



European
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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

DECISION ON THE MERITS

Adoption: 23 October 2012

Notification: 5 November 2012

Publicity: 11 June 2013

**European Council of Police Trade Unions (CESP)
v. France**

Complaint No. 68/2011

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 260th session attended by:

Luis JIMENA QUESADA, President
Monika SCHLACHTER, Vice-President
Jean-Michel BELORGEY, General Rapporteur
Csilla KOLLONAY LEHOCZKY
Andrzej SWIATKOWSKI
Lauri LEPPIK
Birgitta NYSTRÖM
Rüçhan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Giuseppe PALMISANO
Karin LUKAS

Assisted by Régis BRILLAT, Executive Secretary

Having deliberated on 26 June, 11 September and 23 October 2012;

On the basis of the report presented by Mr Andrzej SWIATKOWSKI;

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint submitted by the European Council of Police Trade Unions (“the CESP”) was registered at the Secretariat on 18 May 2011. It alleges that the regulations introduced by the French Government since April 2008 are in violation of Article 4§2 of the revised European Social Charter (“the Charter”) on the ground that they do not provide for compensation for overtime by the senior officers of the national police command corps.
2. The Committee declared the complaint admissible on 13 September 2011.
3. Pursuant to Article 7§§1 and 2 of the Protocol providing for a system of collective complaints (“the Protocol”) and the Committee’s decision on the admissibility of the complaint, on 16 September 2011 the Executive Secretary communicated the text of the admissibility decision to the French Government (“the Government”), the CESP, the states parties to the Protocol, the states that have ratified the Charter and have made a declaration under Article D§2, and the organisations referred to in Article 27§2 of the 1961 Charter.
4. In accordance with Article 31§1 of the Committee’s Rules, the Committee set a deadline of 28 October 2011 for the Government to present its submissions on the merits. At the Government’s request, the President of the Committee granted an extension of the deadline up to 30 November 2011.
5. The Government’s submissions were registered at the Secretariat on 1 December 2011. Pursuant to Rule 31§2, the President set 3 February 2012 as the deadline for the CESP to present its response to the Government’s submissions. The response was registered on 19 January 2012. It was sent to the Government on 31 January 2012.
6. On 13 September 2012 the Committee asked the parties to provide information on the practical implementation of the legislative provisions referred to in the statement distributed by the Government at the 1114th meeting of the Ministers’ Deputies of the Council of Europe on 25 May 2011 (DD(2011)384F). The parties were given until 5 October 2012 to respond.
7. The CESP’s response was registered at the Secretariat on 2 October 2012. At the Government’s request, the President of the Committee granted an extension of the deadline up to 17 October 2012. The Government’s response was registered by the Secretariat on 16 October 2012.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

8. The complainant organisation asks the Committee to find that 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 ministerial order NOR IOCC0804409A of 15 April 2008, and Instruction NOR INTC0800092C of 17 April 2008 are in breach of Article 4§2 of the Charter.

B – The Government

9. The Government considers that the impugned payment arrangements are totally compatible with Article 4§2 of the Charter and it therefore asks the Committee – in the unlikely event that it deems the complaint to be admissible – to find it unfounded and hence to dismiss it.

RELEVANT DOMESTIC LAW AND CASE-LAW

10. In this section, reference is made only to the domestic law applicable to the subject of the present complaint, as the rules that applied prior to this are described in the decision on the merits of 1 December 2010 on Complaint No. 57/2009 by the European Council of Police Trade Unions (CESP) v. France, to which the reader is referred. In view of their relevance to the allegations made in the complaint, the orders establishing, from 2004 onwards, the amounts of the command bonus awarded to officers of the national police command and/or management corps are also mentioned in this section.

11. Decree No. 95-654 of 9 May 1995, amended, establishing general provisions applicable to operational members of the national police force

Article 22

"Under the conditions set by the employment regulations established by ministerial decree, operational members of the national police force may be asked to perform their duties, both during the day and at night, outside the limits of the standard working week. Duty performed beyond the standard working week shall be compensated by equal or equivalent rest periods, which must be granted at the earliest opportunity, subject to the needs of the service, or, under conditions established by decree, by a suitable overtime payment system."

12. Decree No. 2000-194 of 3 March 2000 on the conditions for the payment of overtime to operational members of the national police force

Article 1

As amended by Decree No. 2008-340 of 15 April 2008 – Article 1

"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 that cannot be recovered, benefit from a compensatory payment for extra services".

