



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

European Social Charter

European Committee of Social Rights

Conclusions XVI-2

(Portugal)

**Conclusions concerning Articles 1§4,
2, 3, 4, 9, 10 and 15 of the Charter in
respect of Portugal**

Introduction

The European Committee of Social Rights' function is to judge the conformity of the law and practice of States party to the European Social Charter.

A presentation of this treaty as well as general comments formulated by the Committee figure in the General Introduction to the Conclusions (www.coe.int).

The European Social Charter was ratified by Portugal on 30 September 1991 and then the Revised Charter was ratified on 30 May 2002. The time limit for submitting the 8th report on the application of the Charter to the Council of Europe was 31 March 2002 and Portugal submitted it on 8 July 2002. It concerns the reference period 1997-2000.

This report (www.coe.int) concerned the rights forming the first part of the “non-hard core” provisions of the Charter: the right to just conditions of work (Article 2), the right to safe and healthy working conditions (Article 3), the right to a fair remuneration (Article 4), right to vocational guidance (Article 9), right to vocational training (Article 10), rights of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (Article 15). Portugal has accepted all of these articles.

The present chapter on Portugal contains 21 conclusions¹:

- 11 cases of conformity: articles 2§1, 2§3, 2§5, 3§1, 3§3, 4§1, 4§2, 4§5, 9, 10§1 and 10§3
- 5 cases of non-conformity: articles 2§2, 3§2, 4§3, 4§4 and 15§2

1. Article 1§4 has been considered during cycle XVI-2 because the Committee's conclusion depends on the conclusions under Articles 9, 10§3 and 15§1.

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In respect of the other 5 cases, that is articles 1§4, 2§4, 10§2, 10§4 and 15§1, the Committee needs further information in order to assess the situation. It asks the Portuguese Government to communicate the answers to these questions before the 31 March 2006.

The next Portuguese report will concern the accepted provisions of the hard core articles, that is Article 1 (right to work), 5 (right to organise), 6 (right to bargain collectively), 12 (right to social security), 13 (right to social and medical assistance), 16 (right of the family to social, legal and economic protection) and 19 (right of migrant workers and their families to protection and assistance), of the European Social Charter. It concerns the reference period 2001 – 2002 and should be submitted to the Council of Europe before 30 June 2003.

Article 1 – Right to work*Paragraph 4 – Vocational guidance, training and rehabilitation*

The Committee takes note of the information contained in the Portuguese report and refers to its conclusions under Article 9 (right to vocational guidance), 10§3 (right to vocational training and retraining of workers), and 15§1 (right of persons with disabilities to guidance, education and vocational training).

The Committee concluded that the situation was in conformity with the Charter with regards to vocational guidance and continuing vocational training, while it deferred its conclusion with regards to rehabilitation of people with disabilities.

Pending receipt of the information requested under Article 15§1, the Committee defers its conclusion.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable daily and weekly working hours

The Committee notes from the Portuguese report that during the reference period Act No. 73/98 was adopted to transpose Council Directive 93/104/EC. Under the new legislation normal daily working time is 8 hours for manual workers and 7 hours for salaried employees. Weekly working hours may not exceed 48 hours on average, including overtime. The daily uninterrupted rest period shall be at least 11 hours. The Committee notes that derogations are possible, notably that normal daily and weekly working hours may be increased under flexibility arrangements pursuant to statute or collective agreement, but it asks that the next report state clearly what are the absolute upper limits to working hours on any single day and in any single week, including overtime.

In reply to the Committee's question in the previous conclusion, the report states that a new working time regime has been introduced in the public service by Legislative Decree No. 259/98. Under this regime, which applies to all sectors of the public service, normal daily working hours are fixed at 7 and weekly working hours at 35. In addition, the daily rest period shall be at least 12 hours.

According to the report, working hours in practice have decreased during the reference period. In 92 collective agreements normal weekly working time is now fixed between 35 and 39 hours and average working hours in the labour market as a whole dropped from 40 hours in 1997 to 38 hours in 1999.

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 2§1 of the Charter.

Paragraph 2 – Public holidays with pay

The Committee notes from the Portuguese report that there have been no changes to the situation under which workers in enterprises with less than ten employees who are obliged to work on a public holiday are not entitled to at least equivalent time off *in lieu*. Instead, Section 9 of Legislative Decree No. 421/83 provides for time off with pay equal to 25 % of the hours worked. The Committee reiterates that this is not in conformity with the requirements of Article 2§2 of the Charter.

The Committee takes note of the explanation regarding Section 4 of the above-mentioned decree defining circumstances under which employees may be required to work on a public holiday.

In reply to the Committee's question in the previous conclusion, the report confirms that part-time workers are entitled to public holidays with pay on the same conditions as other workers.

As regards seafarers the report states that under Legislative Decree No. 73/74 such workers have the right to one day off in lieu if work on a public holiday exceeds three hours. The Committee notes that there are about 3 000 seafarers in Portugal.

The Committee concludes that the situation Portugal is not in conformity with Article 2§2 of the Charter as workers in enterprises with less than ten employees who are obliged to work on a public holiday are not entitled to equivalent time off in lieu.

Paragraph 3 – Annual holiday with pay

The Committee notes from the Portuguese report that there have been no changes to the situation during the reference period and it therefore concludes that the situation in Portugal is in conformity with Article 2§3 of the Charter.

Paragraph 4 – Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations

The Committee notes from the Portuguese report that certain collective agreements in sectors considered as dangerous and unhealthy such as mining, the steel industry, the cellulose industry and the oil industry provide for reduced working hours or additional holidays. While recalling that Article 2§4 covers a number of other sectors and activities, it again asks the Government to specify all the sectors concerned in Portugal and to list all the relevant collective agreements stating precisely what they provide in terms of reduced working hours and/or additional holidays. It also asks what is the proportion of workers covered by such measures.

The Committee further notes that Legislative Decree No. 53-A/98 provides for pay supplements and other forms of compensation for dangerous and unhealthy work in the public sector. According to the report this decree foresees the possibility of adopting compensatory

measures such as working time flexibility, additional holidays and special retirement schemes. The Committee asks whether any such measures have been adopted, and if so what were their precise nature.

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

Paragraph 5 – Weekly rest period

The Committee notes from the Portuguese report that Section 6 of Act No. 73/98 transposing Council Directive 93/104/EC provides for one weekly day of rest in continuation of the daily rest period (i.e. at least 35 hours).

