime generated by the exceptional wave of demonstrations in 2006.

The complainant organisation cannot therefore rely on the previous decision since it no longer reflects the situation of police officers eligible for overtime they are required to work.

## **II. Article 4§2 of the revised Charter is inapplicable to this case**

The CESP argues that the regulations governing overtime worked by ordinary police officers were introduced in breach of the requirements of Article 4§2 of the revised Charter, which states that:

*"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: (...)*

*2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;"*

These provisions do not apply to the disputed overtime payment arrangements.

Thus, in the Digest of its case-law, the European Committee of Social Rights has confirmed that there can be exceptions to the principle of higher overtime pay and has specified the particular cases in which such exceptions may be allowed.

In particular, it has consistently accepted that "granting leave to compensate for overtime is in conformity with Article 4§2, on condition that this leave is longer than the overtime worked" (Digest of Case-law, page ...).

For example, in conclusions *XIV-2, Belgium*, p. ..., the Committee stated that:

*"the aim of Article 4 § 2 is to ensure that the additional occupation of workers during overtime is rewarded. Under this provision such reward must take the form of an increased rate of remuneration. However, the Committee recognises reward in the form of time off, provided that the aim of the provision is met. This means, in particular, that where remuneration for overtime is entirely given in the form of time off, as in the present case, Article 4 § 2 requires that this time be longer than the additional hours worked." (Digest of Case-Law, page ...).*

Similarly, in conclusions *XIV-2*, in a statement of interpretation of Article 4§2, p. ....:

*"The Committee recalls that the principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be paid at a rate higher than the normal wage. The Committee allows additional time off to replace increased remuneration." (Digest of Case-law, p. ...).*

In this particular case, the dual arrangements for compensating ordinary police officers for overtime worked are fully consistent with the requirements of Article 4§2.

Proof of this is provided by article 22 of amended decree 95-654 of 9 May 1995, which reads:

*"Hours worked in excess of the normal working week shall be compensated by equal or equivalent rest periods that must be granted as soon as is compatible with the needs of the service, or by an appropriate allowance system, under conditions laid down in a decree."*

These provisions make it clear that financial compensation is not the only form of recompense for overtime worked by police officers because it may also take the form of increased compensatory time off, as will be demonstrated below.

Moreover, according to article 1 of amended decree 2000-194 of 3 March 2000 setting the conditions for compensation for overtime for operational members of the police force, payment for overtime is non-mandatory:

*"Operational members of the national police force, with the exception of members of the senior planning and management corps and of the command corps, may, when they are required to perform extra services the time spent on which cannot be recovered, benefit from a compensatory payment for extra services".*

In other words, police officers who are eligible for the compensation that is the subject of the complaint do not have automatic entitlement to overtime payments. The granting of such payments is optional, and at the authorities' discretion, subject to the funds being available, as specified in article 2 of amended decree 2000-194 of 3 March 2000:

*"The decision to make such payments shall be taken by the Minister of the Interior, within the limits of the relevant budgetary appropriations."*

Additionally, as will be clearly demonstrated below, the level of payment for overtime has been raised significantly to offer ordinary police officers higher pay for such overtime.

Similarly, compensatory rest time for overtime worked by ordinary police officers has also been increased under amended ministerial decree NOR: INTC0600544A of 6 June 2006, on the general employment regulations for the national police force. Article 113-34 reads:

*"Those performing additional duties, such as standby, on-call, recalls to duty and hours worked in excess of the legal working day or shift, are entitled:*

- 1. To equal or equivalent rest periods as specified in the general instruction on work organisation in the national police force. (...)*
- 2. Or to a flat-rate payment as specified in a decree.*

*In accordance with amended decree 2000-194 of 3 March 2000, payment for overtime worked in a specified period precludes compensatory time off for the same period.. (...).*

In accordance with the general employment regulations for the national police force of 18 October 2002, NOR: INT/C/02/00190/C, as amended by NOR: IOCC 0903253J of 12 June 2009, those performing standby, on-call, recalls to duty or excess hours of work are entitled, in the absence of payment, to increased compensatory time off, on the following basis:

