



European Social Charter

European Committee of Social Rights

Conclusions XVII-1 (Portugal)

The text of the conclusions may be subject to editorial revision.

Introduction

The function of the European Committee of Social Rights is to judge the conformity of national law and practice with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as general comments formulated by the Committee figure in the General Introduction to the Conclusions¹.

Portugal ratified the European Social Charter on 30 October 1991 and the Revised European Social Charter on 30 May 2002. The time limit for submitting the 9th report on the application of the Charter to the Council of Europe was 30 June 2003 (reference period 1 January 2001 to 31 December 2002) and Portugal submitted it on 23 July 2003.

This report concerned the rights forming part of the “hard core” provisions of the Charter:

- the right to work (Article 1),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to social security (Article 12),
- the right to social assistance (Article 13),
- the rights of the family (Article 16)
- the rights of migrants (Article 19).

Portugal has accepted all these articles.

The present chapter on Portugal contains 27 conclusions²:

- 23 cases of conformity: Articles 1§1, 1§3, 5, 6§1, 6§2, 6§3, 12§1, 12§2, 12§3, 12§4, 13§2, 13§3, 16, 19§1, 19§2, 19§3, 19§4, 19§5, 19§6, 19§7, 19§8, 19§9 and 19§10
- 3 cases of non-conformity: Articles 1§2, 6§4 and 13§4

In respect of the other case, that is Article 13§1, the Committee needs further information in order to assess the situation. It asks the Portuguese Government to communicate the answers before 30 June 2005.

The next Portuguese report will concern the following provisions:

- Article 7 (prohibition on employment of children under the age of 15 and the right of young persons between 15 and 18 years to appropriate working conditions),

¹ The conclusions as well as states reports can be consulted on the Council of Europe’s Internet site (www.coe.int) under Human Rights.

² The 27 conclusions correspond to the paragraphs of the articles forming the hard core accepted by Portugal, with the exception of Article 1§4, which is examined with Articles 9, 10 and 15 due to the links between these provisions.

- Article 8 (right of employed women to protection),
- Article 11 (right to protection of health),
- Article 14 (right to benefit from social welfare services),
- Article 17 (right of mothers and children to social and economic protection), and
- Article 18 (right to engage in a gainful occupation in the territory of other Contracting Parties of the European Social Charter¹).

It concerns the reference period 1 January 1999 to 31 December 2002 and should be submitted to the Council of Europe before 31 March 2004.

¹ It concerns the provisions of the second part of the “non-hard core” articles accepted by Portugal.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information provided in the Portuguese report.

Employment Situation

The growth of Portuguese GDP has consistently decreased during the reference period, dropping from 3,7% in 2000 to 1,6% in 2001 and 0,5% in 2002.

The labour market reflects the worsening of the macroeconomic situation. There has been a halt to the progressive decreasing of the general unemployment rate that was assessed in the previous conclusion. During the reference period, the general unemployment rate raised from 4,0% in 2000 to 5,1% in 2002, remaining well below the average of the 15 Member States of the European Union (7,7%). The unemployment of men and women has increased equally by one point, while youth unemployment has risen from 8,6% in 2000 to 11,5% in 2002. With regard to long-term unemployment, there has been a slight drop from 40% to 37%.

The report provides additional information in reply to the questions asked by the Committee in its previous conclusion.

During the reference period, the number of foreign jobseekers from European countries rose from 1 073 in 2000 to 4 345 in 2002, with a significant increase in jobseekers from Eastern European countries¹. The total number of foreign jobseekers rose from 5 355 in 2000 to 16 268 in 2002.

The report does not provide figures with regard to the unemployment rate of people with disabilities due to the fact that jobseekers do not always state their health situation with the employment services. However, the report gives detailed information with on the number of person with disabilities who have benefited from special programmes with regard to employment. In 2001, 629 disabled persons have been hired with the support of public funds, 61 have been helped to set up their independent professional activity and special insertion programmes have been carried out for 3 510 workers with disabilities. The Committee insists to receive information on the unemployment rate of people with disabilities.

Employment Policy

The employment policy as laid down in National Action Plan (NAP) during the reference period is a continuation of the strategy adopted in 1998 in the first NAP and assessed in detail by the Committee in its last conclusion (Conclusions XVI-1, p. 563-565.) On that occasion, the Committee noted the various quantitative objectives set in the framework of NAP and asked to be informed of the fulfilment of these objectives.