Under Legislative Decree No. 259/98 public service employees are entitled to one weekly rest day as well as a supplementary rest day and these two days should normally fall on Saturday and Sunday.

The report confirms that part-time workers have the same rights as full-time workers as far as the weekly rest period is concerned; under Section 2§1 of Act No. 103/99 part-time workers shall be treated on the same terms as full-time workers unless differential treatment is justified by objective reasons.

Finally, as regards workers in the steel and textile industries for which Sunday working may be provided for by collective agreement on condition that one Sunday of rest is guaranteed every four weeks (in addition to rest on other days), the report indicates that the Government has no knowledge of this situation. Moreover, it emphasises that the statutory day of rest is Sunday (Section 37 of Legislative Decree No. 409/71) except for enterprises which have been granted dispensation from the weekly rest day rule or where the rest day must “necessarily” be another day than Sunday. In any event, enterprises are obliged to obtain prior authorisation for Sunday work from the Ministry of Labour and Solidarity (or another ministry depending on the nature of the enterprise in question).

The Committee concludes that the situation in Portugal is in conformity with Article 2§5 of the Charter.

Article 3 – Right to safe and healthy working conditions

Paragraph 1 – Issue of safety and health regulations

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

Content of the regulations on occupational health and safety

The Committee examined the general scope of the regulations in Conclusions XIV-2 (pp. 635 and 636). Among the legislation and regulations introduced during the reference period, the Committee notes that Legislative Decree No. 441/91 of 14 November 1991 on the organisation of safety, hygiene and health in the workplace has been amended to extend the obligations of employers, who are now required to replace equipment or processes that are recognised to be dangerous with ones that are safe or less dangerous (Legislative Decree No. 133/99 of 21 April 1999). It also notes that additional regulations have been introduced concerning protection against biological agents (Legislative Decree No. 84/97 of 16 April 1997) and carcinogens (Legislative Decree No. 301/2000 of 18 November 2000).

The Committee asked several specific questions concerning the content of preventive and protective measures in Portuguese regulations:

Protection against dangerous agents and substances

– Protection of workers against asbestos. The Committee noted in the previous conclusion that Portuguese regulations (Legislative Decree No. 284/89, as amended by Legislative Decree No. 383/93), provide for the replacement of asbestos by less dangerous products, require employers to notify activities in which workers are or may be exposed to asbestos, lay down various protective and preventive measures to accompany the use of or exposure to asbestos, including maximum levels of asbestos fibres in the air that are identical to those in Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work¹, as amended by Directive 91/382/EEC of 25 June 1991², and prohibit the application of asbestos by means of the spraying process and the use of asbestos fibre in what is recognised to be a particularly

1. Official Journal No. L 263 of 24/09/1983 p. 0025 – 0032.

2. Official Journal No. L 206 of 29/07/1991 p. 0016 – 0018.

dangerous form, namely crocidolite, subject to duly authorised exceptions.

The report indicates that asbestos continues to be imported into Portugal and that about 300 workers still work in the four factories producing cement asbestos. To enable it to assess the situation, the Committee asks for confirmation that amphibole asbestos fibres or products containing them may not in any circumstances be manufactured, imported, sold or used in workplaces. These measures are crucial for the effective application of any ban on the workplace use of asbestos in what are recognised to be its most noxious forms, namely crocidolite amphibole fibres, in accordance with Article 3§1 of the Charter. It also asks whether, as well as asbestos spraying, working procedures that involve low-density insulating or soundproofing materials are also prohibited.

– Protection against ionising radiation. Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation¹ was transposed into domestic law in 2002, therefore outside the reference period. The Committee recalls that for the situation to be in conformity with Article 3§1, states must offer effective protection against the risks related to ionising radiation, which involves adjusting their regulations to take account of the recommendations of the International Commission on Radiological Protection (ICRP). It considers that these recommendations are sufficiently reflected in the dose limits in Directive 96/29/Euratom and that the situation in Portugal is therefore in conformity with Article 3§1 in this regard.

– Protection of workers against vibration. The report indicates that there have been no changes in this regard. The Committee emphasises that vibration is one of the risks that must be controlled to satisfy Article 3§1 of the Charter. The report indicates that the situation could change with the transposition into domestic law of Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration)². The Committee considers that this indicates a

1. Official Journal No. L 159 of 29/06/1996 p. 0001 – 0114.

2. Official Journal No. L 177 of 06/07/2002 p. 0013 – 0020.

commitment on the Portuguese authorities' part to bringing the situation into conformity with the Charter. It therefore invites the Portuguese authorities to extend the relevant domestic legislation and regulations as rapidly as possible.

Protection against the risks inherent in certain sectors and occupations

– The report confirms the absence in domestic law of safety standards on board merchant ships to prevent accidents on deck, in engine rooms, with loading and unloading equipment or with anchors, chains and cables. However, it states that the application of the International Management Code for the Safe Operation of Ships and for Pollution Prevention is obligatory for ships flying the Portuguese flag and companies operating them. In addition, Legislative Decree No. 280/2001 of 23 October 2001 introduces regulations governing the activities of seafarers.

– The report confirms that there are no specific regulations applicable to the agricultural sector. However, it says that the regulations implementing Legislative Decree No. 441/91 that are particularly relevant to that sector take account of its specific needs. For example, pesticides and plant protection products are taken into account in the classification, packaging and labelling of dangerous substances and special safety rules have been introduced for the design and manufacture of agricultural equipment (Legislative Decree No. 374/98 of 24 November 1998).

– The report refers to legislation introduced in the reference period to improve health and safety regulations on board fishing vessels (Legislative Decree No. 116/97 of 12 May 1997).

Protection of non-permanent workers

In reply to the general question on measures to take account of the occupational health and safety needs of persons on fixed term and temporary contracts, the report states that the health and safety regulations apply to all workers. The Committee notes from another source¹ that while temporary contracts are operative, the user enterprise is responsible for applying health and safety regulations

1. *Non-permanent employment, quality of work and industrial relations*, study conducted in 2002 by the European Industrial Relations Observatory On-line (consulted on the site www.eiro.eurofound.eu.int).

and that temporary workers may not be used for certain particularly dangerous tasks.

The Committee also notes from this source that in 2001 15% of the employed workforce were on fixed-term contracts and that temporary agency employment accounted for less than 1,6% of employed workers.

