

Report on Portugal's Compliance of Article 25 of the European Social Charter

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Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Article 25 of the European Social Charter establishes a guarantee of protection of workers' rights in the event of their employer's insolvency or difficult financial status. This translates into a situation where the employer is no longer able to cover salaries.

The degree of protection that is given is subject to a certain level of discretion by the Member States (as all Social Rights are).

For the European Committee, the States will be considered in compliance with Article 25, if this protection is considered **adequate** and **effective**. To be considered adequate protection: *i)* it must include situations where the employer has ceased payments but has not been formally declared insolvent *ii)* the time that elapses between the lodging of the claim and the payment made must be considered reasonable *iii)* the overall proportion of workers' claims that are satisfied *iv)* must at least extend to wages, and sums due for paid holidays and other paid absences.

So, to determine whether or not Portugal is in compliance with Article 25, a verification of all the requisites previously mentioned is necessary.

The Portuguese Wage Guarantee Fund (Fundo de Garantia Salarial) was created in 1999 and is currently established in Articles nº 336 and nº 347 of the Labour Code.

The aforementioned article 336 guarantees the payment of workers' claims arising out of a contract of employment, which cannot be paid by the employer due to insolvency or complicated economic situation, by the Wage Guarantee Fund.

There are some conclusions we have to reach by analysing the text of this article, specifically in regard to the previously mentioned requisites of compliance:

- a) By stating *verbatim* "... insolvency or complicated economic situation..." it is clear the intention of the Portuguese legislator to extend the protection of the fund to those situations where the employer has ceased payments, but a formal declaration of insolvency has not been issued.
- b) The expression "...claims arising out of a contract of employment..." refers to more than mere wages but also includes other sums established in the contract of employment, such as paid holidays or Christmas bonuses.

So, having established that Portugal's legislation is in fact in compliance, we now have to take a look at the practise.

In its Conclusions of 2008, the Committee deemed Portugal in compliance with Article 25, having, however, requested information in regard to the time that elapses between the lodging of the claim and the payment that must be made by the Wage Guarantee Fund.

The Committee was forced to defer its Conclusions of 2012 for Portugal had still not divulged the previously requested information. The Committee considered the absence of information a breach of the reporting obligation entered into by Portugal under the Charter.

By 2016, Portugal had finally found a way of including in its Report the necessary information: On average, a worker had to wait, on average, a time of 11-12 months between the filling of their claim and the payment of any sum owed. This waiting period was considered excessive by the Committee in the 2016 Conclusions and therefore not in compliance with the Charter.

In conclusion, the situation in Portugal is not in conformity with Article 25 of the Charter due to procedural issues. Portugal has to improve the process of the Wage Guarantee Fund in order to satisfy worker's claims in a reasonable amount of time.

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