Stand-by duty
<p><b>Definition:</b> Period spent on duty in the place of work or any other location outside of normal working days or hours.</p> <p><b>Compensation:</b> compensatory time off of 125%, 150%, 175% or 200% of hours actually worked, depending on when it took place (legal rest period, public holiday, night of Saturday to Sunday and so on).</p>
On call duty
<p><b>Definition:</b> Period of non-working hours in which the individual concerned is required to remain at or near his or her home so as to be available to be called out. Only the periods for which such call-outs last are deemed to be working time.</p> <p><b>Compensation:</b></p> <p>Compensation for on-call periods is either financial (€ 121 per on-call week) or takes the form of compensatory time off.</p> <p>For call-out periods and travelling time to and from work there is compensatory time off equivalent to 100% of the periods in question.</p> <p>The two forms of compensation are cumulative.</p>
Recalls to duty
<p><b>Definition:</b> additional hours worked by individuals when they are recalled to duty on non-working days.</p> <p><b>Compensation:</b> compensatory time off of up to 200% of hours actually worked, depending on when it took place (legal rest period, public holiday, Saturday or Sunday night and so on).</p>
Excess hours of work
<p><b>Definition:</b> Overtime worked by police officers when they continue beyond the end of their shifts (in the case of those working a cyclical system) or working days (for those with a normal working week). The extra hours worked are taken into consideration in calculating their compensation.</p> <p>Compensation: Depending on whether the extra hours worked were in a legal rest period, a public holiday, a compensatory rest period, at night or outside these periods, the hourly compensation ranges from 100 to 200% of the hours actually worked.</p>

It is clear therefore that whatever the type of overtime considered, ordinary police officers are entitled to increased compensatory rest time for that overtime, in strict accordance with the Committee's case-law on Article 4§2 of the revised Charter.

The CESP therefore has no grounds for maintaining that the contested compensatory arrangements are incompatible with Article 4§2 of the revised Charter, particularly as its arguments ignore the existence of additional rest periods to compensate for overtime worked by ordinary police officers.

Given the foregoing, the Committee can only conclude that Article 4§2 of the revised Charter is inapplicable to this complaint.

### **III. The alleged failure to comply with Article 4§2 of the revised Charter**

In the unlikely event that the Committee finds that Article 4§2 of the revised Charter is applicable to the contested provisions it must still find that they have not been disregarded in this case since ordinary police officers are now entitled to increased pay for overtime they are required to work, in pursuance of their right to a fair remuneration.

Thus, the Committee needs to be aware that, following decision 30/2006 of 3 December 2007, major changes were made to the arrangements for compensating police officers for overtime worked that led to a substantial rise in the hourly rate of the compensation paid.

Firstly, decree 2008-340 of 15 April 2008 amended article 1 of decree 2000-194 of 3 March 2000 setting the conditions for compensation for overtime for operational members of the police force. This removed police officers' entitlement to this benefit as of 1 April 2008 if and when they were upgraded to managerial status.

Under a reform dated April 2008, the arrangements governing the working hours of senior police officers were altered so that those concerned moved on to a weekly hours worked system in which overtime hours were not calculated, so that these hours were no longer paid at a higher rate.

In exchange, the payment system for senior officers was changed, and this included an increase in the so-called command bonus.

Under amended article 1 of decree 2000-194 of 3 March 2000, members of the senior planning and management corps and of the command corps are now no longer entitled to overtime pay as such, for which only ordinary police officers, the so-called supervision and enforcement corps, are eligible.

Secondly, and in view of the government's commitment to increasing the purchasing power of public officials through higher overtime payments, two major changes have been made to decree 2000-194 of 3 March 2000 setting the conditions for compensation for overtime for operational members of the police force.

Thus, decree 2008-199 of 27 February 2008 on overtime payments to certain public officials has amended article 3 of decree 2000-194 to read:

*"The hourly rate of this payment shall be calculated on the basis of the gross annual pensionable income corresponding to gross salary point 342, divided by 1 820. 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."*

Since the introduction of decree 2002-194 of 3 March 2000, the hourly overtime rate has always been based on a fraction of gross annual pensionable income corresponding to the salary



point 342 applicable at the time the overtime was worked, but there have been significant changes to the way this hourly rate is calculated.