13. Order of 27 May 2004 setting the amounts of the command bonus awarded to members of the national police command and management corps:

Article 1:

"The monthly amounts of the command bonus awarded to officers of the national police command and management corps under the Decree of 27 February 1998, cited above, shall be set as follows:

Senior operational commander and commander: €317.33;
Captain: €290.65;
Lieutenant: €263.97;
Trainee lieutenant: €119.14".

Article 2:

"The basic amounts of command bonus set in Article 1 above may be increased by 20% in the case of personnel assigned to one of the cyclical services not subject to a weekly working arrangement".

Article 3:

"The order of 17 January 2002 setting the amounts of the command bonus awarded to officers of the national police command and management corps shall be repealed".

Article 4:

"The Director General of the National Police, the Director of the Budget and the Director General of Administration and the Civil Service shall be severally responsible for the implementation of this order, which shall take effect from 1 January 2003 and be published in the Official Journal of the French Republic".

14. Decree No. 2005-716 of 29 June 2005 on the specific status of the command corps of the national police force

Article 2

"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 superintendents in the performance of their duties, except in cases where the law explicitly requires a superintendent'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."

Article 3

"The command corps of the national police force comprises three grades:

- 1° Police lieutenant;
- 2° Police captain;
- 3° Police commander.

Article 4

The grade of police lieutenant comprises a step as cadet, a step as trainee and eight further steps.

The grade of police captain comprises five steps and an exceptional grade.

The grade of police commander comprises five steps and two steps at senior operational (EF) level".

15. Order of 6 June 2006 on the general regulations governing employment in the national police force

Article 113-34, as amended by the Order of 9 March 2009 – Article 1 (initial version)

"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 calculated on an hour for hour basis through arrangements 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 No. 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 amended Decree No. 2002-819 of 3 May 2002, payment for a period on standby precludes compensatory time off for the same period.

Any officer who, in accordance with the provisions of the Decree of 3 May 2002 cited above, is entitled to payment or, in the absence of payment, compensatory time off for periods of standby and completes an unpaid period of standby shall be granted compensatory time off for this period in accordance with the arrangements set out in the general instruction on work organisation in the national police force".

16. Decree No. 2008-340 of 15 April 2008 amending Article 1 of Decree No. 2000-194 of 3 March 2000 and setting out the conditions for the payment of overtime to operational members of the national police force:

Article 1:

"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 that cannot be recovered, benefit from a compensatory payment for extra services".

Article 2:

“The Minister of the Interior, Overseas Territories and Local and Regional Authorities, the Minister of Budgetary Affairs, Public Accounts and the Civil Service and the State Secretary in charge of the Civil Service shall be severally responsible for the implementation of this decree, which shall be published in the Official Journal of the French Republic and which shall take effect on 1 April 2008”.

17. Decree No. 2008-341 of 15 April 2008 awarding a command bonus to officers of the national police command corps:

Article 1:

“On account of the particular responsibilities which they exercise and the constraints inherent in their duties, a command bonus may be awarded to officers of the national police command corps, with the exception of cadets.

Officers posted abroad and covered by the arrangements laid down in the decrees of 28 March 1967 and 18 February 2002, cited above, shall not be eligible for the command bonus.

The same shall apply to officers assigned to civil security who are covered by the provisions of the decrees of 30 May 2005 and 2 September 2005, cited above”.

Article 2:

“The command bonus shall be paid monthly upon completion of actual service. It shall be exclusive of:

- a) the hourly allowance for working on Sundays and/or public holidays;
- b) the hourly allowance for night work and the special supplement for intensive work;
- c) the duty allowance”.

Article 3:

“The monthly amounts of the command bonus shall be set by a joint order of the Minister of the Interior, the Minister of Budgetary Affairs and the Minister responsible for the Civil Service according to the grades and positions held by the recipients.

Individual awards of the command bonus shall 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 and may be paid up to a maximum of 140% of the monthly amounts.

The monthly amounts of the command bonus set by the order referred to in the first paragraph of this article may be increased by up to 30% in the case of personnel who perform their duties under one of the cyclical work regimes in force within the national police, as well as those who are subject to the weekly/cyclical mixed working arrangements that apply in the mobile state security police units (*compagnies républicaines de sécurité*). This adjustment may be combined with that provided for in the previous paragraph”.

Article 4:

“Decree No. 98-115 of 27 February 1998 awarding a command bonus to officers in the command and management corps of the national police shall be repealed.”

