



UNIVERSIDADE CATÓLICA PORTUGUESA

**The right to work as defined on article 1 of the
(Revised) European Social Charter – The
Portugal overview**

**Essay on the Multilevel Protection of Fundamental Social
Rights Seminar**

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October 2017

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I. Introduction – Article 1 of the (Revised) European Social Charter

The 1996 Revised European Social Charter is a Council of Europe's treaty, signed for 43 of the 47 members of the Council of Europe. This revised version is an update of the first Charter of 1961, on which Portugal was not a part in. This instrument reflects the principle of equality and non-discrimination, as a consequence of the Council of Europe's main goals: the protection of human rights, the effective exercise of the rule of law and the maintenance of democratic societies within the organisation and its members. It advocates the ideas of universality, indivisibility, interdependence and interrelation of Human rights, in a way to affirm the dogma of equal footing of both civil and political rights and social rights. For that, the treaty lists rights that have to be respected by the parts, as interpreted by the organs of the Council (as published in the Digest of the Case of Law¹) and creating monitoring mechanisms, for which is responsible the Committee of Social Rights of the Council of Europe.

The Committee is composed by 15 independent and impartial members, who are responsible for controlling the effective application of the Charter by 2 monitoring mechanisms. They are the Collective complaints procedure (introduced by the Additional Protocol of 1995, that only applies to the parts that rectified this treaty) and the Reporting System (as regulated in the Part IV of the 1961 Charter of Social Rights). The last mechanism in what it concerns to Portugal is what the present article will be focused on, in relation to the article 1 of the Revised Social Charter.

Article 1, entitled right to work, states the following:

"With a view to ensuring the effective exercise of the right to work, the Parties undertake:

¹ <https://rm.coe.int/168049159f>

1 to accept as one of their primary aims and responsibilities the achievement and maintenance

of as high and stable a level of employment as possible, with a view to the attainment of full employment;

2 to protect effectively the right of the worker to earn his living in an occupation freely entered

upon;

3 to establish or maintain free employment services for all workers;

4 to provide or promote appropriate vocational guidance, training and rehabilitation."

The evaluation from the Committee of this article 1 of the Charter in Portugal was made by 37 different Conclusions (10 each for the paragraphs 1, 2 and 3 and 7 for paragraph 4), through the period between 1991 and 2011. This analysis will concentrate on the last Conclusions between the period of 2001 and 2014 (Conclusions XVII-1, 2006, 2008, 2012 and 2016, respectively).

II. The Interpretation of article 1 § 1²

" With a view to ensuring the effective exercise of the right to work, the Parties undertake to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible."

This article imposes the obligation of pursuing full employment policies by States as a mean to achieve both a higher level of employment rate as possible, especially in what concerns to long term employment, and a lower rate of unemployment as possible, with more relevance in vulnerable groups (such as the elders, person with disabilities, the minorities and the youth) by promoting and effectively undertake public policies that create the means to achieve these goals. Those measures should be considered by the observation of multiple economic and social national factors, as well as they may be adequate to the reality lived in each country on each period analysed, taking into account the international obligations of the State and the international economical paradigm. Therefore, the result of such policies is less relevant than the actual measures and efforts created by the State, being these last elements

² As stated in the Digest of the Case of Law of the European Committee of Social Rights

the criteria on which a State is pronounced as being in conformity (or non-conformity) with the Charter by the Committee. The evaluation of the Committee is done on a legal and practice perspective.

II.I. The application of article 1§1 in Portugal

1. The Conclusion XVII-1 (Reference Period 01/01/2001 to 31/12/2002)³

The Committee noted that in spite of a decreasing on PIB in the revised period, there were positive signs in an overall descent of unemployment rates, which revealed a slight reduction in long term unemployment. However, it was not reflected on young people and women or in the situations of foreign UE citizens, especially from Eastern Europe, that had rising unemployment rates. Therefore, the Committee asked for information on how the State will combat the current statistics, at the time, as well as detailed data on unemployment within individuals with disabilities, which was not given, in most cases, both to the Committee or the State by those individuals.

In conclusion, the Committee attributes a conformity grade to Portugal, in line with the success of governmental programmes for this period such as NAP, INSERJOVEM, REAGE and EALV.

2. The Conclusion 2006 (Reference Period 01/01/2003 to 31/12/2004)⁴

The Committee underlined that in these years, and since 2001, Portugal lived an economic recession, which led its vital statistics in relation to the employment rate to a decrease, and unemployment rates to a light climb in general terms. Furthermore, youth and feminine unemployment are an example of the stated whereas long-term unemployment is nearly stable. Again, the Committee reaffirms non-communication on people with disabilities' unemployed, apart from foreign citizens rates, requesting it, on condition of an affirmative evaluation.