The Committee points out that for the situation to be in conformity with Article 3§1 of the Charter, states must take the necessary measures to equip non-permanent workers (temporary agency workers and fixed-term workers) with information, training and medical surveillance adapted to their employment status, in order to avoid any discrimination in respect of health and safety in the workplace. The Committee indicates that these measures must ensure that such workers are afforded adequate protection, including against risks resulting from a succession of accumulated periods spent working for a variety of employers, exposed to dangerous substances, and, if necessary, must contain provisions prohibiting the use of non-permanent workers for some particularly dangerous tasks. The Committee therefore asks the Portuguese authorities to indicate how the regulations apply the Charter in this regard.

Personal scope of the regulations

Legislative Decree No. 441/91 and the regulations adopted pursuant thereto apply to all branches of activity in all sectors, public, private, co-operative and social, and to all workers, including those who are self-employed. In answer to the Committee, the report indicates that the rules laid down in Legislative Decree No. 441/91 also apply to civil servants (Legislative Decree No. 488/99 of 17 April 1999).

The report also states that domestic work has been made the subject of special regulations – Legislative Decree No. 235/92 of 24 October 1992 – which in particular define employers' and employees' duties with regard to health and safety at work.

Conclusion

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

Paragraph 2 – Provision for the enforcement of safety and health regulations by measures of supervision

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

Occupational accidents and diseases

The Committee notes from the report that the number of occupational accidents for which compensation was paid fell slightly during the reference period, from 211 801 in 1996 to 216 115 in 1999. Compared with the trend in total employment over the same period¹, these figures show a decline in the frequency of accidents, which fell from 4,8 per 100 workers in 1996 to 4,4 per 100 in 1999. The Committee notes that this slight improvement in the situation is confirmed by the Eurostat figures² according to which, in 1998, in nine branches of activity³, the standardised number of accidents at or on the journey to or from work resulting in over three days' absence was 5 515 per 100 000 persons employed (compared with a European Union average of 4 089), or a total of 147 115 accidents notified.

However, the Committee notes that the trend towards an improvement in the situation does not extend to the construction industry, which accounted for 23 % of all accidents at work in 1999, compared to only 11 % of total employment.

According to the ILO *Yearbook of Labour Statistics* (2001) the fatal accident rate slightly increased, from 0,12 deaths per 100 accidents in 1996 to 0,16 in 2000. On average, one third the fatal accidents occurred in the construction sector. According to Eurostat information, the standardised number of fatal accidents per 100 000 persons in employment was 7,7 (or 166 notified accidents, excluding traffic and transport accidents), compared to a European Union average of 3,4. The Committee notes that this is the "record" figure among European Union countries with a 100 % notification rate. It also notes that the situation continued to deteriorate outside the reference period: 119 fatal accidents

1. 4 836 900 persons in 1999, according to the ILO Yearbook.

2. Eurostat – "Statistics in Focus" Population and social conditions: No 16/2001 "Accidents at work in the EU 1998-1999".

3. Agriculture, hunting and forestry; manufacturing; electricity, gas and water supply; construction; commerce, repair of motor vehicles and personal and household goods; hotels and restaurants; transport and communications; financial intermediation, real estate, renting and business activities.

had already been reported in the first six months of 2002, 44 % of them in the construction industry¹. According to the CGTP and UGT trade unions, one of the main reasons for this phenomenon is not the absence of legislation but the fact more particularly that insufficient attention is paid to monitoring its application in practice (see *infra*).

In the light of the foregoing information, the Committee again draws the Portuguese Government's attention to the fact that in accepting Article 3 it has undertaken to guarantee individuals' right to physical and psychological integrity at work. The Committee recalls that the satisfactory application of the Charter "cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised" (Complaint No. 1/1998, International Commission of Jurists against Portugal, decision on the merits, 9 September 1999, §32). The Committee considers that in order to assess the effective respect of the right enshrined in Article 3 under paragraph 2, the number and frequency fatal accidents and their trends are a decisive factor. In Portugal's case, it considers that the number of fatal accidents, particularly in the construction industry, is patently too high for this right to be considered effectively secured.

In reply to the Committee, the report indicates that pursuant to Section 14 of Legislative Decree No. 441/91 of 14 November 1991, employers must notify the General Labour Inspectorate (IGT) within 24 hours of any fatal accidents or other accidents that reveal a particularly serious situation. Failure to issue such a notification is considered to be a very serious offence.

The report contains information on trends in the number of recipients of occupational disease pensions. However, in the absence of similar data in previous reports, the Committee is unable to assess this information and asks for comparable information in the next report.

Activities of the labour inspectorate

The Committee examined the general organisation of inspection services in Conclusions XIV-2 (pp. 641 and 642). The report updates the data on the activities of the General Labour Inspectorate. The Committee notes firstly that the department's staffing has been

1. European Industrial Relations Observatory (consulted on the site of the European Foundation for the Improvement of Living and Working Conditions: www.eurofound.eu.int).

increased: 316 inspectors in 2000, compared to 259 in 1996. Several campaigns were launched or continued during the reference period, aimed at improving working and safety conditions in agriculture, the textile and clothing industry and construction.

Inspection activities increased significantly compared to the previous reference period: over the period 1997-2000, each year an average of 32 897 establishments with 395 805 employees received 40 952 visits. Since these visits were not all concerned with the application of health and safety regulations, the Committee asks for a breakdown in the next report of the different types of inspection activity and the various business sectors inspected, and indicate the geographical distribution of the visits undertaken.

A third of the visits in 2000 concerned the construction sector, that is 7 200 establishments and 34 743 employees. Over the period 1997-2000, an average of 42 710 workers were covered by safety inspection visits in the construction industry.

The Committee recognises that efforts were made during the reference period to improve the situation, particularly by strengthening the activities of the inspection service. However, compared to the total number of employees, the number of inspection visits and the number of workers concerned remains excessively low and it will take an average of ten years of inspection work to cover the entire labour force. The Committee notes that "in order to maintain an efficient system of inspection, there must be a minimum number of regular inspections to ensure that the largest possible number of workers benefit from the right enshrined in Article 3 as soon as possible" (Conclusions XIV-2, p. 128). The Committee considers that the number of inspection visits in Portugal during the reference period was still clearly insufficient for it to conclude that the right enshrined in Article 3 is fully respected.