Article 5:

“The Minister of the Interior, Overseas Territories and Local and Regional Authorities, the Minister of Budgetary Affairs, Public Accounts and the Civil Service and the State Secretary in charge of the Civil Service shall be severally responsible for the implementation of this decree, which shall be published in the Official Journal of the French Republic and which shall take effect on 1 April 2008”.

18. Order of 15 April 2008 setting the amounts of the command bonus awarded to members of the national police command corps:

Article 1

"The monthly amounts of the command bonus awarded to officers of the national police command corps under the Decree of 15 April 2008, cited above, shall be set as follows:

Senior operational commander and commander: €350;
Captain: €320;
Lieutenant: €290;
Trainee lieutenant: €130".

Article 2

"The order of 27 May 2004 setting the amounts of the command bonus awarded to officers of the national police command and management corps shall be repealed".

Article 3

"The Director General of the National Police, the Director of the Budget and the Director General of Administration and the Civil Service shall be severally responsible for the implementation of this order, which shall be published in the Official Journal of the French Republic and which shall take effect from 1 April 2008".

19. Instruction of 17 April 2008 supplementing and amending the general instruction on the organisation of the work of the national police force (operational members of the national police force) of 18 October 2002 – Circular NOR INT/C/08/00092/C.

The instruction makes the following stipulations regarding the organisation of work:

"When carrying out their duties, and without detracting from the exercise of hierarchical authority, the members of the national police command corps who are not covered by Article 10 of Decree No. 2000-815 of 25 August 2000, amended, on the adjustment and reduction of working hours in the national civil service and the judiciary shall be granted the necessary latitude to manage their operational obligations and responsibilities".

20. Order of 31 December 2008 setting the amounts of the command bonus awarded to members of the national police command corps:

Article 1:

"The monthly amounts of the command bonus awarded to officers of the national police command corps under the Decree of 15 April 2008, cited above, shall be set as follows:

Senior operational commander and commander: €375;
Captain: €343;
Lieutenant: €311;
Trainee lieutenant: €130".

Article 2:

"The order of 15 April 2008 setting the amounts of the command bonus awarded to officers of the national police command and management corps shall be repealed".

Article 3:

“The Director General of the National Police, the Director of the Budget and the Director General of Administration and the Civil Service shall be severally responsible for the implementation of this order, which shall be published in the Official Journal of the French Republic and which shall take effect from 1 January 2009”.

21. Order of 23 December 2009 setting the amounts of the command bonus awarded to members of the national police command corps:

Article 1

“The monthly amounts of the command bonus awarded to officers of the national police command corps under the Decree of 15 April 2008, cited above, shall be set as follows:

Senior operational commander and commander: €401;
Captain: €366;
Lieutenant: €332;
Trainee lieutenant: €139”.

Article 2

“Article repealing the order of 31 December 2008 setting the amounts of the command bonus awarded to members of the national police command corps”.

Article 3

“The Director General of the National Police and the Director of the Budget shall be severally responsible for the implementation of this order, which shall be published in the Official Journal of the French Republic and which shall take effect from 1 January 2010”.

22. Order of 6 January 2011 setting the amounts of the command bonus awarded to members of the national police command corps:

Article 1

“The monthly amounts of the command bonus awarded to officers of the national police command corps under the Decree of 15 April 2008, cited above, shall be set as follows:

Senior operational commander: €413;
Police commander: €413;
Police captain: €378;
Police lieutenant: €343;
Trainee police lieutenant: €143”.

Article 2

“The following provisions shall be amended:

- Order of 23 December 2009 (Ab) to be repealed;
- Order of 23 December 2009 – Article 1 (Ab) to be repealed.”
- Order of 23 December 2009 – Article 3 (Ab) to be repealed”.

Article 3

“The Director General of the National Police, the Director of the Budget and the Director General of Administration and the Civil Service shall be severally responsible for the implementation of this order, which shall be published in the Official Journal of the French Republic and which shall take effect from 1 January 2011.”

