

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



19 May 2011

Case Document No 1

**European Council of Police Trade Unions (CESP)
v. France**
Complaint No 68/2011

**COMPLAINT
(TRANSLATION)**

registered at the Secretariat on 18 May 2011



Conseil Européen des Syndicats de Police

Organisation Internationale Non Gouvernementale au Conseil de l'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.

This complaint follows the decision taken with regard to complaint No. 57/2009 and is aimed at rectifying a misinterpretation of the provisions applicable to senior police officers in the command corps of France's national police force.

I – Admissibility

In connection with the complaint registered under No. 57/2009, the European Committee of Social Rights found that the European Council of Police Trade Unions was entitled under the revised European Social Charter and the 1995 protocol to the European Social Charter providing for a system of collective complaints to lodge a complaint against the French Government for non-compliance with Article 4 § 2 of the revised European Social Charter as regards Decree No. 2000-194 of 3 March 2000, as amended by Decree No. 2008-340 of 15 April 2008, the general regulations governing employment in the national police force, of 6 June 2006, as amended by order NOR IOCC0804409A of 15 April 2008 issued by the Minister of the Interior, and Instruction NOR INTC0800092C of 17 April 2008.

II – Legislation adopted by France on the right to an increased rate of remuneration for overtime

FRANCE is bound by Article 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" (Article 4).

III – French legislation on payment of overtime

In this connection, the European Council of Police Trade Unions refers to the terms of its complaint No. 57/2009, which contains details of all the applicable texts.

The following is merely a list of these texts:

- ✓ Decree No. 2005-716 of 29 June 2005 on the specific status of the command corps of the national police force;
- ✓ Decree No. 2000-815 of 25 August 2000 on the adjustment and reduction of working hours in the national public service and the judiciary;
- ✓ Decree No. 2002-60 of 14 January 2002 concerning hourly payments for overtime;
- ✓ Decree of 6 June 2006 on the amended General Employment Regulations of the national police force;

- ✓ Decree No. 2000-194 of 3 March 2000 laying down the conditions of award of compensation for overtime to national police officers, as amended by Decree No. 2008-340 of 15 April 2008;
- ✓ Instruction NOR INTCO200190C of 18 October 2002 from the Ministry of the Interior, Internal Security and Local Freedoms, laying down the rules governing the organisation of the work of operational members of the national police force;
- ✓ Instruction NOR INTC0800092C of 17 April 2008 from the Ministry of the Interior.

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

1. In respect of payment for overtime

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 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.

2. Status of senior police officers in the light of the revised European Social Charter

In an initial decision (*cf.* report to the Committee of Ministers of 3 December 2007 following complaint No. 38-2006), the European Committee of Social Rights expressed the view that senior police officers in the national police command corps could not be excluded from the provisions of Article 4 § 2 of the revised European Social Charter.

The Committee stated 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."

In a second decision (cf. report to the Committee of Ministers of 1 December 2010 following complaint No. 57-2009), the Committee confirmed its initial decision, whilst fine-tuning its position: "43. The Committee notes that the organisational status and responsibilities of members of the command corps have continued, since 15 April 2008, to differ significantly from those of police commissioners. The former act as operational heads of police departments and offer a high level of expertise in policing and internal security matters. They provide support to or stand in for members of the planning and management corps, the most senior branch of the service. The latter are the most senior managers in the French police, and constitute what is defined as a higher technical corps with joint ministerial responsibilities. Whereas senior police officers are simply responsible for heading specific departments and units, police commissioners have both operational and organisational responsibility for the departments they manage. Finally, senior police officers carry out inquiries and fact-finding and surveillance operations in the police operational departments whereas commissioners have certain judicial powers under the law."

Under these circumstances, it is quite clear that the provisions of Article 4 § 2 of the revised European Social Charter must apply to senior police officers in the command corps of the national police force.

3. Violation of the provisions of Article 4 § 2 on the payment of overtime worked by senior police officers

3.1 – Committee’s decision in response to complaint No. 57-2009

First of all, it is important to note that, in its aforementioned report of 3 December 2007, the European Committee of Social Rights took the view that the flat-rate payment provided for by French regulations (*cf.* decree No. 2000-194 of 3 March 2000) infringed the provisions of Article 4 § 2 of the revised Charter.

It seemed logical that the provisions of the regulations abolishing all compensation for overtime (with some exceptions) performed by senior police officers would necessarily violate the provisions of Article 4 § 2 of the said Charter.

Following a misinterpretation of the provisions relating to the command bonus awarded to senior police officers, however, the European Committee of Social Rights, in its aforementioned report of 1 December 2010, held that the system put in place by the French Government, from 15 April 2008, satisfied the provisions of Article 4 § 2 of the revised European Social Charter.