The Committee takes note of the new system of enforcement measures to deal with breaches of the employment provisions of Act No. 116/99 of 4 August 1999, particularly to reinforce its preventive effects. The principal changes are as follows: employers are now responsible for breaches; the payment of a fine does not absolve the offender from applying the rule that has been breached, if this is still possible; fines are determined according to whether offences are classified as minor, serious or very serious; fines also vary according to the size of the enterprise and the degree of responsibility; depending on number of employees and turnover, enterprises are

classified as micro, small, medium or large. The Committee takes note of the scale of fines: from 99,76 € for a minor offence committed by negligence in a micro enterprise to 44 891 € for a very serious offence committed intentionally in a large enterprise.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 3§2 of the Charter because of the patently excessive number of fatal accidents, particularly in the construction industry, and the inadequate number of inspection visits to firms for health and safety purposes.

Paragraph 3 – Consultation with employers' and workers' organisations on questions of safety and health

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

The Committee considered the machinery and procedures for consultation at national level in its previous conclusion (Conclusions XIV-2, pp. 642 and 643) and concluded that they satisfied Article 3§3 of the Charter.

At enterprise level, the report states that Legislative Decree No. 133/99 of 21 April 1999, which amends Legislative Decree No. 441/91 of 14 November 1991, extends the range of circumstances in which employers must enter into prior and appropriately timed consultations with employees' representatives or, in their absence, the employees themselves, particularly on matters relating to risk assessment, including ones concerning groups of workers subject to special risks. The Committee noted in the previous conclusion that Legislative Decree No. 441/91 provided for the establishment, under collective agreements, of joint health and safety committees. It asks for information on the proportion of enterprises in which such committees have been set up.

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

Article 4 – Right to a fair remuneration

Paragraph 1 – Adequate remuneration

The Committee notes from the Portuguese report that Act No. 45/98 removed age as a criterion for determining the level of the statutory minimum wage. Henceforth, all workers in agriculture, industry, trade and services, including those under the age of 18, are entitled to the full amount of the minimum wage. The minimum wage for domestic employees is slightly lower at about 94 % of the full rate.

The report contains detailed and pertinent information on the net value of both the minimum wage and the average wage as requested in the previous conclusion. The report indicates that the annual net national average wage stood at 6 103 € in 1997 increasing to 6 697 € in 1999. The annual net minimum wage stood at 3 524 € in 1997 increasing to 3 810 € in 1999. Accordingly, the net minimum wage represented about 57,7 % of the net average wage in 1997 and about 57,0 % in 1999. For domestic employees the corresponding percentages would be 52,8 % in 1997 and 52,4 % in 1999.

In the light of this information the Committee considers the minimum wage to be low. However, from supplementary information provided by the Government it notes that workers on the minimum wage are exempt from the co-payment in respect of health care and have the right to increased family allowances. Therefore, on the basis of the information available at this stage, the Committee considers that the situation is in conformity with the Charter.

Finally, the Committee notes that the proportion of workers receiving the minimum wage decreased somewhat during the reference period; from 7,8 % of all workers in 1998 to 6,2 % in 2000.

The Committee concludes that the situation in Portugal is in conformity with Article 4§1 of the Charter.

Paragraph 2 – Increased rate of remuneration for overtime work

On the basis of the information provided in the Portuguese report and in previous reports, the Committee notes that the situation with regard to the workers' right to an increased rate of remuneration for overtime work, which it previously considered to be in conformity with the Charter, has not changed.

Furthermore, it notes that, in reply to a question asked in its last conclusion, the report states that domestic employees who could be asked to perform overtime work on some days will be compensated by an equivalent reduction of their regular working time, so that their average weekly working time would not be higher than the statutory threshold (forty hours per week).

It therefore concludes that the situation in Portugal is in conformity with Article 4§2 of the Charter.

Paragraph 3 – Non-discrimination between men and women workers with respect to remuneration

The Committee takes note of the information contained in Portugal's report.

The right to equal pay is enshrined in legislative decree No. 392/79 of 20 September 1979 and in Act No. 105/97 of 13 October 1997 on equality and non-discrimination based on gender at work and in employment, which enforce the constitutional principle that all workers, regardless of their sex, have the right to remuneration for their work in keeping with its quantity, nature and quality and with the principle of equal pay for equal work (Section 59).

Remuneration is defined as any payment, in nature or in kind, to which the worker is entitled by virtue of his or her employment contract, i.e. the basic wage and any other regular and periodical benefit (Section 2/c.)

Under Section 16 of legislative decree No. 392/79, provisions of collective agreements setting lower levels of remuneration for women than for men in the same or equivalent professional categories are null and void and women are entitled as of right to the same wages as men.

Legislative decree No. 392/79, which covers the private and public sectors, guarantees equal pay for men and women for equal work or work of equal value carried out for the enterprise ("corporate entity") (Section 9§1). Work of equal value is work done for the same corporate entity when the tasks performed, although of a different nature, are considered as equivalent following the application of objective job evaluation criteria (Section 2/e).

The Committee has consistently held that comparisons of pay and jobs must extend to other enterprises, where this is necessary for an

appropriate comparison (Conclusions XIII-1, p. 121). It considers that "the possibility of looking outside the enterprise for an appropriate comparison is of fundamental importance for a system of objective job evaluation to be efficient in certain circumstances, in particular in enterprises where the workforce is largely, or even exclusively, female" (Conclusions XIII-5, pp. 259, 265 and 269).

Similarly, the Committee has also stressed the importance of the right to refer cases to a judicial body, in order to safeguard the right to equal pay between the sexes (Conclusions IX-1, p. 13), and has noted that the existence of commissions responsible for enforcing the principle of equal treatment for men and women does not rule out appeal to the courts (Conclusions IX-2, p. 10).

Accordingly, noting that Portuguese law does not permit pay for determining equal work or work of equal value beyond the same enterprise ("corporate entity"), the Committee considers that the situation is not in conformity on this point with Article 4§3 of the Charter.

The same text stipulates that task description and job evaluation systems must be based on objective criteria common to men and women, in order to exclude all discrimination (Section 9§3).

Collective agreements must, if possible, contain provisions aimed at securing the effective application of the rules on equality. The Committee notes from another source¹ that during the reference period several collective agreements introduced clauses guaranteeing equality between men and women. It observes in particular that the agreement signed in the metal industry provides for women to receive the same pay as men if they do the same work and/or have the same qualifications. The Committee wishes to draw the attention of the Portuguese authorities to the highly restrictive wording used in this clause, in which the only criterion for comparing and evaluating work is the qualifications of the employees concerned.

