

— Portugal and the European Social Charter —

Signatures, ratifications and accepted provisions

Portugal ratified the European Social Charter on 30/09/1991 and the Revised European Social Charter on 30/05/2002, accepting all of its 98 paragraphs.

It accepted the Additional Protocol providing for a system of collective complaints on 20/03/1998, but has not yet made a declaration enabling national NGOs to submit collective complaints.

The Charter in domestic law

Under Article 8§2 of the Constitution: "Rules provided for in international conventions duly ratified or approved, following their official publication, apply in municipal law as long as they remain internationally binding with respect to the Portuguese State."

Table of Accepted Provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
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15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3						Grey = accepted provisions				

Monitoring the implementation of the European Social Charter ¹

I. Collective complaints procedure ²

Collective complaints (under examination)

University Women of Europe (UWE) v. Portugal (Complaint No. 136/2016)

The Committee [declared](#) the complaint admissible on 4 July 2017.

Collective complaints (proceedings completed)

1. Complaints inadmissible or where the Committee has found no violation

a. Inadmissible

Frente Comum de Sindicatos da Administração Pública v. Portugal (Complaint No. 36/2006)

The Committee [declared](#) the complaint inadmissible on 5 December 2006.

b. No violation

European Council of Police Trade Unions v. Portugal (Complaint No. 60/2010)

- Violation of Article 4§2 (right to a fair remuneration)
- Non-violation of Article 6§§1 and 2 (right to collective bargaining: joint consultation and machinery for voluntary negotiations) and Article 22 (right to take part in the determination and improvement of the working conditions and working environment) of the Revised Charter

[Decision on the merits of 17 October 2011.](#)

Follow up:

- [Resolution CM/ResChS\(2013\)18 on 13 December 2013](#) of the Committee of Ministers.

Sindicato dos Magistrados do Ministério Público (SMMP) v. Portugal (Complaint No. 43/2007)

- No violation of Article 12§3 (right to social security)

[Decision on the merits of 3 December 2008.](#)

Follow up:

- [Resolution CM/ResChS\(2009\)2 on 21 January 2009](#) of the Committee of Ministers.

European Council of Police Trade Unions v. Portugal (Complaint No. 40/2007)

- No violation of Articles 6§§1-2 (right to collective bargaining), 21 (right to information and consultation) and 22 (right to take part in the determination and improvement of the working conditions and working environment)

[Decision on the merits of 23 September 2008.](#)

Follow up:

- [Resolution CM/ResChS\(2009\)1 on 21 January 2009](#) of the Committee of Ministers.

European Council of Police Trade Unions v. Portugal (Complaint No. 37/2006)

- No violation of Articles 4§§1-2 (right to adequate remuneration and right to increased rate of remuneration for overtime work) and 6 §§1-2 (right to collective bargaining: joint consultation and machinery for voluntary negotiations)

[Decision on the merits of 3 December 2007.](#)

Follow up:

- [Resolution ResChS\(2008\)5 on 27 February 2008](#) of the Committee of Ministers.

¹ The European Committee of Social Rights ("the Committee") monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure ». Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

² Detailed information on the Collective Complaints Procedure is available on the [relevant webpage](#).

World Organisation against Torture v. Portugal (Complaint No. 20/2003)

- No violation of Article 17 (right of children to social, economic and legal protection)
- Decision on the merits of 7 December 2004.

Follow up:

- Resolution ResChS(2005)2 on 20 April 2005 of the Committee of Ministers.

European Council of Police Trade Unions v. Portugal (Complaint No. 11/2001)

- No violation of Articles 5 and 6 (right to organise and right to collective bargaining)
- Decision on the merits of 21 May 2002.

Follow up:

- Resolution ResChS(2002)5 on 17 July 2002 of the Committee of Ministers.

European Federation of Employees in Public Services v. Portugal (Complaint No. 5/1999)

- No violation of Articles 5 and 6 (right to organise and right to collective bargaining)
- Decision on the merits of 4 December 2000.

Follow up:

- Resolution ResChS(2001)4 on 7 February 2001 of the Committee of Ministers.

2. Complaints where the Committee has found a violation which has been remedied

World Organisation against Torture v. Portugal (Complaint No. 34/2006)

- Violation of Article 17 (right of children to social, economic and legal protection)
- Decision on the merits of 6 December 2006.

Follow up:

- Resolution ResChS(2008)4 on 27 February 2008 of the Committee of Ministers.

European Council of Police Trade Unions v. Portugal (Complaint No. 60/2010)

- Violation of Article 4§2 (right to a fair remuneration)
- Non-violation of Article 6§§1 and 2 (right to collective bargaining: joint consultation and machinery for voluntary negotiations) and Article 22 (right to take part in the determination and improvement of the working conditions and working environment) of the Revised Charter

Decision on the merits of 17 October 2011.