23. Decision of the *Conseil d’Etat*, combined 5th and 4th sub-sections, Decision No. 317225, delivered on 19 March 2010:

“...Considering that, until the issuing of the contested decree and orders, under a Decree of 3 March 2000, members of the national police command corps were entitled to overtime payments for hours worked in addition to the normal working day and time spent on standby, on-call and recalls to duty that could not be recovered, though this did not extend to police commanders who were heads of public security districts, departments or self-contained units, who, under a Decree of 27 May 2004 and on account of their special responsibilities, received the duty allowance for members of the national police planning and management corps, to the exclusion of overtime payments; that the contested Decree of 15 April 2008 amends the Decree of 3 March 2000 by removing, from 1 April 2008, entitlement of members of the police command corps to overtime payments; that two orders issued on the same day stipulate that recalls to duty and hours worked in excess of the working day shall not be taken into account for the purposes of compensatory time off, provide for a flat-rate compensatory allowance and specific compensation for time spent on call and retain the principle of compensatory time off for stand-by duty. The latter must be taken within seven days of the end of the stand-by period or, if the requirements of the service prevent it from being taken within this period, within eight weeks; that these orders introduce the same compensatory time off arrangements for stand-by carried out by members of the corps performing the duties of heads of public security districts, departments or self-contained units; that, finally, another Decree of 15 April 2008 increased the command bonus for senior police officers not exercising high-level responsibilities who are subject to special working time requirements; ...

Considering, however, that the contested decrees and orders, which were published in the official journal of the French Republic on 16 April 2008, could not, on account of the link that existed in the previous overtime payment system they were replacing between the right to financial compensation and the right to compensatory time off, take effect on a date prior to their publication without adversely affecting legally established situations; that in view of the fact that they provided that they would come into force on 1 April 2008, the decree and the orders are unlawfully retroactive in effect; that they should therefore be declared void for that reason;

Decides:

Article 1: Article 2 of Decree No. 2008-340 of 15 April 2008, Article 4 of the order of 15 April 2008 amending the order of 6 June 2006 on the General Regulations governing employment in the national police force and Article 6 of the order of 15 April 2008 amending the order of 3 May 2002 on the application to the national police force of Articles 1, 4, 5 and 10 of Decree No. 2000-815 of 25 August 2000 on the adjustment and reduction of working hours in the national public services are declared void, since they provide for their entry into force on 1 April 2008. ...”.

THE LAW

PRELIMINARY OBJECTION OF THE GOVERNMENT ON THE ADMISSIBILITY OF THE COMPLAINT

24. Having not been consulted on the admissibility of the complaint, in its submissions on the merits thereof the Government asserts that the complaint should not have been declared admissible because the alleged violation was already examined by the Committee in the context of previous complaints (European Council of Police Trade Unions (CESP) v. France, No. 38/2006; European Council of Police Trade Unions (CESP) v. France, No. 54/2008, and European Council of Police Trade Unions (CESP) v. France, No. 57/2009). The Government considers in particular that the complaint is:

“very manifestly inadmissible, for it produces no new evidence in fact or in law as compared to complaint No. 57 ...”.

25. The Government is also of the view that the complaint:

“is intended to challenge the decision of the [Committee] delivered on 1 December 2010 and equates to a request for review”,

and considers that:

“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 [the complaint] is inadmissible”.

26. Accordingly, the Government:

“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”.

27. The Committee points out that, under Article 6 of the Protocol:

“the Committee ... may request the Contracting Party concerned and the organisation which lodged the complaint to submit written information and observations on the admissibility of the complaint within such time-limit as it shall prescribe”,

28. The Committee points out that, pursuant to this provision and Rule 29§4, under which:

“the Committee has the possibility of declaring any complaint either admissible or inadmissible, without having invited the government concerned to submit observations, when it considers that the admissibility conditions are either manifestly fulfilled or manifestly unfulfilled”,

it is not required to consult the Government before ruling on the admissibility of a complaint.

29. The complaint was found to be admissible because it complies with all the requirements laid down by the Protocol and the Committee's Rules.

30. The Committee also recalls that:

(a) the fact that a complaint relates to a claim it has already examined in the context of a previous complaint is not in itself a reason to find it inadmissible;

(b) the submission of new evidence during the examination of a complaint may prompt the Committee to re-assess a situation it has already examined in the context of previous complaints and, where appropriate, take decisions which may differ from the conclusions it adopted previously.

31. The Committee considers that, in this case, the examination of the circumstances relating to the admissibility of the complaint has highlighted new evidence pertaining to the merits of questions raised in the context of previous complaints linked to the same subject-matter. This evidence concerns the command bonus awarded to senior police officers, its increase and the actual circumstances of the payment of this bonus to the officers in question.

ALLEGED VIOLATION OF ARTICLE 4§2

32. Article 4§2 of the Charter reads:

“Article 4 – The right to a fair remuneration

Part I: “All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.”

Part II: “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; ...”.