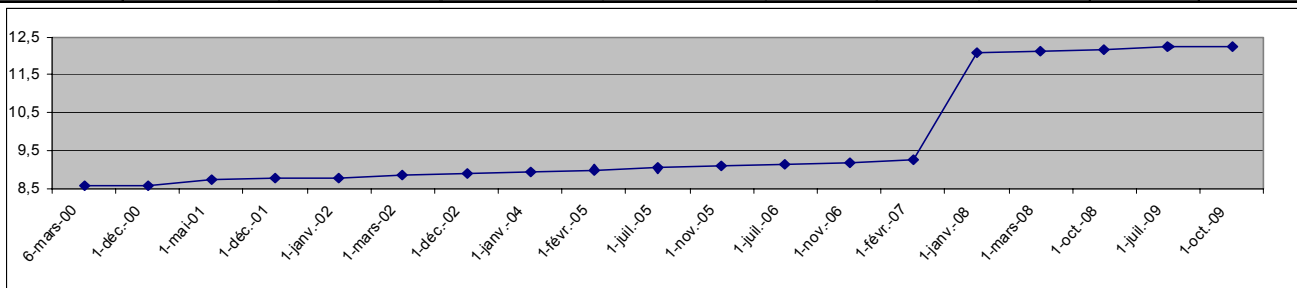
Today, the hourly rate for overtime is based on gross annual pensionable salary corresponding to salary point 342, divided by 1 820, rather than, as formerly, 1 900. But additionally, and above all, overtime payments are increased by 25%, in accordance with Article 4§2 of the revised Charter.

The hourly overtime rate may therefore be calculated as follows:

$$\begin{aligned} &\text{Annual pensionable income} \\ &\text{corresponding to salary point 342} \\ &(\text{€ } 17\,857.73 \times 1.25) / 1\,820 = \text{€ } 12.26 \text{ an hour} \end{aligned}$$

The following table and chart on trends in overtime payments show that they have risen significantly since article 3 of decree 2000-194 was amended by decree 2008-199 of 27 February 2008 on overtime payments to certain public officials.

<b>Date</b>	6-mars-00	1-déc.-00	1-mai-01	1-déc.-01	1-janv.-02	1-mars-02	1-déc.-02	1-janv.-04	1-févr.-05
<b>Montant en €</b>	8,58 (56,28 Fr)	8,58 (56,27 Fr)	8,72 (57,20 Fr)	8,78 (57,60 Fr)	8,78	8,83	8,90	8,94	8,99
<b>Date</b>	1-juil.-05	1-nov.-05	1-juil.-06	1-nov.-06	1-févr.-07	1-janv.-08	1-mars-08	1-oct.-08	1-juil.-09
<b>Montant en €</b>	9,03	9,10	9,15	9,18	9,25	12,07	12,13	12,17	12,23
<b>Date</b>	<b>1-oct.-09</b>								
<b>Montant en €</b>	<b>12,26</b>								



In other words, as a result of the 25% increase and the higher percentage of income on which the calculation is based, the hourly overtime rate rose between 1 July 2006 and 1 July 2009 from € 9.15 to € 12.23

At the same time, the hourly rate of payment rose, admittedly less significantly but regularly, in line with the pay of civilian and military government personnel, to € 12.26 on 1 October 2009.

Thirdly, the policy of increasing public sector workers' purchasing power by increasing overtime payments also resulted in these payments being made non-taxable.

Thus, under article 1.11 of decree 2007-1430 of 4 October 2007, implementing section 1 of the Employment and Purchasing Power Act, no 2007-1223 of 21 August 2007, overtime payments to ordinary national police officers, the so-called supervision and enforcement corps, under the disputed decree, are tax exempt.

This most recent tax measure also increases the overtime payments of ordinary policemen.

The complainant is therefore unjustified in arguing that amended article 3 of decree 2000-194 of 3 March 2000 setting the conditions for compensation for overtime for operational members of the police force denies these officers the right to an increased rate of remuneration for overtime work in accordance with Article 4§2 of the revised Charter.