With regard to youth unemployment, figures provided in the report show that the INSER-JOVEM programme has achieved some quantitative results. In 2000, only 12,1% of young jobseekers concerned were still unemployed after six months from the day they joined the programme. In 2001, they were 17,3% and in 2002, 18,6%. Similar patterns can be observed with regard to adult unemployment (REAGE programme). In 2000, 14,4% of adult

¹ Bulgaria, Croatia, the Slovak Republic, Slovenia, Hungary, Serbia and Montenegro, Moldova, Poland, the Czech Republic, Romania, the Russian Federation and Ukraine.

jobseekers concerned were still unemployed after six months from the day they joined the programme. In 2001 they were 17,6% and in 2002 22,5%. The Committee notes that, although these percentages have increased during the period 2000-2002, they are lower than those assessed in its previous conclusion both for young and adult jobseekers (20% and 24% respectively). This trend shows that, despite the rise in the overall unemployment rate, the initiatives undertaken within the framework of the NAP had a positive impact on the employability of the labour force.

The Committee further asked what was the average duration of the period from the time a person registers as unemployed until he or she receives an offer of participation in an active measure. The report states that this average duration was 8,57 months in 2001 and 8,70 months in 2002.

The Committee also notes the implementation, in 2001, of two new programmes in addition to the NAP: the National Strategy for life-long vocational training (EALV) and the National Strategy for jobs creation in the service sector. The former will be examined in the next conclusion under Article 10 of the Charter. The latter is specifically intended to develop the service sector, which is underexploited in Portugal, in particular in the business services and the tourism industries.

Finally the Committee notes that expenditure for the financing of NAP amounted to 1,49 billion € in 2002 (1,08% of GDP), while the loss of income from tax exemptions intended to boost employment amounted to 0,35 billion € (0,27% of GDP). The same year, passive labour market measures amounted to 1,04 billion € (0,8% of GDP).

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 1§1 of the Charter.

Paragraph 2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The Committee takes note of the information in the Portuguese report.

The previous conclusion (Conclusions XVI-1, pp. 565-571) contained a general description of the legal situation and questions to the Government on specific aspects of discrimination in employment. The report refers to a number of positive developments and answers all these questions.

1. Prohibition of discrimination in employment

Discrimination based on sex

Act No. 9/2001 of 21 May 2001 strengthens the machinery for identifying and penalising discrimination, particularly by extending the powers of the general labour inspectorate in cases of indirect discrimination and reducing the time limit for carrying out its inspections.

In addition in its previous conclusion the Committee noted that the country's anti-discrimination legislation had been supplemented by a new Act, No. 105/1997 of 13 September 1997. It asked whether the new legislation was additional to or a replacement for Legislative-Order No. 392 of 20 September 1979, which it had previously found to be compatible with the Charter. The report confirms that the 1979 Legislative-Order is still in force and has been strengthened by the 1997 Act.

Finally the Committee notes the continued success of the joint efforts of the labour inspectorate, the committee on equality in work and employment (GITE) and the directorate general for working conditions to identify discriminatory vacancy notices, which led to 356 formal warnings in 2001 and has reduced the number of unlawful advertisements by 15%.

Discrimination on grounds other than sex

In its previous conclusion the Committee noted that other forms of discrimination were prohibited under Act No. 134/99 of 28 August 1999 and asked for additional information on the nature of the sanctions provided for.

The report states that the sanctions in question take the form of administrative fines. The Committee would like information on the level of these fines and recalls that where discrimination occurs, the penalties must represent a sufficient disincentive for employers and compensation for employees.

It also appears from the answer to another question that discriminatory dismissal is unlawful and is covered by the general employment legislation on dismissals, which the Committee has already deemed admissible in its previous conclusion on discrimination on grounds of sex¹.

The Committee also notes that the reversal of the burden of proof for cases of sex-based discrimination is not extended under the 1999 legislation to other forms of discrimination.

It therefore asks whether, in practice, the relevant courts adjust the burden of proof by accepting that once the would-be victim has adduced sufficient facts to establish a presumption of discrimination, the employer must prove that there were objective grounds for the decision.

Finally, the Committee notes that there are no restrictions on access to employment based on nationality. The only exception to this principle concerns public offices that involve the exercise of public authority. The Committee wishes to know whether these restrictions apply to employees of publicly-owned industrial or commercial undertakings and if so which ones, and what posts and aspects of the exercise of public authority are concerned.

2. Prohibition of forced or compulsory labour

Forced or compulsory labour for the production of goods or services

In its previous conclusions the Committee found that the situation in Portugal was not in conformity with Article 1§2 because Sections 132 and 133 of the Merchant Navy Penal and Disciplinary Code provided for sanctions against seafarers who abandoned their posts.

The situation did not change during the reference period and the Government is still considering the possible repeal of these provisions.

Prison work

In answer to the Committee the report states that prison work is on a purely voluntary basis.

¹ Conclusions XVI-1 p. 567

3. Other aspects of the right to earn one's living in an occupation freely entered upon

Acceptance of a job offer or of a training offer as a condition for maintaining unemployment benefits

The report states that workers who refuse work without justification lose entitlement to unemployment benefits. However this does not apply when the job in question is incompatible with the worker's age, physical suitability, qualifications and experience.

There is a right of administrative or judicial appeal against such measures under the general system of remedies for administrative decisions.