The report contains information on the difference between the mean gross wages of men and women. It reveals a slight deterioration of the situation during the reference period, as the mean gross salary paid to women amounted to 72,4 % of that paid to men, compared to 73,1 %

1. *EIRO Comparative study on gender pay equity: the case of Portugal* consulted on the Internet site of the European Industrial Relations Observatory (www.eiro.eurofound.ie).

in 1996. The Committee requests that the next report update these statistics, broken down, if possible, by economic sector.

Disputes over equal pay are a matter for the labour relations courts, to which cases may be referred by individual employees or by their trade union (Section 16 of legislative decree No. 392/79). It is up to the employer to prove that there has been no gender discrimination (Section 9§4 of legislative decree No. 392/79).

The tripartite Employment Equality Board (CITE) is responsible for analysing all collective framework agreements and making recommendations to the parties with a view to deleting any discriminatory clauses, receiving and dealing with complaints of gender discrimination and formulating legal opinions to remedy the situation. When these opinions are adopted unanimously by the CITE, they are published and transmitted for execution to the Labour Inspectorate, which can impose fines.

The Committee would like to know what factors are taken into consideration by the courts and the CITE in determining whether or not there has been a violation of the right to equal pay for work of equal value.

Under Act No. 118/99 of 11 August 1999, introducing a new scheme of labour-related offences, violation of the equal pay principle is classified as a very serious offence punishable by fines ranging from 1 496 € to 119 711 €. The Committee asks for information on what compensation victims of wage discrimination are entitled to and whether, when the discrimination is the result of the employment contract, they can apply for the contract to be declared void.

Legislative decree No. 392/79, of 20 September 1979, prohibits employers from dismissing employees or applying sanctions or other retaliatory measures on the grounds of complaints of discrimination (Section 11). It also provides for the payment of compensation in keeping with the general principles of law. Under the terms of Sections 12 and 13 of legislative decree No. 64-A/89 of 27 February 1989, an employee who has been wrongfully dismissed and prefers compensation to reinstatement is entitled to one month's salary per year of service, even partial, with a minimum of three months' pay. The report explains that in the event of unlawful dismissal reinstatement is the rule, and that the choice between reinstatement and compensation lies with the employee alone. It further explains that the compensation rate is imposed as such in

court, although collective agreements may provide for more advantageous compensation rates.

The Committee considers that the principle that there should be no discrimination between the sexes implies that the rule of equal pay for full-time and part-time workers should be observed, since most of the latter are women and this can give rise to indirect discrimination. Accordingly, the Committee wishes to receive answers to the following questions:

- Is the hourly wage of part-time workers employed in the same type of job or in a similar job identical, as a rule, to the hourly wage of full-time workers ?
- Are there any exceptions to this principle and, if so, on what grounds?
- If pay increases with length of service, how is the latter calculated in the case of part-time workers?
- Are certain components of pay, such as premiums, bonuses, entitlements and benefits associated with complementary insurance schemes, paid as a result of employment, reserved for full-time workers?

The Committee concludes that the situation in Portugal is not in conformity with Article 4§3 of the Charter because under Portuguese law, the scope of the comparison of wages for determining equality or equal value of jobs is limited to the same enterprise.

Paragraph 4 – Reasonable notice of termination of employment

The Committee takes note of the information provided in the Portuguese report, which shows that there have been no changes in the relevant legal provisions.

In its previous assessment, the Committee found that the overall situation of Portugal with regard to reasonable notice of termination of employment was in conformity with the Charter. However, it noted that Portuguese law (Section 55.1 of Regulation No. 64-A of 1989) did not require any period of notice for termination of employment during probationary periods, which, in the case of directors and executives, may last for up to eight months.

The report confirms that these particular categories of workers may be submitted to probationary periods lasting up to eight months and that, during these periods, they may be dismissed without notice.

The Committee considers that pursuant to Article 4§4, workers having served for eight months with the same employer must be granted an appropriate period of notice for termination of employment.

It also asks what is the average length of probationary periods with regard to all other workers.

The Committee concludes that the situation of Portugal is not in conformity with Article 4§4 of the Charter because some categories of workers are not granted a period of notice for termination of employment after serving with the same employer for eight months.

Paragraph 5 – Limitation of deduction from wages

On the basis of the information provided in the Portuguese report and in previous reports, the Committee notes that the situation with regard to the limitation of deductions from wages, which it previously considered to be in conformity with the Charter, has not changed.

It therefore concludes that the situation in Portugal is in conformity with Article 4§5 of the Charter.

Article 9 – Right to vocational guidance

The Portuguese report up-dates the information on vocational guidance.

As Portugal has accepted Article 15, the measures concerning vocational guidance of people with disabilities are dealt with under that provision.

Vocational guidance within the education system

In reply to the Committee's question, the report indicates that the staff involved in vocational guidance in the education system consists of teachers having qualified as Guidance Counsellors for the last cycle of compulsory school and secondary school; teachers having qualified in educational support for the first and second cycle of compulsory school; psychologists; and social services technicians. In 2000/01, the total number was 1 129.

Expenditure for vocational guidance in the education system amounted to about 13 million € yearly during the reference period.

No figures are provided on the number of beneficiaries of vocational guidance in the education system and the Committee asks this information to be provided systematically for each supervision cycle.

The Committee asks if students can chose to follow or not the advice received through guidance. If the advice is compulsory, the Committee asks which are the consequence in case of non-compliance by the student.

Vocational guidance in the labour market

a. Functions, organisation and operation

The Portuguese report states that the main development during the reference period is the reorganisation of the intervention of the Employment Centres, carried out by the public employment service (IEFP – *Instituto do Emprego e formação profissional* – Employment and Vocational Training Institute) within the European Strategy for Employment. This reorganisation has, among others, introduced the Employment Personal Plan and has structured vocational guidance on three levels. The first level aims at laying the foundation of the Employment Personal Plan; the second level at providing a deeper guidance through the skills audit, collective guidance sessions, and a

psychological support; the third level at developing, when needed, the social and personal competences of the candidates.

According to the report, vocational guidance in the labour market, aiming at the integration or the maintenance in job positions, consists in the second and third level of the guidance system described above. Guidance counsellors working in the local and regional units carry out the service.

The organisation of the vocational guidance services, which is managed by the Directorate for Information and Guidance Services of the IEFP, consists of local and regional units.