In any case, the precise amount of the fixed sum payment of € 12.20 per hour paid by the French government for overtime worked by ordinary police officers is outside the jurisdiction of the European Committee of Social Rights.

In its decision of 3 December 2007 on the merits of the CESP complaint 38/2006 concerning amended decree 2000-194 of 3 March 2000, as then worded, the Committee found that:

*"it is outside its remit to rule on whether the flat rate payments applied in the present case were appropriate. The Committee is competent to decide whether the rules providing for increased payment for overtime worked by police officers and the application of these rules are consistent with Article 4§2 of the Revised Charter, but not to rule on any ad hoc measures taken in a particular situation which are not indicative of a general practice."*

The complainant cannot therefore rely on the flat rate payment specified in decree 2000-194 of 3 March 2000 to show that ordinary police officers do not receive higher overtime pay.

Finally, and above all, it should be noted that the overtime pay arrangements for ordinary police officers are in no way confined to the sum laid down in amended decree 2000-194 of 3 March 2000.

Section 19 of the Security Policy and Programming Act, no. 95-73 of 21 January 1995, granted members of the supervision and enforcement corps, that is ordinary police officers, a special status:

*"On account of the special nature of their duties and of the responsibilities they are required to perform, operational staff of the national police force shall constitute a special category within the public service."*

*The general public service staff regulations may not apply to this special category of staff, to ensure that the organisation of the corps and careers concerned is adapted to the specific duties of the national police force.*

*Because of the nature of these duties, operational staff of the national police force are subject to special obligations .....*

*To compensate for the duties and responsibilities applicable to them, operational staff of the national police force shall be deemed to be a special case for the purposes of their pay scales.*

*These officers may be granted exceptional allowances and special conditions governing their allowances and pension schemes on account of the specific nature of the duties and activities entrusted to them."*

These provisions entitle ordinary police officers to a so-called "special police responsibilities allowance" under article 2 of decree 68-207 of 16 February 1968 on career and salary points for operational staff of the national police force.

On 1 July 2009, under section 2 of decree 2009-441 of 20 April 2009 on the special responsibilities allowance for operational members of the police force, this allowance was set at 25% of their pensionable earnings.

The Committee should therefore find that the overtime allowance instituted by amended decree 2000-194 of 3 March 2000 meets the requirements of Article 4§2 of the revised Charter, particularly as this allowance is not the only source of overtime compensation for ordinary police officers.

The European Committee of Social Rights cannot therefore fail to find that French law provides for an appropriate system of increased compensatory time off or financial recompense for overtime worked by ordinary police officers, and that the alleged breach of Article 4§2 of the revised Charter must be dismissed.

Since the contested legislation is totally compatible with Article 4§2 of the revised Charter the Committee should find the complaint unfounded and dismiss it.

Jean-Luc Florent  
Deputy Director of Legal Affairs



## Part two: Government replies to the Committee's questions

### Questions to the French Government in connection with Complaint 57/2009

- Question 1:

**Since the Committee's decision on the merits of complaint 38/2006 states that "*the functions of senior officers and commanders do not always equate to planning and management tasks*", does the French government consider that the amendments to decree 2000-194 made by decree 2008-199 of 27 February 2008 have limited the extent to which the flat-rate payment system for overtime equates these two functions?**