Part-time work

The legal arrangements governing part-time work are laid down in Act No. 103/99 of 26 July 1999.

The act fixes a maximum length of part-time work, which cannot exceed 75% of full-time work (unless provided for in a collective agreement) and must be specified in writing in the employment contract. There is no minimum number of hours. Overtime may not exceed 80 hours per year, or 200 hours in exceptional circumstances, subject to written agreement.

The Committee notes that the pay and other benefits of part-time workers are proportional to their full-time counterparts in comparable circumstances.

3. Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 1§2 of the Charter because Sections 132 and 133 of the Merchant Navy Penal and Disciplinary Code remain in force.

Paragraph 3 – Free placement services

The Committee notes, from the Portuguese report, that there have been no changes to the situation, which it has previously found to be in conformity.

It further notes, in reply to a question posed in its last conclusion, that pursuant to Decree-Law No. 124/89 of 29 April 1989, the monitoring of private placement agencies is carried out by the General Labour Inspectorate.

In reply to another question, the report states that there are only two private agencies in the country and that the number of placements they make is insignificant.

The Committee concludes that the situation in Portugal is in conformity with Article 1§3 of the Charter.

Article 5 – Right to organise

The Committee takes note of the information in the Portuguese report.

The description of the situation in law and in practice appears in the previous conclusions (Conclusions XV-1, p. 469-471, Conclusions XVI-1, p. 573). In these conclusions, therefore, the Committee will confine itself to recent developments.

The Committee takes note of the information in the report on Act No. 14/2002 of 19 February 2002, which regulates the exercise of the freedom of association and collective bargaining and participation rights of staff members of the Public Security Police with police duties. The Committee recalls that, in its decision on the merits of Complaint No. 11/2000, (*European Council of Police Trade Unions v. Portugal*, decision of 21 May 2002) it considered that the new arrangements were compatible with Article 5 of the Charter. It notes that, according to the report, seven trade union associations were formed during the reference period.

As regards members of the armed forces, the report indicates that although the constitutional restriction on the exercise of their right to organise has been retained, Act No. 4/2001 of 30 August 2001 has amended the wording of section 31 of the National Defence and Armed Forces Act by adding sub-sections A to F on freedom of association and assembly, the right to demonstrate, freedom of expression, the right of collective petition and the right to stand for election of members of the armed forces on active service and permanent, voluntary and contractual military staff. Under Section 31 D of the Act members of the armed forces are free to form any association, including professional associations, other than ones with political, partisan or trade union purposes. The Right of Professional Association Act No. 3/2001 of 29 August 2001, extended the scope of professional associations to which armed forces staff could belong beyond those strictly concerned with professional issues and conduct to include ones with a mutual assistance or occupational role. In particular, the Committee notes that under Section 2b of the Act legally constituted associations may be consulted on matters relating to their members' professional status, pay and social conditions.

Finally the report states that the system for collecting trade union contributions is now governed by Act No. 81/2001 of 8 July 2001, which repealed Act No. 57/77 of 5 August 1977. The new system has introduced stronger penalties for breaches of the legislation. For example, an employer's refusal or failure to collect the trade union contributions of employees who have authorised or expressly asked for them to be subtracted from their pay are treated as very serious offences liable to fines of between € 1 496.39 and 44 891.81. Similarly withholding trade union contributions levied on employees or failure to hand them over to the unions concerned is deemed to constitute fraudulent breach of trust, liable to up to three years' imprisonment (eight years in serious cases).

The Committee concludes that the situation in Portugal is in conformity with Article 5 of the Charter.

Article 6 – Right to collective bargaining

Paragraph 1 – Joint consultation

The Committee takes note of the information in the Portuguese report on the exercise of the right of participation of staff members of the Public Security Police (PSP) with police duties, as provided for in Act No. 14/2002 of 19 February 2002, which regulates the exercise of the freedom of association and collective bargaining and participation rights of the PSP. The Committee recalls that it has found the new arrangements to be in conformity with Articles 5 and 6§2 of the Charter (Complaint No. 11/2000, European Council of Police Trade Unions v. Portugal, decision on the merits 21 May 2002).

As far as the other relevant aspects of Article 6§1 are concerned, the Committee notes from the report, that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

The Committee considers that the situation in Portugal is in conformity with Article 6§1 of the Charter.

Paragraph 2 – Negotiation procedures

The Committee notes from the Portuguese report that 798 collective agreements have been concluded in the private sector. In the public sector a partial agreement was concluded in 2001 with the UGT trade union federation. As in the previous supervision cycles (Conclusions XVI-1, p. 574) the report informs the Committee of all the unsuccessful negotiations settled unilaterally by the government. No agreements were reached in 2002 and, following further unsuccessful negotiations and in order to contain the public deficit, the government unilaterally set the levels of the annual uprating of public employees' pay, current salary scales, expenses, meal allowances and travelling costs, and retirement and reversion pensions.