A – Submissions of the parties

1. The complainant organisation

33. Referring to the Committee's decision of 1 December 2010 on the merits of Complaint No. 57/2009, CESP v. France, the CESP considers that, in holding that the command bonus paid to members of the national police command corps (referred to hereinafter as “senior police officers”) as compensation for overtime work complied with Article 4§2 of the Charter, the Committee misinterpreted the relevant national legal provisions.

34. The complainant organisation takes the view that neither the command bonus paid to senior police officers nor the periodical increase in the amount paid compensates for the withdrawal of the overtime payments, which the senior police officers received before the current regulations were introduced. Before backing up this theory with evidence relating to the payment of the abovementioned bonus, the CESP focuses on the question of the subjects of the alleged violations.

35. In this connection, the complainant organisation specifies that the persons, to which it refers, are the senior police officers covered by the "hours of overtime worked" system described in Article 4 of Decree No. 2000-815 of 25 August 2000, who form the great majority of such cases.

36. In its reply to the Government's submissions on Complaint No. 57/2009, the CESP stated:

"this category does not include the senior police officers covered by the arrangements described in Article 10 of Decree No. 2000-815 of 25 August 2000, who must have at least the rank of police commander and be heads of districts, departments or self-contained units, an exhaustive list of which appears in an order of the Minister of the Interior; these officers perform duties that are deemed to be managerial in nature and form only a minority of senior officers (about 4%)"

and:

"these officers are subject to a flat-rate payment system for overtime because their managerial duties exclude them from the 'hours of overtime worked' system. As a result they have never been the subject of any of the complaints lodged".

37. The CESP confirms that, as of 1 April 2008, Decree No. 2008-340 has amended Article 1 of Decree No. 2000-94 to exclude senior police officers covered by the "hours of overtime worked" system provided for in Article 4 of Decree No. 2000-815 of 25 August 2000 from entitlement to payment for any overtime worked or any compensatory time off. The complainant organisation notes, as recognized by the Government, that the result of this new working arrangement was that the officers in question moved to a weekly hours worked system in which individual hours of overtime worked are not counted and therefore not remunerated at a higher rate.

38. With regard to senior police officers with planning and management functions, in its reply to the Government's submissions on the merits of Complaint No. 57/2009, CESP v. France, the CESP stated as follows:

"... the duties of senior police officers – other than individuals covered by article 10 of Decree No. 2000-815 of 25 August 2000 – cannot be equated with those of the planning and management corps for the purposes of instituting a flat-rate payment system for overtime. Yet following the changes to Decree No. 2000-194 of 3 March 2000, since ... April 2008 the French government has abolished all compensation for overtime worked by senior police officers covered by the hours of overtime worked system, in breach of Article 4§2 of the revised Charter".

39. In this connection, the CESP points out that in its decision on the merits of Complaint No. 57/2009, the Committee confirmed that since 15 April 2008 the organisational status and responsibilities of senior police officers (members of the command corps) had continued to differ significantly from those of members of the senior planning and management corps. It also emphasises that, in accordance with this assertion, the Committee confirmed that senior police officers do not fall into the category of exceptions provided for in Article 4§2 of the Charter.

40. Referring to the alleged violation, the CESP confirms – as mentioned in Complaint No. 57/2009, CESP v. France – that the command bonus set up by Decree No. 2008-241, - a bonus that may be awarded to senior police officers since April 2008 on account of the particular responsibilities which they exercise and the constraints inherent in their duties, - was not introduced to compensate for the removal of overtime payments. The CESP reminds that this bonus was established by Decree No. 98-115 of 27 February 1998 and this proves that it was never intended to compensate for overtime, either before or since the adoption of Decree No. 2008-341 of 15 April 2008.

41. In this respect, it is pointed out in the complaint that Article 1 of Decree No. 98-115 of 27 February 1998, which defines the nature of this bonus, has not been affected by the changes in Decree No. 2008-341 of 15 April 2008:

Article 1 of Decree No. 98-115 (repealed by Article 1 of Decree No. 2008-341)	Article 1 of Decree No. 2008-341
Because of the particular 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.	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.

42. In view of the foregoing, the CESP considers that by stating as follows:

“the legislation and its associated regulations [which] have established a specific system for compensating members of the national police command corps for overtime cannot be regarded as being incompatible with the obligations under Article 4§2, particularly as they can be justified by the particular circumstances attached to the performance of intermediate management functions within the national police force”,

and:

“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, because 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”,

the Committee misinterpreted the applicable national legal provisions.