1. The initial wording of article 1 of decree 2000-194 of 3 March 2000 setting the conditions for compensation for overtime for operational members of the police force stipulated that the overtime allowance should be paid to both senior and ordinary police officers.
2. Decree 9 of 27 February 2008 increased the hourly overtime rate by amending article 3 of decree 2000-194 of 3 March 2000.
3. Decree 2008-340 of 15 April 2008 amending decree 2000-194 of 3 March 2000 made senior police officers non-eligible for overtime because, as of 1 April 2008, they were no longer entitled to accumulation of overtime hours worked .
4. The formal agreement of 17 June 2004 between the interior ministry and the police trade unions on the reform of the national police structure and careers led to a number of measures affecting the command corps of the national police force, including an ordinary degree or equivalent requirement in the 2005 recruitment exam and a new, higher, pay scale.
5. These measures confirmed senior police officers' special status, but at the same time gave them service conditions equivalent to a so-called "category A managerial status", reflected in new working time arrangements.
6. Thus, under the formal agreement on the reform of the national police structure and careers all senior police officers would move to a status which involved no accumulation of overtime hours worked and an unchanged adjustment and reduction of working hours scheme.
7. According to the conclusions of the agreement of 17 June 2004 on the reform of the national police structure and careers, the transfer to a scheme for higher ranks would include an increase in the so-called command bonus, whose amounts would vary according to the responsibilities assigned to them, how they carried out their duties and the various constraints concerned, up to a maximum of 140%.
8. Following the upgrading of the responsibilities of the command corps under decree 2005-716 of 29 June 2005, senior police officers are now subject to two sets of working arrangements, laid down in articles 4 and 10 of decree 2000-815 on the adjustment and reduction of working hours in the national public service.
9. Those covered by article 4 of decree 2000-815 are included in the "hourly hours of overtime worked" system. As such, under Article 113-37 of the amended order of 6 June 2006 on the general regulations governing employment in the national police force, they are no longer entitled to hourly payments for time spent on call or on overtime, or on special duties.

10. Those covered by article 10 of decree 2000-815 are excluded from the "hourly hours of overtime worked" system. Nor, under Article 113-37, are recalls to duty or hours worked in excess of the working day or the shift taken into account for the purposes of compensatory time off.
11. However, senior police officers benefit from a compensatory flat-rate payment system in compensation:
- the command bonus for senior officers not covered by decree 2000-815 has been increased and the amounts may be varied, under decree 2008-341 awarding a command bonus to members of the national police command corps and ministerial order NOR: IOCC0824478A of 31 December 2008 setting the amounts of this bonus;
  - senior officers covered by article 10 are now entitled to the so-called duty allowance. This was set at € 743 under decree 2004-455 of 27 May 2004 establishing a duty allowance for members of the national police planning and management corps, and police commanders who are heads of public security districts, of departments or of self-contained units, and ministerial order IOCC0909210A of 24 June 2009 setting the amounts of this allowance.
12. As far as this allowance is concerned and because they are no longer eligible for overtime payments, members of the national police command corps are now in the same situation as their counterparts in the planning and management corps. Overtime hours worked by these two corps are not counted. However, the two corps are quite separate. Article 2 of decree 2005-716 of 29 June 2005 on the specific status of the command corps of the national police force states that:

*"The senior police officers who constitute this corps shall perform operational command duties and provide advanced knowledge and skills with regard to internal policing and security. They shall assist and replace police superintendants in the performance of their duties, except in cases where the law explicitly requires a superintendant's intervention. They shall also manage certain departments.*

*In performing the duties specified in the previous paragraph, senior police officers shall exercise authority over all the persons under their command.*

*They shall supervise members of the supervision and enforcement corps (ordinary police officers).*

*Senior police officers shall carry out their duties in accordance with the Code of Criminal Procedure and specific regulations pertaining to them, particularly in connection with discipline and training.*

*They may be required to carry out investigations, inquiries and surveillance operations as part of their policing responsibilities and perform their duties in public administrative establishments under the authority of the interior minister.*

*They shall be uniformed. They are entitled to wear the tricolour.*

*They shall be appointed by the minister of the interior."*

13. In contrast, article 2 of amended decree 2005-939 of 2 August 2005 on the specific status of the senior planning and management corps, states that:

*"The senior police officers who constitute this corps constitute a higher technical body responsible to the interior ministry.*

*They shall draw up and apply rules and guidelines for the departments for which they have operational and managerial responsibility. They shall supervise staff assigned to these departments.*

*They may be required to exercise their duties in public administrative establishments under the authority of the interior minister.*

*They shall participate in the design, implementation and assessment of projects and programmes to prevent insecurity and combat crime.*

*They shall exercise the judicial functions assigned to them under the law.*

*They shall wear the tricolour sash as an emblem of their authority whenever the exercise of their duties so requires.*

*They shall be equipped with a uniform."*

- **2<sup>nd</sup> question:**

**What does the government consider to be the basis in domestic law and/or the compelling grounds of public interest to justify the lawfulness and/or desirability of treating members of different national police corps in the same way for the purposes of overtime worked?**