The Committee recalls that in its previous conclusion, it considered that although the machinery for unblocking the situation, under Legislative Decree No. 23/98 of 26 May 1998, authorised the Government to take a unilateral decision, the length of the procedure and the obligation to engage in a second round of negotiations meant that this system was likely to promote collective bargaining.

The Committee therefore concludes that the situation in Portugal is in conformity with Article 6§2 of the Charter.

Paragraph 3 – Conciliation and arbitration

The Committee notes the information in the Portuguese report.

The Committee notes that there have been no changes to the system of compulsory arbitration under Article 35 of Legislative Decree No. 519/C1/79, which it considered in its previous conclusion. Like previous reports, the current report states that no list of arbitrators has been drawn up. As a result, since the preparation of a list of arbitrators in collaboration with the social partners is a prerequisite for the use of compulsory arbitration, the Committee notes that no such arbitration was imposed during the reference period.

In its previous conclusion the Committee asked for an update in the next report on progress on the reform of Article 36 of Legislative Decree No. 519/C1/79, and wished to know whether any labour regulation orders had been issued. It recalls that the Strategic Consultation Agreement (1996-1999) provided for the repeal of Article 36, which authorised the

Minister of Labour to issue a labour regulation order to resolve a collective dispute where labour or management repeatedly refused to negotiate or used obvious delaying tactics.

According to the report, there have been no changes to the regulations and no labour regulation orders were issued during the reference period.

The Committee recalls that, in its previous conclusion, before reaching its conclusion of conformity with the Charter, it had taken account of the fact that the Government had never used this type of regulation, and of its commitment to repealing the relevant regulations, which were not likely to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration.

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 6§3 of the Charter.

Paragraph 4 – Collective action

The Committee takes note of the information in the Portuguese report.

Who is entitled to take collective action?

In its previous conclusion, the Committee concluded that the situation in Portugal was not in conformity with Article 6§4 because workers who were not affiliated to an existing trade union could only exercise the right to strike through a trade union that they had constituted for that purpose, within an excessive time frame of thirty days.

Since the situation has not changed in this regard, the Committee concludes that the situation in Portugal is not in conformity with Article 6§4 of the Charter because the excessive time frame for forming a trade union deprives non-affiliated workers from the effective exercise of their right to strike.

Restrictions on the right to take collective action

The Committee recalls that although the Government's power – under Section 8 of the Right to Strike Act, No. 65/77 of 26 August 1977 – to define minimum services by issuing orders had been declared unconstitutional and the revised version of Article 57 of the Constitution now required such definitions to be the subject of legislation, there had been no changes to the legislation (the situation is described in detail in Conclusions XV-1, pp. 478 - 481. In the absence of any information in this report, the Committee concludes that this provision has still not been amended.

The Committee stresses that government intervention to end strikes can only be in conformity with Article 6§4 of the Charter if it satisfies the requirements of Article 31, namely that it is prescribed by law and necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals. The national authorities – legislative, executive and judicial – have a responsibility for ensuring that these conditions are strictly applied.

The Committee notes that the Government is still empowered to define minimum services by issuing orders and that it is not established that conditions of Article 31 are fulfilled in all cases. Therefore, it considers that the situation is not in conformity with Article 6§4.

Consequences of collective action

In its previous conclusion, the Committee asked about the nature of the offence committed by workers who refused to comply with the minimum service obligation.

The Committee takes note of the information supplied. Refusal to work is deemed to constitute unjustified absence, which under Section 27 of Legislative Decree No. 874/76 of 28 December 1976 results in the non-payment of earnings corresponding to this period. As indicated in the previous report, five consecutive days or ten days in total of unjustified absence per year constitute lawful grounds for dismissal, which the employer may then order following disciplinary proceedings (Article 9 of the appendix to the Legislative Decree of 27 February 1989). Briefly, the employees concerned are guilty of misconduct through failure to comply with their contract of employment, and as such are covered by the Labour Code.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 6§4 of the Charter because

- the right to call for a strike is reserved only to trade unions while the forming of the latter is subject to an excessive timeframe depriving non-affiliated workers from the effective exercise of the right to strike.
- the Government is empowered to define minimum services by issuing orders in conditions that go beyond Article 31 of the Charter.

Article 12 – Right to social security

Paragraph 1 – Existence of a social security system

The Committee notes from the Portuguese report that a reform of the social security system was adopted and entered into force on 20 January 2003, i.e. outside the reference period. The Committee will examine the reform in detail during its next examination of the situation in Portugal, but for the time being it notes the following:

The report states that the reform is based *inter alia* on the principles of “social subsidiarity” and “generational cohesion”. It sets up a new social security structure resting on three pillars. Firstly, the public social security system comprising three subsystems: welfare, solidarity and family protection. Secondly, the social action system carried by both public institutions, notably at municipal level, and private actors. Thirdly, the complementary system englobing statutory and contractual regimes as well as voluntary arrangements.