Follow up:

- Resolution CM/ResChS(2013)18 on 13 December 2013 of the Committee of Ministers.
- Assessment of the European Committee of Social Rights on the follow-up 4 December 2015

3. Complaints where the Committee has found a violation which has not yet been remedied

European Roma Rights Centre (ERRC) v. Portugal (Complaint No. 61/2010)

- Violation of Article 16 (the right of the family to social, legal and economic protection)
- Violation of Article 30 (right to protection against poverty and social exclusion)
- Violation of Article 31§1 (right to housing), read alone or in conjunction with Article E (non-discrimination)

Decision on the merits of 30 June 2011.

Follow up:

- Resolution CM/ResChS(2013)7 on 10 April 2013 of the Committee of Ministers.
- Assessment of the follow-up 4 December 2015

International Commission of Jurists v. Portugal (Complaint No. 1/1998)

- Violation of Article 7§1 (prohibition of employment under the age of 15)
- Decision on the merits of 9 September 1999.

Follow up:

- Resolution ResChS(99)4 on 15 December 1999 of the Committee of Ministers.

II. Reporting system³

Reports submitted by Portugal

Between 1993 and 2017, Portugal submitted 9 reports on the application of the Charter and 12 on the application of the Revised Charter.

The [12th report](#), submitted on 16/01/2017, concerns the accepted provisions relating to Thematic Group 2 "Health, social security and social protection", namely:

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The conclusions with respect to these provisions will be published in January 2018.

The 13th report, which should be submitted by 31/10/2018, should concern the accepted provisions relating to Thematic Group 3 "Labour Rights", namely:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right of dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The conclusions related to these provisions will be published in January 2019.

³ Following a [decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years. Following a [decision taken by the Committee of Ministers in April 2014](#), States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups. Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

Situations of non-conformity ⁴

Thematic Group 1 "Employment, training and equal opportunities" - Conclusions 2012

► *Article 1§2 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

Sections 132 and 133 of the Merchant Navy Penal and Disciplinary Code providing for sanctions against seamen who abandon their post even where the safety of the vessel or the lives or health of persons on board are not at risk remains in force.

► *Article 1§3 - Right to work - Free placement services*

It has not been established that employment services operate in an efficient manner.

► *Article 10§4 - Right to vocational training- Long term unemployed persons*

It has not been established that the right to vocational training for long term unemployed is guaranteed.

► *Article 18§1 - Right to engage in a gainful occupation in the territory of other States Parties-Applying existing regulations in a spirit of liberality*

It has not been established that the existing regulations are applied in a spirit of liberality.

► *Article 20 (and Article 4§3) – Right to equal opportunities and treatment in employment and occupation without sex discrimination*

In equal pay cases, legislation only permits comparisons of pay between employees working for the same company.

Thematic Group 2 "Health, social security and social protection" - Conclusions 2017

► *Article 3§3 – Right to safe and healthy working conditions – Enforcement of safe and healthy working conditions*

- measures taken to reduce the number of accidents at work are insufficient;
- the labour inspection system does not have sufficient human resources to adequately monitor compliance with occupational health and safety legislation.

► *Article 12§1 – Right to social security – Existence of a social security system*

The minimum level of sickness benefit is inadequate.

► *Article 12§4 – Right to social security – Social security of persons moving between States*

- equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties.

► *Article 13§1 – Right to social and medical assistance - Adequate assistance for anyone in need*

- the level of social assistance paid to a single person without resources is not inadequate;
- nationals of States Parties are subjected to a length of residence requirement of one year to be entitled to social assistance.

► *Article 14§1 – Right to benefit from social services - Promotion or provision of social services*

It has not been established that there is an adequate number of staff and that staff have sufficient qualifications.

► *Article 23 – The right of the elderly to social protection*

No anti-discrimination legislation exists protecting elderly persons against discrimination on grounds of age outside the employment sphere.

⁴ Further information on the situations of non-conformity is available on the [HUDOC database](#).

Thematic Group 3 "Labour rights" - Conclusions 2014

► *Article 2§2 – Right to just conditions of work – Public holidays with pay*

Work performed on a public holiday is not adequately compensated.

► *Articles 2§4 – Right to just conditions of work - Elimination of risks in dangerous or unhealthy occupations*

Not all workers exposed to residual risks are entitled to adequate compensatory measures such as reduced working hours or additional leave.

► *Article 4§1 – Right to a fair remuneration – Decent remuneration*

The minimum wage for private sector workers does not ensure a decent standard of living.