43. The CESP considers that - as with the command bonus itself - the increase in the bonus, as well as the fact that it may vary in size have nothing to do with overtime, but merely with issues such as the responsibilities exercised and the way in which duties are carried out. To show that at least initially this was also the Government's view, the CESP points out, in section 3.2.2 of the collective complaint, 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".

In the second paragraph of this section, the complainant organisation emphasises that:

"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".

44. In its reply to the Government's submissions, the CESP notes on the other hand (in section II.B) that:

"The Government has always recognised in its official written statements that it was only the increase in the command bonus which constituted payment for overtime worked by senior French police officers...".

According to the information provided by the complainant organisation, this agreement (section III, page 3) establishes that:

"because the senior police officers were to be granted a 'managerial' status, which meant that their overtime could no longer be counted, ... [it was] only the increase in the command bonus which would provide the flat-rate compensation of overtime worked by senior police officers".

In this connection, it was also pointed out in the CESP's reply that:

"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".

45. In the same document, the complainant organisation states that the Government's assessment that the increase in the bonus was a means of compensating for the withdrawal of overtime payments was borne out in March 2010 by a decision of the *Conseil d'Etat*:

"... 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"¹.

¹ See Judgment of the Conseil d'Etat, combined 5th and 4th sub-sections, Decision No. 317225 (19 March 2010), *Syndicat National des Officiers de Police v. Minister of the Interior*, page 5, 3°§. For more information on the subject, see paragraph 16 above.

46. In view of the foregoing, the CESP considers that – even if the Government’s assessment, as borne out by the *Conseil d’Etat* is correct, which the complainant organisation disputes – in order to be consistent with its own argument, the Government should not have referred, in its submissions on the merits of the complaint, to “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”, but solely to the increase in the bonus.

47. Similarly, the CESP considers that the fact remains that the increase in the bonus does not in any case compensate for the abolition of overtime payments and that for this reason, the increase does not meet the requirements of Article 4§2 of the revised Charter.

48. To furnish proof for the validity of this argument, the complainant organisation provides a series of data in the form of comparative tables on the increase in the amount of the bonus between 2004 and 2010. In this context, the first of these tables shows that over the period in question, the monthly increase in the bonus has been €83.67 for commanders, €75.35 for captains and €68.03 for lieutenants.

	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 order of 27 May 2004

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

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

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

49. This information is completed by using the data on the amount of the command bonus set by the Ministry of the Interior in January 2011 (see paragraph 15 above). The amounts set by the relevant order were as follows: €413 for commanders; €378 for captains and €343 for lieutenants. Taking account of this latest increase, the monthly increase in the bonus between 2004 and 2011 amounted to €95.97 for commanders, €87.35 for captains and €79.03 for lieutenants.

50. In the following table, the complainant organisation shows how, based on the hourly pay of senior police officers and pursuant to Article 4§2 of the Charter, the amount of overtime for each step would have broken down on 1 January 2010:

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

* According to the CESP, these figures are 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.

51. Taking into consideration the higher hourly rate, the CESP then indicates what the increase in the command bonus introduced since 15 April 2008 represents in terms of the 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

52. The complainant organisation estimates that the figures in these tables show that, over the period in question, 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 one hour per week.

53. It considers that if officers are assumed to work an average of 12 hours' overtime, as the Committee did in its decision on Complaint No. 57/2009, then the provisions of Article 4§2 of the revised Charter are not being observed.

This assertion is illustrated by a table which presents the increase in the command bonus in terms of: (1) the higher hourly rate; (2) the increase in the monthly amount between 2004 and 2010, and; (3) the actual hourly rate for twelve hours' overtime:

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

54. The complainant organisation claims that the information provided in the tables above confirms that, in reality, the increase in the command bonus does not compensate for the abolition of payment for overtime worked by senior police officers in accordance with Article 4§2 of the Charter.

55. With regard to compensatory time off granted to senior police officers who have worked overtime, the CESP states that, since the reform of April 2008, the increase required under Article 4§2 is sometimes granted for compensatory time off but is never complied with where pay is concerned.

56 The CESP points out that compensatory time off:

“... offsets overtime performed in the context of planned periods of standby or periods on call. In these circumstances, time off is granted on an “hour for hour” basis without any increase and this is incompatible with the Charter. However, no complaint was lodged with the Committee on this point. (...)

Under no circumstance can such compensatory time off be replaced by compensatory payment for senior police officers as Decree No. 2000-194 of 3 March 2000 does not cover such officers and hence there is no legislation which provides for such payment”.