14. The decision to treat members of the police command corps and ordinary police officers in the same way for the purposes of overtime allowances, as laid down in the original draft of decree 2000-194 of 3 March 2000, reflected a commitment to put these officers on an equal footing, whatever their salary point.
15. A clear distinction in terms of levels of responsibility was also made between police superintendants with major responsibilities and, on the other hand, other senior officers and ordinary members of the national police force, in accordance with the European Committee of Social Rights' interpretation of Article 4§2 of the revised Charter.
16. For example; in Conclusions X-2, Ireland, 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". The Committee concluded that Ireland complied with this provision of the Charter.
17. In its decision 38/2006 of 3 December 2007 the Committee found that the then wording of decree 2000-194 of 3 March 2000 was in breach of Article 4§2 of the revised Charter, as a result of which the French government amended it.
18. Firstly, decree 2008-199 of 27 February 2008 raised the hourly rate of overtime payments. Secondly decree 2008-340 of 15 April 2008 amended decree 2000-194 of 3 March 2000 by making senior police officers non-eligible for the overtime allowance.
19. The managerial-based system of payments to senior police officers introduced on 1 April 2008, in which individual hours of overtime worked are not counted, inevitably makes them ineligible for overtime allowance, which is fully consistent with the Committee's interpretation of Article 4§2 of the revised Charter.
20. Under amended decree 2000-194 of 3 March 2000 overtime payments are now confined to ordinary police officers, which is also fully consistent with Article 4§2 of the revised Charter.

- **3<sup>rd</sup> question:**

**In connection with complaint 38/2006, the French government stated that the system of flat rate payments for overtime worked by senior police officers was justified because**

**"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". Does the government consider that the statement made by the Permanent Representative of France to the Council of Europe at the Ministers' Deputies' 1019<sup>th</sup> meeting (27/28.2.2008), namely that the French government intended to transfer senior police officers to a scheme for higher ranks and that "under the projected scheme, national police officers will receive, via an up-graded bonus for higher ranks, appropriate compensation for overtime worked", is compatible with the former statement?**

21. Transferring senior police officers to the scheme for higher ranks is consistent with this statement. Since these officers are not eligible for accumulation of overtime hours worked they are no longer entitled to hourly overtime payments so the notion of an increased rate for overtime cannot strictly speaking be applied.
22. In recognition of their new responsibilities these officers therefore benefit from alternative arrangements to compensate them for overtime they are required to work.
23. Under this flat-rate payment system, these officers now receive a command bonus that has been increased and will continue to increase until 2011, in accordance with the supplementary conclusions of 5 December 2007 to the agreement of 17 June 2004 on the reform of the national police structure and careers.

- **4<sup>th</sup> question:**

**At the same Ministers' Deputies' meeting in February 2008, the French government also stated that in order to bring the current regulations on senior police officers' overtime pay into line with Article 4§2 of the revised Charter, "an interministerial reform of overtime arrangements, which is now being introduced, provides for a 25% increase in overtime compensation rates". Does this reform apply to all police officers, including senior police officers of the command corps of the national police force? And does it provide for overtime rates that are higher than the normal hourly rate?**

24. For the moment, under articles 1 and 3 of amended decree 2000-194 of 3 March 2000 the 25% increase in the overtime allowance only applies to members of the supervision and enforcement corps (ordinary police officers).
25. Decree 2008-340 of 15 April 2008 makes senior police officers ineligible for the increased rate of overtime payments because of their transfer to a scheme for higher ranks, with no accumulation of overtime hours, as described above.
26. Officers of the police command corps clearly come within the scope of the exceptions provided for in Article 4§2 of the revised Charter for certain particular cases, which the Committee considers to include senior public officials and managers (see Digest of the Case-Law of the European Committee of Social Rights, page ...).
27. The 25% increase in overtime rates introduced by decree 2008-199 of 27 February 2008 on overtime payments to certain public officials gave ordinary police officers a higher level of overtime pay.
28. It must be recognised that the compensation arrangements for overtime worked by these officers are not restricted to decree 2000-194 of 3 March 2000, as the French government's observations have clearly demonstrated.