In order to arrive at this conclusion, the Committee noted as follows:

49. The monthly bonuses are € 375 for commanders, € 343 for captains, € 311 for lieutenants and € 130 for trainee lieutenants. Based on the monthly pay of public officials on the same grades, and according to the reasoning in the submission of the CESP, the equivalent average hourly pay for these officers may be estimated at € 20 for commanders, € 17.50 for captains, € 13 for lieutenants and € 10 for trainee lieutenants.

50. The CESP does not claim that those concerned are required to work in excess of 10 to 12 hours overtime per month, not counting on-call and stand-by duties, which are dealt with separately. Based on an average of 12 hours overtime per month, the hourly pay for overtime averages out at € 31.25 for commanders, € 28.58 for captains, € 25.91 for lieutenants and € 10.83 for trainee lieutenants.

51. The Committee therefore considers that, for each of these grades, the rate of overtime pay is more than 1.5 times the normal hourly rate, which satisfies the requirements of Article 4§2 of the Revised Charter.”

This whole line of reasoning, however, rests on the assumption that the command bonus paid to senior police officers since 15 April 2008 compensates for the overtime worked. Unfortunately that is not the case.

At no point, moreover, has the French government ever considered that the command bonus paid to senior police officers had any such purpose. This is evident from the reasoning presented by the French Government (*cf.* page 9 of the Government’s submissions of 22 January 2010), which states:

“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.

The French Government refers merely to **the increase** in the command bonus.

If the reasoning presented by the French Government is followed, therefore, it is only this increase in the command bonus that provides compensation for the abolition of overtime payments.

In the opinion of the European Council of Police Trade Unions, however, the command bonus paid to senior police officers is not intended to serve as compensation for overtime payments and in any case, the increase in the said bonus cannot, on its own, be considered satisfactory under Article 4 § 2 of the revised European Social Charter.

3.2. True purpose of the command bonus

3.2.1. The command bonus referred to by the French Government, instituted by Decree 98-115 of 27 February 1998 and reproduced in Decree 2008-341 of 15 April 2008, was never intended to compensate for overtime.

Before April 2008 it was already being paid to senior police officers when all their overtime was compensated in the form of compounded time off and this clearly shows that its purpose was not to compensate for overtime.

Furthermore, the regulations on this premium were not amended in substance before the change in the status of senior police officers in April 2008.

This becomes quite clear if Article 1 of Decree No. 98-115 is compared with Article 1 of Decree No. 2008-341.

Art. 1 of Decree No. 98-115	Art. 1 of Decree No. 2008-341
<i>Because of the specific responsibilities they exercise and the specific constraints inherent to the duties that they carry out, a command bonus, from which no deductions shall be made for the state civil pension, may be awarded to officers in the command and management corps of the national police, with the exception of cadets.</i>	<i>Because of the particular responsibilities they exercise and the specific constraints inherent to the duties that they carry out, a command bonus may be awarded to officers of the national police command corps, with the exception of cadets.</i>

Furthermore, the increase in this bonus on 15 April 2008 and the fact that it may vary in size have nothing to do with overtime, merely with the responsibilities exercised and the way in which duties are carried out (...), as the French Government has acknowledged.

3.2.2. A further point to note is that the changes in the status of senior police officers with effect from 15 April 2008 came about as a result of the signing of a memorandum of understanding between the Minister of the Interior and a minority trade union organisation in December 2007, following the memorandum of understanding of 17 June 2004 on reform of the corps and careers in the national police force.

On no account, however, did either the memorandum of 17 June 2004 or that of December 2007 state that the abolition of overtime payments would be offset by the increase in the command bonus.

3.2.3. Under these circumstances, it is clear that the command bonus is not intended to compensate for the absence of payments for overtime.

3.3. Insufficient compensation under Article 4 § 2 of the revised European Social Charter

Even supposing that the French Government's assessment were correct – something the European Council of Police Trade Unions disputes -, i.e. that the increase in the command bonus compensates for the abolition of overtime payments, the fact remains that this compensation does not satisfy the requirements of Article 4 § 2 of the European Social Charter.