The report emphasises that the new legislation on the whole maintains the personal and material scope of social security as previously defined by Act No. 17/2000 of 8 August 2000. However, in the welfare subsystem changes are introduced concerning the fixing of statutory minimum old-age and invalidity pensions. Henceforth, the calculation formula takes into account a contributory history of fourteen years and less (minimum fixed at 65% of the statutory minimum wage). Previously, a minimum pension was fixed only for beneficiaries with 15 years of contribution history or more. The minimum pension for 15-20 years of contribution history is fixed at 72,5% of the minimum wage, for 21-30 years at 80% and for over 30 years at 100%. The Committee underlines that the next report should contain information on the minimum wage, on the number of persons receiving the pension minima and on any supplementary benefits available to these persons.

As regards the pensions under the solidarity subsystem in respect of old-age and invalidity, which are paid where contributions made or benefits received under the welfare subsystem are not sufficient, the new legislation provides that they cannot amount to less than 50% of the statutory minimum wage. According to information provided in the report under Article 13§1, the monthly amount of the social pension in 2002 was 138,27 € from January to November and 143,80 € in December. The report further states that in 1999, the social pension corresponded to about 38,5% of the minimum wage and about 20% of the average wage. The new legislation therefore represents an improvement of the benefit rate. The Committee observes that the 2002 monthly rate (143,80 €) is below 50% of median equivalised income (about 249 € on a monthly basis in 2001). Having noted that various complementary benefits are available, it asks that the next report give an estimate of total social transfers made to recipients of the social pension in order to ensure a decent living standard.

On 1 January 2001 Decree-Law No. 316-A/2000 of 7 December 2000 took effect creating the Institute of Solidarity and Social Security (ISSS). The report states that ISSS embodies a new model for the administrative organization of social security, which is aimed at a more coordinated and transparent administration bringing closer together the system and its end-users. Furthermore, Decree-Law No. 279/2001 of 19 October 2001 created a National Social Security Council, a consultative body involving the social partners and civil society representatives in the process of defining social security objectives and priorities. The Committee asks that the next report contain information on the impact of these measures.

The Committee takes note of the information on social security receipts and total expenditure. In 1999, total expenditure on social protection amounted to 24,3% of GDP.

The report states that following the adoption of Act No. 17/2000 of 8 August 2000 and an agreement between the Government and the social partners new rules on the calculation of old-age and invalidity benefits had been introduced by Decree-Law No. 35/2002 of 19 February 2002. According to the report the new calculation formula, which permits the pension formation rate to reach 92% of the reference wage (compared to maximum 80% under the old rules) will work in favour of beneficiaries with the lowest incomes and the longest contribution periods. With respect to the adjustment of pensions and pension minima, the Committee refers to its conclusion under Article 12§3.

The Committee notes that the level of social security benefits is generally well above the levels required by the European Code of Social Security, but it asks that the next report contain up-dated information on all benefit amounts, both minimum and average levels. The Committee considers that income-substituting benefits must ensure the maintenance of a reasonable standard of living and should therefore not amount to less than 50% of median equivalised income.

The Committee notes that in 2003 (i.e. outside the reference period) legislation was introduced to reduce the qualifying period necessary for entitlement to unemployment benefit to 270 days within the last 12 months. The Committee recalls that it had considered the previous rule of 540 days within the last two years to be restrictive. It wishes to receive more details on the practical impact of the new legislation. It also asks that the next report give up-dated details on the unemployment insurance benefit branch in general paying special attention to level of benefits, the qualification conditions and the duration of benefit periods.

Finally, in order to assess certain aspects of the personal coverage of the social security system, the Committee requests information on the total number of persons receiving old-age pensions, the total number of beneficiaries of maternity benefits and the total number of beneficiaries of child benefits.

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 12§1 of the Charter.

Paragraph 2 – Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102

The Committee notes the information contained in the Portuguese report. It further notes that in Resolution ResCSS(2003)12 on the application of the European Code of Social Security and the Protocol thereto by Portugal (period from 1 July 2000 to 30 June 2001), the Committee of Ministers found that Portugal continues to give full effect to the parts of the Code it has accepted, subject to a point concerning unemployment benefit (qualifying period for entitlement). It follows that the level of the Portuguese social security system is at least equal to that required to ratify ILO Convention No. 102.

Moreover, as noted under Article 12§1, legislation was introduced in 2003 to reduce the qualifying period necessary for entitlement to unemployment benefit to 270 days within the last 12 months, thereby addressing the issue raised by the Committee of Ministers.

The Committee concludes that the situation in Portugal is in conformity with Article 12§2 of the Charter.

Paragraph 3 – Development of the social security system

The Portuguese report states that a new framework act on social security, Act No. 32/2002 of 20 December 2002, entered into force on 20 January 2003, i.e. outside the reference period. The Committee refers to its comments under Article 12§1.