► *Article 4§2 – Right to a fair remuneration – Increased remuneration for overtime work*

Police officers on active prevention (*prevenção activa*) duties and shift duties (*serviço de piquete*) do not receive increased remuneration as required nor even remuneration equivalent to their basic hourly pay.

► *Article 4§4 – Right to a fair remuneration – Reasonable notice of termination of employment*

- The notice periods applicable to probationary periods in the private sector are insufficient below four months of service;
- The notice periods applicable to probationary periods for fixed-term, seasonal or show contracts in the private sector are insufficient;
- No provision is made for notice of the termination of duties during probationary periods for tenured civil servants;
- The conditions governing the termination of the duties of tenured civil servants are left to the discretion of the parties.

► *Article 4§5 – Right to a fair remuneration – Limits to wage deductions*

Guarantees in place to prevent tenured civil servants and civil service contractual staff from waiving their right to limitation of deduction from wages are insufficient.

► *Article 5 – Right to organise*

The criteria used to determine representativeness are not adequate.

► *Article 6§1 – Right to bargain collectively – Joint consultation*

The criteria used to determine representativeness in respect of joint consultation are not adequate.

► *Article 6§3 – Right to bargain collectively – Conciliation and arbitration*

- Compulsory recourse to arbitration in the private sector is permitted in circumstances which go beyond the limits set out in Article G of the Charter;
- Compulsory recourse to arbitration in the public sector is permitted in circumstances which go beyond the limits set out in Article G of the Charter.

► *Article 6§4 – Right to bargain collectively – Collective action*

- The right to call a strike is primarily reserved to trade unions, and the establishment of a trade union is subject to an excessive timeframe;
- It has not been established that recourse to compulsory arbitration to define minimum services in the case of a state-owned company falls within the limits set by Article G of the Charter.

Thematic Group 4 "Children, families, migrants" - Conclusions 2011

► *Article 7§3 – Right of children and young persons to protection – Prohibition of employment of children subject to compulsory education*

The daily and weekly working time for children subject to compulsory education is excessive.

► *Article 19§8 – Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation - Equal treatment for the self-employed*

Migrant workers may be expelled if they abusively interfere with the exercise of rights of political participation that are reserved to Portuguese citizens and there are serious reasons to believe that they

have committed serious criminal acts, or intend to commit such acts, particularly within the territory of the European Union, which as such go beyond what is permitted by the Charter.

► *Article 31§1 - Adequate housing*

The measures taken by public authorities to improve the substandard housing conditions of most Roma in Portugal are inadequate.

The Committee has been unable to assess compliance with the following rights and has invited the Portuguese Government to provide more information in the next report in respect of the following provisions:

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ Article 1§1 - Conclusions 2012
- ▶ Article 10§5 - Conclusions 2012
- ▶ Article 25 - Conclusions 2012

Thematic Group 2 "Health, social security and social protection"

- ▶ Article 11§1 - Conclusions 2017
- ▶ Article 11§3 - Conclusions 2017
- ▶ Article 13§4 - Conclusions 2017
- ▶ Article 14§2 - Conclusions 2017
- ▶ Article 23 - Conclusions 2017

Thematic Group 3 "Labour rights"

- ▶ Article 4§3 - Conclusions 2014

Thematic Group 4 "Children, families, migrants"

- ▶ Article 7§1 - Conclusions 2011
- ▶ Article 7§5 - Conclusions 2011
- ▶ Article 7§10 - Conclusions 2011
- ▶ Article 8§2 - Conclusions 2011
- ▶ Article 16 - Conclusions 2011
- ▶ Article 17§1 - Conclusions 2011
- ▶ Article 19§2 - Conclusions 2011
- ▶ Article 19§6 - Conclusions 2011
- ▶ Article 19§12 - Conclusions 2011
- ▶ Article 31§2 - Conclusions 2011
- ▶ Article 31§3 - Conclusions 2011

III. Examples of progress achieved in the implementation of rights under the Charter (*update in progress*)

Health/Education

- ▶ Prohibition of the employment of minors subject to compulsory education (Constitutional Act No. 1/97); the minimum age for employment has been fixed as 16 and light work has been defined (Act No. 58/99); illegal employment of young persons is regarded as a very serious offence and sanctions have been stepped up (Acts Nos. 113, 114, 116 and 118/1999).
- ▶ General prohibition of night work between 8 p.m. and 7 a.m. for young persons under 16 years of age and between 11 p.m. and 7 a.m. for young persons over 16 years of age has been introduced (Act No 58/99).
- ▶ Six-weeks post-natal leave has been made compulsory (Act No. 142/99) and maternity leave has been increased from 98 to 120 days (Act No. 18/98).
- ▶ The right to time off for nursing mothers has been extended to cover the whole period of nursing, including in the case of part-time work (Act No. 142/99).