Such grade, once more, is due to public policies as for 2004 National Action Plan for Employment, INSERJOVEM programme, the REAGE programme, Employment-Family

³ [http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":\["XVII-1/def/PRT/1/1/EN"\]}](http://hudoc.esc.coe.int/eng/#{)

⁴ [http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":\["2006/def/PRT/1/1/EN"\]}](http://hudoc.esc.coe.int/eng/#{)

measure, Programme for Employment and Social Protection (PEPS), Regional Intervention Plans and the Employment Initiatives within families' support services.

3. The Conclusion 2008 (Reference Period 01/01/2005 to 31/12/2006)⁵

In despite of the steady common unemployment in this time lapse, both the female and youth unemployment have grown, closely followed by the tendency of long-term unemployment. The report on people with disabilities as well as immigrants remains the same. Although, Portugal's State efforts to validate the right to work as defined in the Charter is newly revealed on further programmes focusing on foreign citizens like Second Generation Choices Programme and Intervention Programme for Unemployed Immigrants. In the meantime, INSERJOVEM and REAGE programmes becomes a tool to the needs of the most vulnerable groups, which led to an additional request of information from the Committee in the next report. As for others fresh programmes, the Committee showed interest in Innov-Youth, moreover the general measures of restructure of unemployment benefits scheme and the personal employment plan, as a pattern of national broader working programmes.

As a result of the previously said, Portugal was concluded in conformity with article 1§1.

4. The Conclusion 2012 (Reference Period 01/01/2007 to 31/12/2010)⁶

The Committee tells that in these times Portugal's economy was in a depression, which coincides with the beginning of the latest international economic crises, severely affecting the country, and consequently, employment's status degradation. Not only the employment rates decreased, but also the unemployment increased, rapidly in reference to youth and long-term statistics.

In this context Portugal was part in an assistance programme led by the European Central Bank, the Monetary International Fund and the European Commission which imposed certain financial restrictions, of which the national labour programmes (PNR 2008-2010 and the 2010 Employment Initiative) were constricted by. Stages, professional programmes and vocational integration contracts were other public policies taken into practice, for which the Committee asked for information regarding their effectiveness and justice, to be given in the next report as a requirement to an evaluation. The decision was postponed because of that

⁵ [http://hudoc.esc.coe.int/eng/#{\"ESCDcIdentifier\":\"2008/def/PRT/1/1/EN\"}](http://hudoc.esc.coe.int/eng/#{\)

⁶ [http://hudoc.esc.coe.int/eng/#{\"ESCDcIdentifier\":\"2012/def/PRT/1/1/EN\"}](http://hudoc.esc.coe.int/eng/#{\)

information' obligation, which the Committee stated would be a violation of the article if not presented in the next report.

5. The Conclusion 2016 (Reference Period 01/01/2011 to 31/12/2014)⁷

The Committee reviews that, although there was an economic recuperation of the Country, such reality did not signify an alteration in the degraded actuality of work. Even though the general unemployment rate remained equal during this period, the statistics related to elderly and youth raised.

Many policies were implemented concerning not only the general unemployment but also the specific vulnerable groups. The last periods' measures had an efficiency of 49%, representing in total a significantly percentage of PIB investment.

Nevertheless, and despite these Public exertions, Portugal was considered, by the Committee in disrespect with article 1§1, on account of the insufficiency of its policies to reverse the unemployment rates and therefore an absence in job creating.

6. Conclusion

To sum up, even though the lack of information regarding people with disabilities as well as the higher rates always verified among women, youth, long-term unemployment have always had a negative impact, even more after 2008, Portugal efforts expressed in numerous governmental programmes leads to a general conclusion of conformity with the interpretation of article 1§1. The Conclusion 2016 is an exception to this rule as an effect of the international and national economic crises, at the time.

III. The Interpretation of article 1§2⁸

"With a view to ensuring the effective exercise of the right to work, the Parties undertake to effectively protect the right of the worker to earn his living in an occupation freely entered upon. Appendix: This provision shall not be interpreted as prohibiting or authorising any union security clause or practice."

⁷ [http://hudoc.esc.coe.int/eng/#{\"ESCDcIdentifier\":\"2016/def/PRT/1/1/EN\"}](http://hudoc.esc.coe.int/eng/#{\)

⁸ As affirmed in the Digest of the Case of Law of the European Committee of Social Rights

This article formulates different principles in matters of international labour law: the prohibition of all forms of discrimination in employment; the prohibition of forced or compulsory labour; the prohibition of any practice that might interfere with workers' right to earn their living in an occupation freely entered upon.