To confirm this, one only has to look at how the amount of the command bonus has increased since 2004:

	Commander	Captain	Lieutenant	Trainee lieutenant
2004 ⁽¹⁾	€ 317.33	€ 290.65	€ 263.97	€ 119.14
15/04/2008 ⁽²⁾	€ 350.00	€ 320.00	€ 290.00	€ 130.00
01/01/2009 ⁽³⁾	€ 375.00	€ 343.00	€ 311.00	€ 130.00
01/01/2010 ⁽⁴⁾	€ 401.00	€ 366.00	€ 332.00	€ 139.00
Variation	+ € 83.67	+ € 75.35	+ € 68.03 €	+ € 19.86

⁽¹⁾ – Ministry of the Interior Decree of 27 May 2004

⁽²⁾ – Ministry of the Interior Decree of 15 April 2008

⁽³⁾ – Ministry of the Interior Decree of 4 February 2009

⁽⁴⁾ – Ministry of the Interior Decree of 23 December 2009

Based on the hourly pay of senior police officers at 1 January 2010 and pursuant to Article 4 § 2 of the revised European Social Charter, the amount of overtime for each step breaks down as follows:

Grade and step	Gross salary point	Hourly rate (€) *	Higher hourly rate (€) *
Police Commander EF grade 2 nd step	936	€ 23.11	€ 34.66
Police Commander EF grade 1 st step	882	€ 21.83	€ 32.74
Police Commander 5 th step	876	€ 21.71	€ 32.56
Police commander 4 th step	831	€ 20.68	€ 31.02
Police Commander 3 rd step	782	€ 19.56	€ 29.34
Police Commander 2 nd step	736	€ 18.46	€ 27.69
Police Commander 1 st step	689	€ 17.37	€ 26.05
Police Captain exceptional grade	811	€ 20.19	€ 30.28
Police Captain 5 th step	779	€ 19.47	€ 29.20
Police Captain 4 th step	733	€ 18.40	€ 27.60
Police Captain 3 rd step	693	€ 17.46	€ 26.19
Police Captain 2 nd step	655	€ 16.58	€ 24.87
Police Captain 1 st step	618	€ 15.73	€ 23.59
Police Lieutenant 8 th step	684	€ 17.28	€ 25.92
Police Lieutenant 7 th step	651	€ 16.52	€ 24.78
Police Lieutenant 6 th step	614	€ 15.63	€ 23.44
Police Lieutenant 5 th step	579	€ 14.84	€ 22.26
Police Lieutenant 4 th step	543	€ 14.03	€ 21.04
Police Lieutenant 3 rd step	508	€ 13.27	€ 19.90
Police Lieutenant 2 nd step	469	€ 12.45	€ 18.67
Police Lieutenant 1 st step	425	€ 11.44	€ 17.16
Trainee Police Lieutenant	359	€ 10.14	€ 15.21
Cadet Police Lieutenant	317	€ 9.23	€ 13.84

* This table is based on the salary scale at 1 January 2010 and 1 820 hours worked annually, which are the standard hours worked for members of the national police force.

On the basis of the higher hourly rate, therefore, it is possible to determine what the increase in the command bonus introduced since 15 April 2008 represents in terms of number of overtime hours.

Grade and Step	Higher hourly rate (€) *	Increase	Equivalent in hours
Police Commander EF grade 2 nd step	€ 34.66	€ 83.67	2.41 hours
Police Commander EF grade 1 st step	€ 32.74	€ 83.67	2.55 hours
Police Commander 5 th step	€ 32.56	€ 83.67	2.56 hours
Police Commander 4 th step	€ 31.02	€ 83.67	2.69 hours
Police Commander 3 rd step	€ 29.34	€ 83.67	2.85 hours
Police Commander 2 nd step	€ 27.69	€ 83.67	3.02 hours
Police Commander 1 st step	€ 26.05	€ 83.67	3.21 hours
Police Captain exceptional grade	€ 30.28	€ 75.35	2.48 hours
Police Captain 5 th step	€ 29.20	€ 75.35	2.58 hours
Police Captain 4 th step	€ 27.60	€ 75.35	2.73 hours
Police Captain 3 rd step	€ 26.19	€ 75.35	2.87 hours
Police Captain 2 nd step	€ 24.87	€ 75.35	3.02 hours
Police Captain 1 st step	€ 23.59	€ 75.35	3.19 hours
Police Lieutenant 8 th step	€ 25.92	€ 68.03	2.62 hours
Police Lieutenant 7 th step	€ 24.78	€ 68.03	2.74 hours
Police Lieutenant 6 th step	€ 23.44	€ 68.03	2.90 hours
Police Lieutenant 5 th step	€ 22.26	€ 68.03	3.05 hours
Police Lieutenant 4 th step	€ 21.04	€ 68.03	3.23 hours
Police Lieutenant 3 rd step	€ 19.90	€ 68.03	3.41 hours
Police Lieutenant 2 nd step	€ 18.67	€ 68.03	3.64 hours
Police Lieutenant 1 st step	€ 17.16	€ 68.03	3.96 hours
Trainee Police Lieutenant	€ 15.21	€ 19.86	1.3 hour

It is clear from this table that the increase in the command bonus equates, in the majority of cases, to just three hours' overtime performed over a period of one month, i.e. less than an hour per week.

