

DECISION ON ADMISSIBILITY

22 June 2010

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

Complaint No. 60/2010

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 244th session attended by:

Mrs Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI, Vice-President
Colm O'CONNOR, Vice-President
Jean-Michel BELORGEY, General Rapporteur
Mrs Csilla KOLLONAY LEHOCZKY
Mr Lauri LEPPIK
Mrs Monika SCHLACHTER
Birgitta NYSTRÖM
Lyudmilla HARUTYUNYAN
Mssrs Rüşan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Luis JIMENA QUESADA
Mrs Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 18 March 2010, registered on the same day as number 60/2010, lodged by the European Council of Police Trade Unions (“CESP”) and signed by its President, Mr Branko PRAH, requesting the Committee to find that Portugal is not in conformity with Articles 4§2, 6§§1 et 2, et 22, Part I, of the Revised European Social Charter (“the Revised Charter”);

Having regard to the notification addressed to the Portuguese Government (“the Government”) on 31 March 2010,

Having regard to the documents appended to the complaint ;

Having regard to the Revised Charter, and in particular to Articles 4§2 , 6§1 et §2 et Article 22 which reads as follows :

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 ;

(...)”

Article 6 – The right to bargain collectively

Part I: "All workers and employers have the right to bargain collectively."

Part II: “With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

- 1 to promote joint consultation between workers and employers;
- 2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements”

(...)”

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

Part I: “Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking”

Part II: “(...) the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice , to contribute:

- a to the determination and the improvement of the working conditions, work organisation and working environment;”(...)

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol") ;

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session and on 20 February 2009 at its 234th session ("the Rules");

Having deliberated on 22 June 2010;

Delivers the following decision, adopted on the above-mentioned date:

1. The CESP claims that the calculation method of remuneration for overtime work of the criminal investigation personnel of the Portuguese Criminal Police provided for in the Regulation of 13 February 1997 (Regulation No 98/97) and confirmed by Regulation No. 18/2002 of 5 April 2002, infringes Article 4§2 of the Revised Charter because the assessment of remuneration for overtime work is based on a rate below the normal hourly rate for police officers, and with a *per diem* limit.

2. The CESP also contends that in Portugal police officers do not enjoy, in practice, the right to bargain collectively (Articles 6 §§ 1 and 2 of the Revised Charter) and the right to take part in the determination and improvement of the working conditions and working environment (Article 22 of the Revised Charter).

THE LAW

3. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Portugal on 20 March 1998 and entered into force for this state on 1 July 1998, the complaint has been submitted in writing and concerns Articles 4§2, 6§§1-2, and 22 of the Revised Charter, provisions accepted by Portugal when it ratified this treaty on 20 March 1998 and to which it is bound since the entry into force of this treaty in its respect on 1 July 1998.

4. Moreover, the grounds for the complaint are indicated.

5. The Committee also observes that, in accordance with Articles 1 b) and 3 of the Protocol, the CESP is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints.

6. The Committee has already considered that the CESP has particular competence (CESP v. Portugal, complaint No. 11/2001, decision on admissibility of 17 October 2001, §5; CESP v. Portugal, complaint No. 37/2006, decision on admissibility of 5 December 2006, §5 ; CESP v. France, complaint No. 38/2006, decision on admissibility of 19 March 2007, §6, CESP v. Portugal, complaint No. 40/2007, decision on admissibility of 21 May 2007, §5; CESP v. France, complaint No. 54/2008, decision on admissibility of 17 February 2009, §6 ; CESP v. France, complaint No. 57/2009, decision on admissibility of 7 September 2009, §5). It confirms this decision since no significant change has taken place.

7. The complaint is signed by Mr Branko PRAH, who is President of the CESP. The Committee therefore considers that the complaint complies with Rule 23 (CESP v. Portugal, complaint No. 11/2001, decision on admissibility of 17 October 2001, §6; CESP v. Portugal, complaint No. 37/2006, decision on admissibility of 5 December 2006, §6 ; CESP v. France, complaint No. 38/2006, decision on admissibility of 19 March 2007, §7, CESP v. Portugal, complaint No. 40/2007, decision on admissibility of 21 May 2007, §6; CESP v. France, complaint No. 54/2008, decision on admissibility of 17 February 2009, §7 ; CESP v. France, complaint No. °57/2009, decision on admissibility of 7 September 2009, §6).

8. For these reasons, the Committee, without finding it necessary to invite the Government to submit observations on admissibility (Article 6 of the Protocol and Rule 29§3), on the basis of the report presented by Mrs Jarna PETMAN and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 30 September 2010.

Invites the CESP to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 30 September 2010, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 30 September 2010.

Jarna PETMAN
Rapporteur

Polonca KONČAR
President

Régis BRILLAT
Executive Secretary