The Committee notes that adjustment of pension rates takes place annually taking into account the inflation development. In 2002, pensions below 1 546,27 € were increased by 3,5%, higher pensions were increased by 2,9%, pensions based on a contribution history of less than 15 years were increased by 5,6% and pensions based on more than 15 years of contribution history were increased by 4,1%.

Finally, the Committee notes the introduction by Decree-Law No. 327/2000 of 22 December 2000 of an improved invalidity pension for persons suffering from multiple sclerosis.

Pending the full details on the social security reform and its impact, the Committee concludes that the situation in Portugal is in conformity with Article 12§3 of the Charter.

Paragraph 4 – Social security of persons moving between states

The Portuguese report states that pursuant to Order No. 25360/2001 of 12 December 2001 of the Minister of Health foreigners are henceforth guaranteed access to health care on an equal footing with beneficiaries covered under the national health service.

The report does not indicate that there have any changes in the situation concerning the retention of accrued benefits and the maintenance of accruing rights, which the Committee has previously found to be in conformity with the Charter.

The Committee concludes that the situation in Portugal is in conformity with Article 12§4 of the Charter.

Article 13 – Right to social and medical assistance

Paragraph 1 – Adequate assistance for every person in need

The Committee notes from the Portuguese report that pursuant to Order No. 25360/2001 of 16 November 2001 (see also the conclusion under Article 12§4) foreign nationals lawfully resident in Portugal have access to health care on an equal footing with nationals. The report emphasizes that nationals of other Contracting Parties are thus also exempt from payment of patient charges when they are in state of need.

With respect to the Guaranteed Minimum Income (RMG) the report states that there were 354 258 beneficiaries in December 2001 corresponding to 3,4% of the resident population. Expenditure on RMG amounted to 0,96% of total expenditure on social protection. The Committee asks that the next report contain up-dated information on the level of the RMG, on the criteria used to fix the level and on what are the basic needs to be met by the benefit. It also wishes to know whether any supplementary benefits are available for recipients of the RMG.

The Committee takes note of the information on the level of social pensions in relation to the minimum wage and the average wage as well as on the exceptional “solidarity complement” to the social pension introduced by Decree-Law No. 208/2001 of 27 July 2001. It refers to its comments under Article 12§1.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 2 – Non-discrimination in the exercise of social and political rights

The Committee notes from the Portuguese report that there have been no changes to the situation which it had previously found to be in conformity. It therefore concludes that the situation in Portugal is in conformity with Article 13§2.

Paragraph 3 – Prevention, abolition or alleviation of need

The Committee notes from the Portuguese report that there have been no changes to the situation which it had previously found to be in conformity. It therefore concludes that the situation in Portugal is in conformity with Article 13§3.

Paragraph 4 – Specific emergency assistance for non-residents

The Portuguese report states that, during the reference period as previously, the provision of emergency social assistance (social action benefits), whether in cash or in kind, to nationals of other Contracting Parties has been the subject of no complaints.

The Committee recalls that nationals of other Contracting Parties lawfully within the territory of Portugal do not have an individual right to such assistance, it being dependent on the relevant departments having the necessary resources. Despite the absence of complaints, the Committee considers this situation to be contrary to the Charter.

The Committee concludes that the situation in Portugal is not in conformity with Article 13§4 of the Charter.

Article 16 – Right of the family to social, legal and economic protection

The Committee takes note of the information in the Portuguese report and also refers to its previous conclusions (Conclusions XVI-1, p.588) for the description of the social, legal and economic protection of the family. The Committee asks whether Roma families are guaranteed the same legal, economic and social protection.

Legal protection of the family

The report indicates that Act no. 272/2001 on the settlement of spouses' litigation simplified the procedure as far as reconciliation of separated spouses, separation and divorce, including the issue of parental authority for minors, are concerned. In the event of common agreement between the parties, these procedures are the exclusive competence of civil authorities.

The report also indicates that Act no. 135/99, which introduced a series of protective measures for heterosexual couples having co-habited for two years or more, has been repealed by Act no. 7/2001. The latter has further extended equality of treatment to all co-habitations, heterosexual and homosexual, to the exception of adoption which is a right non-recognised to homosexual couples.

The Committee asks information about the legal protection of single-parents families.

The Committee interprets Article 16 as covering the issue of domestic violence. Accordingly, it considers whether in this respect protection exists in law (legislation or other provisions) and in practice (services devoted to prevent the risk of ill treatment, to support and rehabilitate victims). It therefore asks this information to be provided in the next report.

Economic protection of the family

The report indicates that, during the period of reference, the Legislative Decree no. 250/2001 rearranged the income levels regulating the universal allocation of family benefits and an additional benefit for disabled persons has been introduced. The Committee notes from another source¹ that there are no supplements for single-parents families and asks whether measures are planned to tackle this situation.

