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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

30 November 2011

Case Document No. 2

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

**SUBMISSIONS BY THE GOVERNMENT
ON THE MERITS
(TRANSLATION)**

registered at the Secretariat on 30 November 2011

OBSERVATIONS BY THE GOVERNMENT OF THE FRENCH REPUBLIC
ON THE MERITS OF
COMPLAINT No. 68/2011,
CESP v. FRANCE

By a decision dated 13 September 2011, the European Committee of Social Rights declared admissible the complaint lodged on 18 May 2011 by the CESP, requesting that the Committee find that France has not satisfactorily implemented Article 4§2 of the Revised European Social Charter.

The French Government would like to submit the following observations to the Committee on the merits of the complaint.

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I. THE COMPLAINTS

1. The CESP considers that the "command bonus" paid to police officers in pursuance of Decree No. 2008-340 of 15 April 2008 laying down the conditions of award of compensation for overtime to national police officers does not afford compensation at an acceptable rate for the overtime worked by police officers, and has to be considered contrary to the provisions of Article 4§2 of the European Social Charter, according to which:

"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; (...)."

II. THE MERITS OF THE COMPLAINT

Main argument, on the admissibility of the complaint

2. The Government disputes the admissibility of the present complaint in so far as the complaint has already been examined by the ECSR in the context of previous complaints Nos. 38/2009, and 54 and, in particular, 57/2009. In this last-named decision, dated 3 December 2010, the Committee unanimously took the view that *"there is no violation of Article 4§2 of the Revised Charter arising from the rules applicable since 15 April 2008 to members of the national police command corps performing intermediate management duties"*. The Committee in fact noted that *"the special bonus they receive as compensation for overtime work is such as to comply with Article 4§2 of the Revised Charter which requires overtime work to be compensated at a higher rate than the normal wage rate"*.
3. In its new complaint, No. 68/2011, the CESP thus asks the European Committee of Social Rights to reconsider that decision, which was allegedly adopted because of a misinterpretation of the provisions relating to the command bonus paid to police officers, which, according to the CESP, does not compensate for the overtime worked by the officers.
4. The Government firstly expresses its surprise that it was not consulted about the admissibility of the complaint, and wishes to make comments on this point.
5. This complaint is, in fact, very manifestly inadmissible, for it produces no new evidence in fact or in law as compared to complaint No. 57. The current complaint merely reiterates the observations put forward by the CESP in either the initial complaint registered on 7 May 2009 or the memorial in reply registered on 22 February 2010. The Government can therefore see no evidence which would give ground to believe that the ECSR had made an error of appreciation in its decision on the merits of complaint No. 57 of 1 December 2010. The Government further emphasises that, in the context of this complaint, it has replied to all the questions put by the ECSR in its letter of 14 September 2011. The Committee was thus able to take its decision with all the necessary information at its disposal, and even were it to have made an error of appreciation, that decision would be final.
6. The Government consequently considers that this complaint is intended to challenge the decision of the ECSR delivered on 1 December 2010 and equates to a request for review. However, such a possibility is not provided for by the text of the Additional Protocol to the European Social Charter providing for a system of collective complaints, so it is inadmissible.

In the alternative, on the merits of the complaint

7. It is firstly pointed out that, thanks to the reform of national police corps and careers, the officers of the command corps of the national police (a corps comprising the grades of lieutenant, captain and commander) moved to a system of payment as members of senior management, i.e. a weekly hours worked system in which individual hours of overtime worked are not counted, and therefore not remunerated at a higher rate.

8. In recognition of their new responsibilities, these police officers benefit from a new system of payments covering the additional services which they are required to provide. Under this flat-rate payments system, these officers benefit inter alia from a command bonus.
9. The CESP's argument is wrong, for the command bonus is indeed intended to compensate for the additional services provided by these police officers. The amounts of this bonus may be modulated to take account of the beneficiary's grade and job, and they take account of the scale of the responsibilities exercised, the manner in which duties are carried out and any constraints inherent in the performance of the relevant duties.
10. The monthly amounts are determined by an order and are regularly reviewed (orders of 15 April 2008, 31 December 2008, 23 December 2009 and 6 January 2011 setting the amounts of the command bonus awarded to officers of the national police command corps). After 15 April 2008, they were thus between 130 euros (for a trainee lieutenant) and 375 euros (for a senior operational commander). Since January 2011, the amounts have been between 143 and 413 euros.
11. This large increase in the bonus has also been accompanied by annual salary scale increases.
12. Furthermore, the CESP cannot legitimately base its calculation of the hourly pay for overtime worked by officers solely on the amount of the increase between 2008 and 2011 in the command bonus.
13. It is appropriate, as the Committee did in its decision of 1 December 2010, to take into account the total amount of the command bonus paid monthly and to relate this to the number of hours of overtime worked per month on average in order to obtain the hourly pay for overtime worked by officers. A comparison of the hourly pay for overtime worked with the normal hourly rate (established on the basis of the salary paid to the public officials concerned) enabled the Committee to consider, in its decision of 1 December 2010, 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*".
14. In these conditions, there is no reason for the Committee to reconsider its conclusions, especially as the monthly amount of the command bonus has further increased since the Committee's decision. For further details, the Government refers to the observations which it already produced in the context of complaint No. 57.
15. The impugned compensation arrangements being free from any contravention of the provisions of Article 4 § 2 of the Charter, it is in consequence appropriate, in the unlikely event that the Committee deems the complaint to be admissible, to invite it to declare the present complaint ill-founded, and therefore to dismiss it.
16. The Government finally regrets the instrumentalisation of the Protocol providing for a system of collective complaints by certain organisations whose practice it is to reformulate, in the context of new complaints, allegations which have already been the subject of examination by the Committee, in order to obtain a decision in their favour.