57. The CESP considers that the effect of this exclusion is to preclude any payment for overtime covered by compensatory time off. Consequently, it argues that overtime worked by senior police officers which is compensated for by rest periods without any increase cannot give rise to increased payment for these hours either.

58. The complainant organisation draws attention to the fact that the Government has stopped counting overtime hours worked by senior police officers, making it impossible to provide precise figures on the number of overtime hours actually completed. It does point out, however, that the duties of the officers in question generally involve a large number of overtime hours.

2. The respondent Government

59. The Government acknowledges firstly that:

“the command corps of the national police ... have been moved to ... a weekly hours worked system in which individual hours of overtime worked are not counted, and therefore not remunerated at a higher rate”.

60. It considers that:

“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”.

61. Accordingly, the Government argues that:

“the command bonus is indeed intended to compensate for the additional services provided by these police officers” and that “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”.

62. With regard to the increase in the bonus, the Government points out that:

- 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 (for a trainee lieutenant) and €375 (for a senior operational commander). Since January 2011, the amounts have been between €143 and €413;
- this large increase in the bonus has also been accompanied by annual salary scale increases.

63. The Government considers that:

“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”.

64. On this subject, it considers that:

“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”.

65. In view of the foregoing, the Government considers that:

“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”.

66. On the question of compensatory time off granted to senior police officers who have worked overtime, the Government states as follows:

“While Article 22 of Decree No. 95-654 of 9 May 1995, amended (see paragraph 11 above) is applicable to all operational members of the national police force, Article 1 of Decree No. 2000-194 of 3 March 2000 is, as indicated in the article itself, not applicable to [the senior police officers] to whom the CESP’s complaint relates”.

67. The Government points out that, as a result of this, some of the additional duties performed by senior police officers do not give rise to compensatory time off. Additional duties which are no longer covered by compensatory time off (hours worked in excess of the standard working day and recalls to duty) are now covered by the payment system connected with the command bonus. Some additional duties do, however, continue to be covered by compensatory time off (standby and periods actually spent working when on call).

68. With regard to the practical arrangements for compensatory time off, the Government refers to the notion of “operational latitude” introduced by the instruction of 17 April 2008 (see paragraph 19 above).

69. For further details on this matter, the Government refers to the submissions which it already made in the context of Complaint No. 57/2009, CESP v. France.

70. Similarly, the Government states that it can see no evidence which would give ground to believe that the Committee had made an error of appreciation in its decision on the merits of Complaint No. 57/2009, CESP v. France. It is also stated in its submissions that, in the context of the aforementioned complaint, the Government already replied to all of the questions put by the Committee. The Government therefore considers that the Committee has been able to take its final decision with all the necessary information at its disposal.

71. The Government concludes that since the impugned payment arrangements are totally compatible with Article 4§2 of the Charter, the complaint should be declared unfounded, and hence dismissed.

B – Assessment of the Committee

72. The Committee recalls that this complaint – like Complaint No. 57/2009, CESP v. France – concerns senior police officers covered by the “hours of overtime worked” system described in Article 4 of Decree No. 2000-815 of 25 August 2000.

73. The Committee considers that the information provided by the CESP in the context of the present complaint and the Government’s response to it warrant a fresh assessment of the system for the payment of overtime by the senior police officers in question to check whether, in practice, this system meets the requirements of Article 4§2.

74. The Committee considers that this fresh assessment of the situation does not stem from a misinterpretation of the applicable domestic legal provisions, but is based on the provision of new information by the complainant organisation concerning the payment of the command bonus. In fact, in order for the requirements of Article 4§2 of the Charter to be met, the aforementioned system should not be considered, in practice, without taking proper account of the amount of the increase in the command bonus.

75. The Committee confirms – as it did in its decision on the merits of Complaint No. 57/2009, CESP v. France – that the rules in force, which based the compensation for overtime by senior police officers on a particular system centring on a specific bonus, could not in principle be considered to be in breach of Article 4§2.

76. In this connection, the Committee considers it essential to emphasise that it is not the purpose of the command bonus in itself to compensate for overtime; it is only the extra amount added to the bonus since 2008 in the form of an increase that is intended to compensate for the overtime worked by senior police officers.