The report indicates that the family allowance for children and young persons, provided under the different regimes, amounted, in 2002 and in the lowest income level, to 131,03 € as from the third child up to 12 months and 39,36 € as from the third child over 12 months. In the highest income level, these values were, respectively, 52,52 € and 20,05 €. Values are adjusted once a year. Allowances are paid up to 16 years or later if children study and 1,64 million children out of around 2 million received them in 2001.

Regarding the adequacy of family benefits, the Committee considers that child allowance is an adequate income supplement when it represents a satisfactory percentage of the monthly mean equivalised net income. In Portugal the average family allowance for the lowest income level represents 14,6% of this income as calculated by Eurostat², while it

¹ K. Wall, The situation of families in Portugal in the Late 1990s, in Key Family Issues in the EU member States, Reports prepared by the national experts of the European Observatory on the Social Situation, Demography and Family, in www.europa.eu.int, employment and social affairs, social situation and demography.

² Last data available are for 2000. Eurostat definitions are as follows : **Income**: Total household income is taken to be all the net monetary income received by the household and its members at the time of the interview (t) during the survey reference year (t-1). This includes income from work (employment and self-employment), private income (from investments, property and private transfers to the household), pensions and other social transfers directly received. No account has been taken of indirect social transfers, transfers paid to other households, loans interest payment, receipts in

represents 6,2% of this income for the highest income level. The Committee considers the benefit to be adequate since, at least for low-income level families, it represents a relevant contribution to the family income.

The Committee notes from the report that families with children are entitled to tax reduction for expenses related to their education. It also notes from another source¹ that single-parents families are entitled to a tax-free allowance, which represents 80% of the minimum wage.

Social protection of the family

The report provides figures about childcare. In 2001/2002, there were about 65 000 children in day-care institutions and home-nursing, while 238 000 children attended pre-school education. The Committee notes from Eurostat that in that period children less than 5 years were numbered about 560 000. Taking into consideration that several programmes were launched during the reference period to increase both childcare facilities under the age of three and pre-school education, the Committee asks the next report to provide the coverage rates achieved by the existing facilities.

In reply to the Committee's question, the report indicates that the aim of public and private childcare institutions is universal access. The State provides full financial support for the education offered by public institutions. Also as regards non-profit private institutions, the State is in charge of the educational component, while in the profit private sector families pay fees. However, also these latter institutions can ask for financial support by the State for families in a difficult financial situation.

Financial support to families is threefold: the state pays for each child/month an amount covering the educational part; it also pays, along with parents, a certain amount per child/month covering food and socio-educational activities; finally, a special fund has been established to help the children of poor families to attend non-profit private childcare.

Since the focus of Article 16 is the maintenance of family's ties, the Committee will deal here with housing only from the family perspective – where family stands for households of parents with children, including single parents and young couples that will potentially have children. This means, *inter alia*, considering the availability of family-size dwellings in states' construction and social housing policies; and the availability of housing benefits specifically targeted at families (e.g. grants or subsidies for the purchase or construction of family home, tax relief on mortgage repayments, subsidised loans for acquiring the first home, subsidised rent for families, housing allowances, etc.).

The report provides figures about several programmes operating throughout the country and providing support for construction and renovation. Renovation programmes aim at providing families living in degraded housing with new or renovated dwellings through public subsidies and loans. It also indicates that financial instruments are available, such as mortgage loans and housing allowance for young people (about 22 000 people received a

kind and imputed rent for owner-occupied accommodation. **Mean equivalised income:** In order to take into account differences in household size and composition in the comparison of income levels, the amounts given are per "equivalent adult". The household's total income is divided by its 'equivalent size', using the modified OECD equivalence scale. This scale gives a weight of 1.0 to the first adult, 0.5 to the second and each subsequent person aged 14 and over, and 0.3 to each child aged under 14 in the household. The mean equivalised income is the average of the equivalised income over all persons (adults and children).

¹ K. Wall cit.

monthly allowance of 202 € in 2002). The Committee notes from another source¹ that other financial instruments, such as subsidised loans for the purchase of primary residences are available for young single-persons and couples, regulated rent and subsidised rent for low-income households, exist.

However, taking into consideration certain characteristics of the housing situation in Portugal (low housing construction, including social housing, the existence of slum settlements, the lack of maintenance, the limited stock of public rented housing), the Committee asks whether the measures adopted are effective in order to ensure families with housing, which is affordable and adapted to their needs.

The report indicates that Act no.150/2000 established the National Commission on the Family, an advisory body on family policy where civil organisations representing family are present. The Commission is also in charge of providing subsidies to this kind of organisations.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Portugal is in conformity with Article 16 of the Charter.

¹ C. Donner, Housing Policies in the European Union, Portugal, p. 410, Theory and Practice.

Article 19 – Right of migrant workers and their families to protection and assistance

Paragraph 1 – Assistance and information on migration

The Committee notes from the Portuguese report that the situation regarding free assistance and information services, which it had previously considered to be satisfactory, has not changed.