In addition, to extend the offer of guidance as much as possible, the IEFP concludes partnerships with other public non-profit providers. The most relevant are the UNIVA (Active Life Insertion Units), which provide vocational information and guidance for young people. There are currently 709 UNIVA, which represents an increase of 80 % in comparison with 1996.

b. Expenditure, number of staff and persons assisted

The report indicates that expenditure for vocational guidance in the labour market increased from about 13 million € in 1998 to, yearly, about 25 million € in 1999 and 2000.

The guidance counsellors increased from 182 in 1997 to 228 in 2000. According to the report, efforts have been made to improve their initial qualification as counsellors. During the reference period, 183 counsellors followed training courses.

The total number of beneficiaries of vocational guidance increased from 95 146 in 1997 to 176 786 in 2000. This is almost twice the last report's figure.

Dissemination of information

According to the report, the Directorate for Information and Guidance Services of the IEFP produces information for technicians and users. This information is available in the Employment Centres, in the Guidance Services, in the Self-guidance Services, in schools, in the UNIVA, and in the Employment Clubs.

Information is available in printed version (leaflets, brochures, monographs), in multimedia version (tapes and videos) and in informatics version (Cd-ROM, website).

Nationals of the other Parties to the Charter

As to equal treatment for the nationals of the other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter, the report indicates that, on the basis of Act No. 134/99, implemented by the Decree-Law No. 111/2000, any racial discrimination, meant as any distinction, restriction or exclusion done on the ground of nationality, is banned. Accordingly, equal treatment with respect to vocational guidance is guaranteed to lawfully residing or regularly working nationals of other Parties to the Charter.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 9 of the Charter.

Article 10 – Right to vocational training*Paragraph 1 – Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education*

The Portuguese education and training system consists of primary, secondary general and vocational education, university and non-university higher education. The Committee takes note of the information contained in the report concerning vocational training, which is pertinent rather for the analysis under Articles 10§§ 2 and 3 than under Article 10§1.

The Committee recalls that Article 10§1 covers all forms of higher education. In view of the current evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the Committee considers that, today, the notion of vocational training of Article 10§1 covers initial training, i.e. general and vocational secondary education, university and non-university higher education, and continuing training. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.

Under Article 10§1 national reports should, accordingly:

- describe the most recent measures adopted to promote vocational training, including general and vocational secondary education, university and non-university higher education, apprenticeship, and continuing training (the description of the whole system may be recovered from existing database on the topic: Eurydice, Cedefop);
- highlight the bridges between secondary vocational education and university and non-university higher education;
- outline the mechanisms for the recognition of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general or technical education;
- underline the measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;

- outline the mechanisms for the recognition of qualifications awarded by continuing vocational education and training;
- provide figures about the completion rate of students enrolled in higher education;
- provide figures on the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

It is clear that access to higher technical or university education based solely on individual aptitude cannot be achieved only by setting up educational structures which facilitate the recognition of knowledge and experience as well as the transfer from one type or level of education to another; this also implies that registration fees or other educational costs do not create financial obstacles for some candidates.

The Committee requires that the next report provide detailed information on the entire education and training system on the basis of the above guidelines and the Form for Reports.

As Portugal has accepted Article 15, the measures concerning training of people with disabilities are dealt with under that provision.

Secondary education

After nine years of compulsory schooling, pupils may attend general or technical secondary education or vocational education. General courses aim at the continuation of studies, while technological courses are oriented towards working life. Vocational education is provided by the *Escolas Profissionais*, which represent an alternative to the regular education system and where pupils graduate as intermediate technicians.

The report does not provide the figures about pupils and teachers requested by the Committee in its previous conclusion. It only provides figures with respect to vocational schools, the participants of which amounted to 26 438 in 1997/98 and to 28 409 in 1999/2000. From another source¹, the Committee notes that, in 1997/98, pupils in secondary education were 410 368. General education accounted for

1. Portuguese Ministry of Education, (www.min-edu.pt).

266 209 pupils and technological education for 76 441 pupils. In 1998/99, the total number of pupils was 387 577, broken down as follows: 275 777 in general education and 111 800 in technological education, including vocational schools.

In 1998/99, teachers in secondary education numbered 40 634.

Moreover, the Committee observes from another source¹ that, since 1997, initial vocational training courses have been launched for young people who drop out from compulsory schooling or who have completed only basic education. These courses are organised by schools with the support of the public employment service (IEFP – *Instituto do Emprego e formação profissional* – Employment and Vocational Training Institute). The report indicates the number of participants to these courses: 27 608 in 1997, 38 939 in 1998, and 50 562 in 1999.

The Committee reiterates its question about the proportion of the relevant age group enrolling and completing initial vocational training provided in the school system or elsewhere.

Higher education

Higher education divides into university and polytechnics education. The report indicates that, in 1997/98, there were 141 837 students attending university and 59 875 students attending polytechnics. The number grew to, respectively, 155 390 and 67 189 in 1998/99, and to 155 611 and 73 263 in 1999/2000.

The report indicates that admission criteria to university and polytechnics are holding the secondary school leaving certificate and passing an entrance examination.

Information is missing in the report about the total amount of expenditure for education and training. It only indicates that expenditure for initial vocational training amounted to about 453 million € for the whole reference period.

From Eurostat, the Committee observes that, during the reference period, Portugal spent yearly 5,6 % of the GDP on education and training, which amounts to around 27 million € per year. Given the sharp difference between the above figures, the Committee asks that

1. InforMISEP, no.59, Autumn 1997.

the next report provide the relevant information for the relevant reference period.

In reply to the Committee's question, the report indicates that, on the basis of Act No. 134/99, implemented by the Decree-Law No. 111/2000, any racial discrimination, meant as any distinction, restriction or exclusion done on the ground of nationality, is banned. Accordingly, equal treatment with respect to access to education and training is guaranteed to lawfully residing or legally working nationals of the other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 10§1 of the Charter.

Paragraph 2 – Promotion of apprenticeship

The Portuguese report provides information on apprenticeship and other forms of training for young people.

According to the report, during the reference period, participants to apprenticeship have increased from 13 033 in 1997 to 29 111 in 1999. Apprenticeship has been financed in the framework of the Vocational Training and Employment Programme (PESSOA) until 1999 and then in the framework of the Operational Programme for Employment, Training and Social Development (POEFDS) for a total amount of 290 million € for the whole period of reference.

