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

19 January 2012

Case document No. 3

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

**RESPONSE FROM CESP
TO THE GOVERNMENT'S SUBMISSIONS
ON THE MERITS
(TRANSLATION)**

registered at the Secretariat on 19 January 2012



Conseil Européen des Syndicats de Police

Organisation Internationale Non Gouvernementale au Conseil de l'Europe

Mr Branko Prah
President of the European Council of
Police Trade Unions

to

The Executive Secretary of the
European Social Charter
Council of Europe
Directorate General of Human Rights
and Legal Affairs
67075 Strasbourg CEDEX

Lyon, 18 January 2012

**Subject: Complaint submitted by the European Council of Police Trade Unions
against France for failure to implement Article 4§2 of the revised Social
Charter. Response**

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

Dear Sir,

The European Committee of Social Rights forwarded us the French Government's observations on our collective complaint of 17 May 2011, registered under the number 68/2011 and declared admissible in a decision of 13 September 2011.

You will find below our reply to the arguments put forward by the Minister for Foreign Affairs on behalf of the French Government.

I – The admissibility of Complaint No. 68/2011

The French Government considers that since the Committee gave a final ruling on the dispute over the payment of overtime to French senior police officers in its decision of 1 December 2010 on Complaint No. 57/2009, a new complaint on the same subject is tantamount to reopening proceedings before the Committee, for which no provision has been made. This argument cannot be accepted.

The aim of this complaint is merely to submit facts to the Committee which differ from those on which it ruled on 1 December 2010, as on that occasion the Committee ruled on a situation which was inferred from the case file of Complaint No. 57/2009 but did not correspond to the real situation of senior French police officers.

Consequently, in this complaint (No. 68/2011), contrary to what the French Government claims, the European Council of Police Trade Unions provides new factual evidence.

It gives a precise description of the true situation with regard to the payment of overtime to senior police officers by the French Government in the light of the application of Article 4§2 of the revised Charter.

In no respect is it the intention of the European Council of Police Trade Unions in lodging Complaint No. 68/2011 to dispute the decision on Complaint No. 57/2009 or to ask for it to be reviewed.

It simply asks the Committee to rule on the application of Article 4§2 of the Charter in a substantively different situation, namely in connection with the arrangements for the payment of overtime to senior French police officers, while having due regard for the principles laid down in the Committee's decision on Complaint No. 57/2009.

Consequently, as the Committee has already found, this complaint is entirely admissible.

II - The merits of Complaint No. 68/2011

A – The payment system for police “managers” and Article 4§2 of the Charter

The Government's first argument is that the European Council of Police Trade Union's complaint is unfounded because since 1 April 2008, French senior police officers have been covered by a system of payment for senior management, which means that they cannot be given extra pay for any overtime they carry out. This argument cannot be accepted.

In its decision of 1 December 2010 on Complaint No. 57/2009, the Committee confirmed that the managerial status of France's senior police officers did not exclude them from the application of the provisions of Article 4§2 of the Charter on increased payment for overtime.

This is confirmed by the following statement: “44. The Committee therefore finds that, in general, members of the national police command corps (senior police officers) do not fall into the category of exceptions provided for in Article 4§2 of the revised Charter”.

Consequently, the French Government's interpretation is at variance with the stance taken by the Committee.

B – The command bonus and the flat-rate payment for overtime

Secondly, the French Government claims that since 1 April 2008, senior police officers have been paid for overtime through a monthly flat-rate payment known as the “command bonus”.

In this point, it argues as follows: “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”.

This is an attempt by the Government to mislead the Committee and a misrepresentation of the facts.

1° - It should be pointed out that in its official written statements, the French Government has always recognised that it was only the **increase** in the command bonus which constituted payment for overtime worked by senior French police officers after 1 April 2008.

On 5 December 2007, before adopting the texts of 2008, which the European Council of Police Trade Unions considers to be in breach of Article 4§2 of the revised Charter, the French Government signed an agreement on overtime with a minority trade union of senior police officers.

The agreement stated that because the senior police officers were to be granted a “managerial” status, which meant that their overtime could no longer be counted, their command bonus would be **increased**. This confirms that it is **only the increase** in the command bonus which provides the flat-rate compensation of overtime worked by senior police officers (see, page 3, section III).