It notes from the report that additional measures have been adopted to increase the information (Inter-ministry Accompanying Commission for Immigration Policy, the telephone help-line - SOS Migrant, national and local helping centres for migrants) and the social integration (Cultural mediators, Inter-cultural Secretariat) of migrant workers and their families.

The Committee notes from another source¹ that Portugal should improve the functioning of administrative services dealing with non-nationals. The Committee asks whether public servants who are in contact with immigrants are given appropriate training in the fight against racism and xenophobia.

The Committee concludes that the situation in Portugal is in conformity with Article 19§1 of the Charter.

Paragraph 2 – Departure, journey and reception

The Committee notes from the Portuguese report that, during the period of reference, Law-Decree no. 4/2001 on entry, stay, departure and deportation of foreigners was adopted and implemented. The report indicates that the new legislation did not change the situation regarding departure, journey and reception, with the exception of the delivery of visas for temporary professional activity. The delivery of such visas is regulated on the basis of the existence of job opportunities.

The Committee also notes that equality of treatment as regards access to the national health system has been strengthened in 2001.

The Committee concludes that the situation in Portugal is in conformity with Article 19§2 of the Charter.

Paragraph 3 – Co-operation between social services of emigration and immigration states

The Committee notes from the Portuguese report that the situation regarding cooperation between social services in emigration and immigration countries, which it had previously considered to be in conformity, has not changed. The report also indicates that, during the period of reference, an individual allowance to meet basic needs has been established for elderly Portuguese citizens living abroad and not entitled to any social assistance cover.

The Committee asks that the next report provide information on the existence of public as well as private social services related to migration.

The Committee concludes that the situation in Portugal is in conformity with Article 19§3 of the Charter.

¹ ECRI (European Commission against Racism and Intolerance) Second report on Portugal 2002, CRI(2002)33 in www.coe.int/T/E/human_rights/ECRI

Paragraph 4 – Equality regarding employment, right to organise and accommodation

The Committee notes from the Portuguese report that the situation regarding equality in employment, right to organise and accommodation, which it had previously considered to be in conformity, has not changed.

The Committee notes from another source¹ that Portugal should apply more effectively the existing legislation on non-discrimination and protect migrant workers from abuses in the employment field. It therefore asks information on how the Government secures for migrant workers treatment not less favourable in law and practice with regard to employment, as well as with regard to the right to organise and accommodation.

The Committee concludes that the situation in Portugal is in conformity with Article 19§4 of the Charter.

Paragraph 5 – Equality regarding taxes and contributions

The Committee notes from the Portuguese report that there have been no changes to the situation which it had previously found to be in conformity. It therefore concludes that the situation in Portugal is in conformity with Article 19§5 of the Charter.

Paragraph 6 – Family reunion

The Committee notes from the Portuguese report that the situation regarding family reunion, which it had previously considered to be in conformity, has not changed. In reply to the Committee's question, the report indicates that statistics on the average time taken to process these applications are not yet available. The Committee reiterates its question about the effectiveness of the family reunion procedure.

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 19§6 of the Charter.

Paragraph 7 – Equality regarding legal proceedings

The Committee notes the information contained in the Portuguese report.

It recalls that in Conclusions XVI-1, it deferred its conclusion until it received confirmation that legal assistance was in practice equally guaranteed to all nationals of the other Contracting Parties to the 1961 European Social Charter and of the Revised European Social Charter. It notes that the report confirms this to be the case.

The Committee concludes that the situation in Portugal is in conformity with Article 19§7 of the Charter.

Paragraph 8 – Guarantees concerning deportation

The Committee notes from the Portuguese report that there have been no changes to the situation which it had previously found to be in conformity. It therefore concludes that the situation in Portugal is in conformity with Article 19§8 of the Charter.

¹ ECRI (European Commission against Racism and Intolerance) Second report on Portugal 2002, CRI(2002)33 in www.coe.int/T/E/human_rights/ECRI

Paragraph 9 – Transfer of earnings and savings

The Committee notes from the Portuguese report that there have been no changes to the situation which it had previously found to be in conformity. It therefore concludes that the situation in Portugal is in conformity with Article 19§9 of the Charter.

Paragraph 10 – Equal treatment for the self-employed

The Committee notes from the Portuguese report that the situation regarding equality of treatment between migrant employees and self-employed migrants, which it had previously considered to be in conformity, has not changed.

It recalls that in Conclusions XVI-1, it deferred its conclusion under Article 19§10 until it received confirmation in the context of Article 19§7 that legal assistance was in practice equally guaranteed to all nationals of the other Contracting Parties to the 1961 European Social Charter and of the Revised European Social Charter. It notes that the report confirms this to be the case.

The Committee concludes that the situation in Portugal is in conformity with Article 19§10 of the Charter.