The report describes all the other existing forms of initial training for young people:

- qualification courses based on a credits system, which consist of long-term initial vocational training for non-qualified young people;
- technological specialisation;
- socio-professional training for young people who drop out from compulsory schooling;
- education-training courses for young people who did not complete compulsory schooling, and can no longer attend;

- programme SUB-21, which concerns young people between 15 and 20 years of age, who dropped out from compulsory schooling, but do not participate in any of the previous forms of education and training.

Training is primarily provided by the public employment service (IEFP – *Instituto do Emprego e formação profissional* – Employment and Vocational Training Institute), but also private operators can apply for financial support in the framework of the POEFDS programme.

The report indicates that, on the basis of Act No. 134/99, implemented by the Decree-Law No. 111/2000, any racial discrimination, meant as any distinction, restriction or exclusion done on the ground of nationality, is banned. Accordingly, equal treatment with respect to apprenticeship and other forms of training for young people is guaranteed to lawfully residing or legally working nationals of the other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter.

Due to the evolution of the legal and practical framework of the organisation of apprenticeship at national level, the Committee has sometimes had difficulties in evaluating its conformity with Article 10§2 of the Charter. As a consequence, the Committee asks the next report to provide information on the following topics: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.

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

Paragraph 3 – Vocational training and retraining of adult workers

Under Article 10§3 of the Charter, the Committee considers continuing vocational training for employed and unemployed persons, including the long-term unemployed. Accordingly, the Committee will examine only those of the activation measures for unemployed people that strictly concern training. It is under Article 1§1 of the Charter that the Committee considers activation measures for the unemployed in general terms.

The Portuguese report provides information about the continuing vocational training system for employed and unemployed people. Continuing vocational training aims at providing new or additional competences and qualifications for employed people and at helping unemployed people to reintegrate the labour market. The report indicates that priority will be given to increasing women's participation in continuing vocational training, but the Committee notes that there is no mention of specific measures adopted to this purpose.

According to the report, continuing vocational training is organised along two ways, available both for employed and unemployed people: qualification courses based on a credits system and adult education and training.

Qualification courses based on a credits system have been introduced to offer a more flexible form of training, which provide trainees the conditions to manage their own process of acquiring skills. Two kinds of qualification courses are available: long-term, corresponding to a full qualification path, and short-term, corresponding to some credits. As regards employed or unemployed people, qualification courses are used for vocational qualification, vocational retraining and recycling, and vocational specialisation.

Adult education and training target employed and unemployed people who are unqualified or non-adequately qualified to advance or re-enter the labour market. According to personal needs, they are organised as basic training, aiming at providing a school qualification, and as vocational training, aiming at obtaining of professional certificates. Adult education and training is managed by the National Agency for Adults Education and Training (ANEFA).

In addition, the REDE (Guidance, Training and Help for the Management of medium and small enterprises) programme aims at helping SMEs to develop their management and to train their personnel.

The IEFP also organises training in the information and communication technologies through distance education.

Employed people

According to the report, the continuing vocational training measures organised by the IEFP increased from 3 904 in 1997 to 13 314 in

2000. Adult education and training measures started only in 2000 and amounted to 326 measures.

From the table of the Operational Programme for Employment, Training and Social Development (POEFDS), it appears that participants in continuing vocational training grew from 67 271 in 1997 to 111 299 in 1999. Figures for 2000 are lower (31 592), but the report explains that this is due to the fact that 2000 is a transition year. Additional participants to continuing training are most probably covered under the item 'Improvement of the quality and the level of employment', where the number of participants was 64 712 in 1997 and 106 096 in 2000.

From Eurostat, the Committee observes that only 17 % of employees participate in some form of continuing vocational training and, taking into account the traditional shortcomings in the qualification of the working population in Portugal, asks which measures are planned to increase their number.

The Committee also requires the next report to provide information about the extent of continuing vocational training provided within the enterprises themselves. The Committee in fact observes from another source that Portugal gave priority to developing on-the-job training in SMEs¹.

In view of the growing relevance of continuing vocational training, the Committee asks that the next report provide information on the existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress.

Unemployed people

From Eurostat, the Committee observes that in the period 1997-2000 the number of unemployed people decreased from 329 300 to 208 800, that is from 6,8 % to 4,1 % of the labour force (the total of employed and unemployed people in the country). The share of long-term unemployed (i.e. those persons who are without work for 12 months or more) as percent of total unemployment was, respectively, 55,6 % in 1997 and 42,9 % in 2000.

1. Portugal National Action Plan for Employment, 1998, (www.europa.eu.int).

The continuing vocational training system described above is also open to unemployed.

According to the report, the IEFP vocational training measures targeting unemployed people amounted to 5 887 in 1997 and 11 694 in 2000. In addition, 256 and 1 110 specific actions for long-term unemployed people were organised in, respectively, 1997 and 2000.

As to participants, the POEFDS table reports that there were 11 710 participants in 1997 and 17 817 in 1999.

From another source¹, the Committee observes that, in Portugal, the activation rate of unemployed people with respect to training measures was 7,8 % (63 992 participants) in 1998, 7,4 % (25 299 participants) in 1999, and 7 % in 2000.

These rates being very low, the Committee asks that the next report give more information on how the government plans to raise the availability of these kinds of measures, in particular for long-term unemployed.

According to the report, the total number of persons, employed or unemployed, in working age who participated in all types of training grew from 124 315 in 1997 to 204 305 in 1999.

The Committee asks whether legislation exists on the possibility of individual leave for training and, in particular, subject to what conditions, on whose initiative, of what length and in which cases it is paid or not.

As to expenditure for continuing vocational training of employed and unemployed people, the report indicates that, for the whole reference period, it amounted to about 566 million €.

The Committee requests information on the sharing of the burden of the cost of vocational training among public bodies (state or other

1. EC, Joint Employment Reports 1999, 2000 and 2001, (www.europa.eu.int). In 1998-99, the activation rate was defined as the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons. In 2000, the activation rate is defined as the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

collective bodies), unemployment insurance systems, enterprises, and households as regards continuing training.

In reply to the Committee's question, the report indicates that, on the basis of Act No. 134/99, implemented by the Decree-Law No. 111/2000, any racial discrimination, meant as any distinction, restriction or exclusion done on the ground of nationality, is banned. Accordingly, equal treatment with respect to access to continuing vocational training is guaranteed to lawfully residing or legally working nationals of the other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 10§3 of the Charter.