The terms of this agreement are reproduced in instruction DAPN/AGF/AJS/STAT No. 00526 of 16 April 2008 by the director general of the national police, which describes the new employment conditions for “officers receiving the **increased** command bonus, [who are] now no longer eligible for any specific compensatory payment or time off” for their overtime (see page 3, 2°).

2° - Likewise, in a dispute between the senior police officers and the Minister of the Interior, France’s highest administrative court, the *Conseil d’Etat*, examined all the provisions altering the senior police officers’ status.

In its judgment of 19 March 2010 (on application No. 317225, *Syndicat National des Officiers de Police v. Minister of the Interior*, page 5, 3°§), it noted as follows:

“it can be deduced from the combination of all these texts that the Government altered the system for the payment of the overtime of senior police officers not exercising any particular responsibility by substituting a system of compensation based largely on flat-rate payments, awarded **by means of the increase in the command bonus** to which these officers are **now** entitled, for the system of compensation which applied **beforehand**, which was largely proportionate to the actual number of hours of overtime worked.”

It follows from this judgment that it is only the increase in the command bonus which provides the flat-rate compensation for overtime worked by senior police officers.

3° - Under these circumstances, the Government cannot dispute:

- ✓ that the command bonus existed **before** the senior police officers’ employment conditions were changed on 1 April 2008;
- ✓ that it is only the **increase** in the command bonus after 1 April 2008 which corresponds to the flat-rate compensation for overtime worked by the senior police officers.

4° - As stated in the complaint of 17 May 2011, this increase has been applied progressively.

Today, irrespective of the number of hours of overtime actually worked it amounts to the following sums:

- ✓ €68.03 for a Police Lieutenant;
- ✓ €75.35 for a Police Captain;
- ✓ €83.67 for a Police Commander;

When set against the increased hourly rate required by Article 4§2 of the Charter, these increases **cover only two to four hours of overtime per month** depending on the officer’s grade (see appended table).

Clearly, however, senior police officers work far more than two to four hours of overtime per month, not counting on-call and stand-by duties, even though it is currently impossible for them to determine precisely how many overtime hours they do work.

It should be emphasised that this impossibility is **exclusively** the result of the French Government's attitude, as it was the Minister of the Interior who refused to allow the overtime worked by senior police officers to be counted (see Complaint No. 57/2009).

5° - If we apply the number of overtime hours adopted by the Committee in its decision of 1 December 2010 on Complaint No. 57/2009, namely 10 to 12 hours per month, it is clear that the increase in the command bonus alone is not enough to constitute an increased rate of pay for these hours compared to the senior police officers' standard wage.

In these circumstances, the Committee can only conclude that France's system of flat-rate compensation for overtime worked by senior police officers is still in breach of Article 4§2 of the revised Charter.

C - The alleged instrumentalisation of Committee and the French Government's bad faith

The European Council of Police Trade Unions regrets the fact that the French Government raises the suspicion that Complaint No. 68/2011 is instrumentalising the Committee whereas, in July 2011, the same Government set up a temporary arrangement for the payment of certain overtime hours worked by the management corps of the French national police under conditions that were entirely at variance with the Committee's decision of 1 December 2010 on Complaint No. 57/2009.

Lastly, the European Council of Police Trade Unions would like to highlight the particular bad faith of the French Government in having no hesitation in presenting the Committee with arguments that run counter to its own written statements and the findings of the *Conseil d'Etat* in its decision of 19 March 2010 with the sole aim of misleading the Committee and hence avoiding the application of Article 4§2 of the revised Charter.

The Committee cannot allow itself to be deceived by the French Government's attitude.

In view of the foregoing, the European Council of Police Trade Unions upholds its complaint as it stands and calls for the French Government's claims to be rejected.

Branko Prah

President of the CESP

Extra documents enclosed:

- ✓ summary table of the number of overtime hours that can be compensated for by the increase in the command bonus;
- ✓ summary of the conclusions of 5 December 2007;
- ✓ instruction DAPN/AGF/AJS/STAT No. 00526 of 16 April 2008;
- ✓ Judgment No. 317225 of the *Conseil d'Etat* of 19 March 2010.