77. The Committee notes that the general rule under the Labour Code is that the increased remuneration rate for overtime may be freely negotiated by the social partners provided it is not less than 10% (Conclusions 2010, France, p. 10). Accordingly, and bearing in mind:

a) the information supplied by the CESP concerning the increase in the amount of the command bonus, as determined by the orders of the Minister of the Interior over the period from 2004 to 2010;

b) the increase in the amount of the bonus following the order of the Minister of the Interior of 6 January 2011 (see paragraph 15 above);

the Committee notes that following the abolition, in April 2008, of payment for overtime by senior police officers, in practice, the increase in the command bonus applied was well below the percentage referred to above and therefore the increase could compensate only for a very small number of hours of overtime.

78. To illustrate its argument, the Committee notes that over the period in question, the increase in the bonus for police lieutenants at the sixth step in their grade was €68.03 per month. If it is assumed that officers work an average of 12 hours' overtime per month – which was the figure applied by the Committee in its decision on the merits of Complaint No. 57/2009, CESP v. France, and has not been disputed by the Government – this amount corresponds to an increase of €5.66 per hour. Yet, if a rate of 10% is applied to the standard working pay, the lieutenants in question should have been receiving €17.19 more per overtime hour worked.

79. In other words, the increase in the command bonus of €68.03 per month is only enough to compensate for about four hours of overtime per month.

80. The Committee would emphasise that this theoretical calculation is based on the premise that payment for overtime should be increased by 10% compared to payment for standard working hours. The gap would be even greater if, like the CESP in its submissions, the calculations were based on a 25% increase.

81. It follows from the information presented in the tables supplied by the complainant organisation that the situation of the other grades of senior police officers covered by the “hours of overtime worked” system is similar to that of the police lieutenants at the sixth step in their grade, which the Committee merely referred to above to illustrate its argument.

82. The Committee does not consider it necessary, in the present complaint, to decide what the minimum increase in pay for overtime should be, because that depends on the particular context and circumstances.

83. In this case, it notes that at all events, the senior police officers in question do not receive any increase in their standard pay for any extra hours worked exceeding four hours’ overtime per month.

84. As to the question of the arrangements for compensatory time off for overtime – an issue which was not raised in the complaint but on which the parties have provided detailed information at the Committee's request – the Committee notes as follows:

- a) some duties cannot give rise to compensatory time off because they are taken into account as part of the payment system connected with the command bonus;
- b) other duties are covered by compensatory time off calculated on a strict hour for hour basis, without any increase and with no possibility of replacement by a monetary form of compensation.

85. The Committee considers that as the arrangements for compensatory time off provide that senior police officers working overtime when performing certain duties may only claim equal or equivalent rest periods calculated on an hour for hour basis, they are not in conformity with Article 4§2 of the Charter.

86. In this connection, the Committee would point out that:

- “not only must the worker receive payment for overtime, therefore, but also the rate of such payment must be higher than the normal wage rate” (Conclusions I, statement of interpretation of Article 4§2, p. 28);

- "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, ... Article 4 § 2 requires that this time be longer than the additional hours worked" (Conclusions XIV-2, Belgium, p.134);
- "... 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..." (Conclusions XIV-2, statement of interpretation of Article 4§2, p. 35).

87. In view of the foregoing, the Government concludes that:

- a) the increase in the command bonus following the withdrawal, in April 2008, of the overtime payments which the senior police officers received before the current regulations were introduced - regulations which could, in principle, have compensated for this withdrawal - and which was introduced 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 ministerial order NOR IOCC0804409A of 15 April 2008, and Instruction NOR INTC0800092C of 17 April 2008 is not in conformity with Article 4§2 of the Charter;
- b) the arrangements for compensatory time off for overtime worked by senior police officers provided for by the Order of 6 June 2006 on the general regulations governing employment in the national police force and Decree No. 2008-340 of 15 April 2008 amending Article 1 of Decree No. 2000-194 of 3 March 2000 on the conditions for the payment of overtime to operational members of the national police force are not in conformity with Article 4§2 of the Charter.

88. Consequently, the Committee holds that there is a violation of Article 4§2 of the Charter.

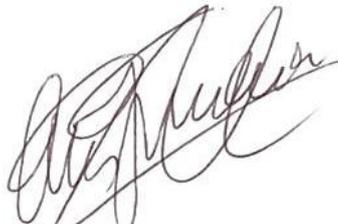
CONCLUSION

For these reasons the Committee concludes unanimously:

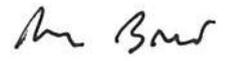
- that there is a violation of Article 4§2 of the Charter.



Andrzej SWIATKOWSKI
Rapporteur



Luis JIMENA QUESADA
President



Régis BRILLAT
Executive secretary