Paragraph 4 – Encouragement for the full utilisation of available facilities

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

Fees and financial assistance (Article 10§4 a and b)

Secondary education in Portugal is free of charge, while fees of a very small amount are charged for higher education.

The Committee observes from another source¹ that Act No. 113/97 regulates the issue of financial assistance for higher education. Needy students are entitled to receive scholarships and other kinds of help, such as lodging, food, health care etc. The amount of scholarships varies between that of the minimum income and 1/20 of that income. Loans are also available.

The report indicates that, in 1997/98, there were 43 700 higher education students who were granted a scholarship. In 1999/2000, this number grew to 57 100, for a total expenditure of about 79 million €.

1. Portuguese Ministry of Education, (www.min-edu.pt).

The report describes the financial assistance available for participants in vocational training provided by the Vocational Training Centres and the Employment Centres of the public employment service (IEFP).

Workers undergoing training during or outside working-time may benefit from a meal subvention and of risk insurance.

Unemployed people undergoing vocational training benefit from a training allowance, which in amount does not go beyond that of the minimum income set up by the law. More precisely, unemployed people looking for a new job are entitled to an allowance of the same amount as the RMI, while unemployed people looking for the first job are entitled to an allowance representing 25 % of the RMI. In addition to the allowance, unemployed people may also benefit of help for meals, lodging, child-care, transports, and insurance.

Workers and unemployed people who undertake training at their own initiative to improve their qualifications may also benefit from financial assistance from the IEFP. This covers registration fees for the training, insurance, transportation costs, and a training allowance for unemployed people, or consists in a part of the salary for employed people.

In reply to the Committee's question, the report indicates that equal treatment of lawfully resident and regularly working nationals of the other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter is ensured with respect to financial assistance for vocational training measures provided by the IEFP. From the combined reading of Act No. 113/97 and Act No. 134/99 (ban of any racial discrimination meant as any distinction, restriction or exclusion done on the ground of nationality) the Committee concludes that equality of treatment is also guaranteed with respect to financial assistance for higher education.

However, the Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.

To this purpose, the Committee recalls that it held that length of residence or employment requirements for vocational training financial assistance are contrary to the provisions of the Charter (Conclusions XIII-2, Austria, p.221; XIII-3, Finland, p.324; XIV-2, Belgium, p.146, Finland, p.238).

From this perspective, the Committee asks whether a specific period of residence or employment is required in order for nationals of the other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter to be equally treated with respect to financial assistance.

Training during working hours (Article 10§4 c)

Since there is no information in the report, the Committee asks whether time spent on supplementary training at the request of the employer is included in the normal working-hours.

Efficiency of training (Article 10§4 d)

The report refers that a new procedure of evaluation is being put in place. Its objective is to improve the training offered by the different providers within the IEFP structure. The Committee asks for more detailed information about it.

Conclusion

Pending receipt of the requested information about equal treatment and the inclusion of training in the normal working hours, the Committee defers its conclusion.

Article 15 – Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement*Paragraph 1 – Vocational training arrangements for disabled persons*

The Committee notes the information in Portugal's report.

General remarks

According to a survey carried out in 1995 in the framework of the "QUANTI" project approximately 9,2 % of the population has a disability, of these approximately 509 600 are between 16 and 64 years.

The Committee wishes to know what steps, if any, have been taken or are planned to move away from a medical definition of disability and towards a social definition such as that endorsed by the WHO in its International Classification of Functioning (ICF 2001).

Education and Vocational Training

The Constitution guarantees everyone the right to education and guarantees equality of opportunity as regards access and achievement. The Committee asks whether these constitutional provisions can be litigated by an individual.

The report recalls that the guiding principle behind education for children with disabilities is integrated education. Measures are available to enable integration such as support teachers and coordination teams.

The Committee recalls from its previous conclusion that most children with disabilities attended regular schools; however, it wishes to receive updated information on the number of children integrated into mainstream schools and the number attending special schools.

As regards higher education the Committee notes there is a certain number of places reserved for persons with physical and sensory disabilities.

The Committee wishes to know whether general teacher training incorporates special needs education as an integral component.

As regards vocational training for adults (including those who have completed basic education) the Committee notes the information on specialist training either provided or supported by the Institute for Employment and Vocational Training (IEFP). It notes in this respect that approximately 134 private organisations provided, *inter alia*, training for 6 143 persons in 2000 and guidance for 241. This was a decrease on previous years, the Committee asks for information on the reasons for this.

The report states that persons with disabilities also attend mainstream training facilities and that special resource centres provide assistance for this and that mainstream courses may be adapted. The Committee requests information on the number of persons integrated into mainstream training.

Conclusion

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

Paragraph 2 – Placement arrangements for disabled persons

The Committee notes the information in Portugal's report.

Measures to promote employment

In order to improve access to employment for persons with disabilities local resource centres and specialised resources centres have been established to assist employment centres place persons in employment.

The report provides information on the different measures available to promote the employment of persons with disabilities; financial assistance, subsidies, post placement support, etc. The Committee notes the introduction of a tele-working scheme for persons with disabilities and the creation of an employment exchange for tele-workers with disabilities.

According to the report, between 1998 and 2000, 2 882 persons with disabilities registered with employment centres were placed in employment, of whom 1947 benefited from assistance; in 2000, 1 066 persons were placed in employment of whom 698 received assistance. The Committee considers that this number is low and

wishes to receive the Government's comments on this. It also wishes to receive further information on the employment and unemployment rate among persons with disabilities.

The Committee notes that legislation was introduced in 2001 (outside the reference period) which instituted a system of quotas in the public sector; in public competitions for recruitment to the civil service a certain percentage of posts should be reserved for persons with disabilities.

As regards sheltered employment the Committee recalls from its previous conclusion that the goal wherever possible of sheltered employment is transition to the open labour market. The Committee wishes to receive updated information on the total number of persons in sheltered employment and the transition rate. Further it recalls that persons working in sheltered employment are entitled to salary not less than 90 % of the guaranteed minimum salary for the sector of activity. The Committee wishes to know whether trade unions are active in sheltered employment.

The Committee considers that the situation of persons with disabilities requires anti discrimination legislation. It notes that persons with disabilities are the subject of specific protection under the Portuguese Constitution. However it notes that there is no specific legislation protecting persons with disabilities from discrimination in the field of employment, therefore the situation is not in conformity with this provision of the Charter.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 15§2 of the Charter as there is no legislation protecting persons from discrimination on grounds of disability in the field of employment.