Likewise, assuming an average of 12 hours' overtime, as the European Committee of Social Rights did in decision No. 57/2009 of 1 December 2010, it is clear that the provisions of Article 4 § 2 of the revised European Social Charter have not been observed. A look at the figures in the following table is sufficient to confirm this.

Grade and Step	Higher hourly rate (€) *	Increase	Actual hourly rate for 12 hours' overtime
Police Commander EF 2 nd step	€ 34.66	€ 83.67	€ 6.97 /h
Police Commander EF 1 st step	€ 32.74	€ 83.67	€ 6.97 /h
Police Commander 5 th step	€ 32.56	€ 83.67	€ 6.97 /h
Police Commander 4 th step	€ 31.02	€ 83.67	€ 6.97 /h
Police Commander 3 rd step	€ 29.34	€ 83.67	€ 6.97 /h
Police Commander 2 nd step	€ 27.69	€ 83.67	€ 6.97 /h
Police Commander 1 st step	€ 26.05	€ 83.67	€ 6.97 /h
Police Captain exceptional grade	€ 30.28	€ 75.35	€ 6.27 /h
Police Captain 5 th step	€ 29.20	€ 75.35	€ 6.27 /h
Police Captain 4 th step	€ 27.60	€ 75.35	€ 6.27 /h
Police Captain 3 rd step	€ 26.19	€ 75.35	€ 6.27 /h
Police Captain 2 nd step	€ 24.87	€ 75.35	€ 6.27 /h
Police Captain 1 st step	€ 23.59	€ 75.35	€ 6.27 /h
Police Lieutenant 8 th step	€ 25.92	€ 68.03	€ 5.66 /h
Police Lieutenant 7 th step	€ 24.78	€ 68.03	€ 5.66 /h
Police Lieutenant 6 th step	€ 23.44	€ 68.03	€ 5.66 /h
Police Lieutenant 5 th step	€ 22.26	€ 68.03	€ 5.66 /h
Police Lieutenant 4 th step	€ 21.04	€ 68.03	€ 5.66 /h
Police Lieutenant 3 rd step	€ 19.90	€ 68.03	€ 5.66 /h
Police Lieutenant 2 nd step	€ 18.67	€ 68.03	€ 5.66 /h
Police Lieutenant 1 st step	€ 17.16	€ 68.03	€ 5.66 /h
Trainee Police Lieutenant	€ 15.21	€ 19.86	€ 1.65 /h

These two simple observations are sufficient to show that the increase in the command bonus cannot be said to compensate for the abolition of overtime payments within the meaning of Article 4 § 2 of the revised European Social Charter.

* * *

Under these circumstances, there can be no doubt that the provisions of Article 4 § 2 of the revised Charter are necessarily violated by:

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

VI - Conclusion

Accordingly, the object of this complaint lodged by the European Council of Police Trade Unions is that the Committee declare that FRANCE:

- ✓ by virtue of Decree No. 2000-194 of 3 March 2000, as amended by Decree No. 2008-340 of 15 April 2008, the general regulations governing employment in the national police force of 6 June 2006, as amended by order NOR IOCC0804409A of 15 April 2008 issued by the Minister of the Interior and Instruction NOR INTC0800092C of 17 April 2008, is in breach of the provisions of Article 4, paragraph 2 of the revised European Social Charter;
- ✓ 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 national police command corps can receive payment for any overtime they may work.



Branko PRAH

Président du CESP

Appendices to the Complaint

- ✓ Decree No. 2005-716 of 29 June 2005 on the specific status of the command corps of the national police force;
- ✓ Decree No. 2000-815 of 25 August 2000 on the adjustment and reduction of working hours in the national public service and the judiciary;
- ✓ Decree No. 2002-60 of 14 January 2002 concerning hourly payments for overtime;
- ✓ Decree of 6 June 2006 on the amended General Employment Regulations of the national police force;
- ✓ Decree No. 2000-194 of 3 March 2000 laying down the conditions of award of compensation for overtime to national police officers, as amended by decree No. 2008-340 of 15 April 2008;
- ✓ Instruction NOR INTCO200190C of 18 October 2002 from the Ministry of the Interior, Internal Security and Local Freedoms, laying down the rules governing the organisation of the work of operational members of the national police force;
- ✓ Instruction NOR INTC0800092C of 17 April 2008 from the Ministry of the Interior.