Employment

- ▶ Act No. 105/97 on equality between women and men.
- ▶ Act No. 134/99, as implemented by Legislative Order No. 111/2000 prohibits any distinction, exclusion, restriction or preference based on race, colour, ancestry or national or ethnic origin in the exercise of economic, social or cultural rights.
- ▶ Decree No. 132/99 contains the principles on the organisation and functioning of employment services.
- ▶ Act No. 73/98 regulates working time.
- ▶ Act No. 45/98 removed age as a criterion for determining the level of the statutory minimum wage.
- ▶ Legislative Decree No. 84/99 guarantees the right to organise for all public employees.
- ▶ The Government has stopped defining by decree the minimum services to be guaranteed in the event of a strike where the parties are unable to reach agreement (decision of the Constitutional Court declaring that certain provisions of the Act on the right to strike were unconstitutional).
- ▶ Act No. 14/2002 of 19 February 2002 concerning the exercise of the freedom of association and collective bargaining and participation rights of staff members of the Public Security Police.

Movement of persons

- ▶ Simplification of the formalities for issuing work permits (Act No. 20/98).
- ▶ Abolition of the quota of foreign nationals allowed to work in undertakings with more than five employees (Act No. 20/98).
- ▶ Act No. 134/99 repealed Decree No. 55/1977 which gave nationals alone the right to apply for subsidised housing.
- ▶ The scope of the provisions relating to family reunion has been extended (Decree-Law of 8 August 1998).
- ▶ Act No. 30-E/2000 provides equal treatment for nationals of the Parties with respect to legal aid.

Protection of children and young persons

- ▶ The 2007 Penal Reform (Law No. 59/2007 of 4 September 2007) created the autonomous crimes of pornography involving minors and the sexual abuse of minors, including the criminalisation of the acquisition or possession of pornographic material (Article 176 (3) of the Penal Code).

Social Protection

- ▶ Executive Law No. 232/2005 has created the Solidarity Supplement for the Elderly (CSI), a monetary benefit designed to combat poverty among the elderly.
- ▶ Under the PARES project, expansion of the network of social facilities by creating 19 000 new places in nursing homes and day centres by 2009.
- ▶ Under Act No. 32/2002, specific emergency assistance (housing, food and benefits in kind to cover basic needs) is available to all persons who are in a situation of exceptional need.
- ▶ Legislative Decree No. 84/2000 has amended the legislation on the guaranteed minimum income.
- ▶ Act No. 135/99 introduced a series of protective measures for heterosexual couples having co-habited for two years or more. In 2001, these measures were extended to homosexual couples.
- ▶ Act No. 142/99 improved provisions for maternity and paternity leave.

Non-discrimination (disability)

- ▶ Adoption of Law 38/2004 on the Prevention, Habilitation, Rehabilitation and Participation of Persons with Disabilities, as well as of Law 46/2006 explicitly prohibiting direct and indirect discrimination on the basis of disability *inter alia* with respect to education and training.
- ▶ Inclusion of measures for the promotion of the insertion in the labour market of persons with disabilities in the national employment plan 2003-2006 (Council of Ministers Resolution 185/2003) and setting the socio-professional integration of persons with Disabilities as an objective in the national action plan (Council of Ministers Resolution 192/2003).

Safe and healthy working conditions

- ▶ The Ministerial Order No. 40/2014 of 17 February 2014 laid down the norms governing the correct removal of materials containing asbestos and the packaging, transport and management of the construction and demolition waste generated, with a view to protect the environment and human health
- ▶ The Law No. 42/2012, which approved the regimes governing access to and pursuit of the professions of senior occupational safety specialists and occupational safety specialist, repealed Article 100 of Law No. 102/2009, under which employers could commit a serious administrative offence if they hired a specialist who did not fulfil the requisites laid down in Article 100(1)

Social security

- ▶ As regards unemployment benefits, the qualifying period was shortened from 450 to 360 days of registered work during the previous 24 months and new rules were introduced, which extend the coverage of unemployment benefits to certain self-employed persons (Executive Law no. 65/2012 of 15 March 2012, Executive Law no. 12/2013 of 25 January 2013)
- ▶ As regards sickness benefits, the coverage was extended as a result of a modification in the way the reference pay is calculated, i.e. by taking into account the whole period from the beginning of the reference period till the day before the occurrence of the incapacity for work (Executive Law no. 133/2012 of 27 June 2012)
- ▶ Entitlement to invalidity pensions was extended as a result of the adoption of new rules (Executive Law no. 246/2015 of 20 October 2015) which take account of the person's objective permanent incapacity for work, regardless of the causes (before the adoption of this law, only invalidity resulting from a specific list of diseases was recognised as such)
- ▶ The 5-years time limit for claiming survivors' pensions was cancelled