1. The prohibition of all forms of discrimination in employment

The Committee recognises discrimination as "a difference in treatment between persons in comparable situations where it does not pursue a legitimate aim, is not based on objective and reasonable grounds or is not proportionate to the aim pursued",⁹ extending the prohibition not only to indirect discrimination, in accordance with article E, defined as "a measure or practice identical for everyone, without a legitimate aim disproportionately affects persons having a particular religion or belief, a particular disability, a particular age, a particular sexual orientation, particular political opinion, particular ethnic origin, etc."¹⁰, but also to those situations where someone fails "to take positive account of all relevant differences or (...) to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all."¹¹

The factors of discrimination consecrated on the Charter are sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion. Consequently, this article should be read in consonance with article 20 (that refers to the discrimination on grounds of sex) as well as 15§ 2 (which grants protection against discrimination on grounds of disability) of the Charter, that regulate specifically these factors. In addition to those, article G of the Charter (that allows different treatment of persons when reasons of "public interest, national security, public health, or morals" are required by law in order to protect the freedoms and right of others in the context of a democratic society) should also be mobilised when interpreting article 1§2.

States must legislate to ensure these prohibitions on the grounds previously explained, which includes an obligation to exclude various employment practices that violate the equality between employees and implement numerous measures to assure the contrary. Particularly, States should alleviate "the burden of proof in favour of the plaintiff in discrimination cases" and take special attention to the discrimination of foreign citizens in the access of employment, that can only happen on cases concerning public employment with the

⁹ Digest of the Case of Law of the European Committee of Social Rights, pp. 21

¹⁰ Ibidem

¹¹ Ibidem

exercise of public authority. This article includes all the relevant moments in a professional life, from access to the job to the exercise of it, including the rights inhering.

2. The prohibition of forced or compulsory labour

This prohibition comprehends three dimensions: forced labour for the production of goods or services; prison work; and conditions for the payment of unemployment benefits.

2.1. Forced labour for the production of goods or services

This dimension consecrates the prohibition of all forms of compulsory or forced work, as defined on article 4 of the European Convention of Human rights and article 29 of the ILO Convention on Forced Labour: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". This rule entails some normative impediments to States, that were imposed by the Committee in response to the Complaints against the Signatory Parties, over the years. This means that it is insufficient not to have a practice in legislation that does not violate this extent of the prohibition to be in conformity with the article.

2.2. Prison work

National legislations should strictly regulate prison work, especially when it takes place in private firms. In which case it is only admissible when prisoners are in the same position, with the necessary adaptations, of other employees, being indispensable their consent to have such job. States legislations also have the obligation to especially regulate these situations in terms of payment, working hours and social security.

2.3. Conditions for the payment of unemployment benefits

This extent of the prohibition is particularly regulated under article 12 of the Charter. Nevertheless, we have to mobilize this article when we are faced with an especially onerous restriction.

3. The prohibition of any practice that might interfere with workers' right to earn their living in an occupation freely entered upon

This states the necessity of structured, proportional and reasonable regulation on other labour matters as for the length of service to replace military service, part-time work and also personal life at work.

III.I. The application of article 1 § 2 in Portugal

1. The Conclusion XVII-1 (Reference Period 01/01/2001 to 31/12/2002)¹²

The analysis by the Committee of the application of employment related discrimination prohibition, for this period, affirms some strong normative protections, including not only discrimination for sex purposes, but also on others relevant factors, underlining Portugal's services on the matter in terms of identifying sex based discrimination. As for the burden of proof rules, the Committee inquired if it was in practice applied on factors other than sex discrimination, as it is not literally regulated, as it is for sex discrimination. Concerning other grounds of unequal treatment, the Committee lauds the legislative prevision of unfair dismissal on such motives as well as the restrictions' free regulation of foreign citizens access to employment, with the exception of the situation the Committee himself have consecrated in its interpretation. Although, the Committee asked for detailed information if and how these limitations would apply to publicly-owned industrial or commercial undertakings. On other hand, it is remembered the indispensable efficiency of sanctions on cases of violation, in regarding the administrative fines for situations of discrimination on grounds other than sex, having been requested further communication.

The prohibition of forced or compulsory labour posed no problem to Portugal in what it concerns to purely voluntary prison work, contrary to the production of goods or services. The last subdimension of the article was, in another time, in disconformity with article 1§2, in reason of Sections 132 and 133 of the Merchant Navy Penal and Disciplinary Code that reference penal sanctions to seafarers that abandon their posts.

In the last dimension of this article prohibitions, the Committee states the proportionality of part-time work, as well as an effective right to jurisdictional exercise to the employees faced with the loss of benefits in reason of refusing to work on causes not included in age, physical suitability, qualifications and experience.

2. The Conclusion 2006 (Reference Period 01/01/2003 to 31/12/2004)¹³

Seeing that there were no legislative revisions on the Merchant Navy Penal and Disciplinary Code, Portugal's grade for these years remains unchanged, even if such norms have never been enforced. In what it concerns to prison work, the Committee remitted its evaluation to the written on the General Introduction to 2006 Conclusions. The same comment was done

¹² [http://hudoc.esc.coe.int/eng/#{\"ESCDcIdentifier\":\"XVII-1/def/PRT/1/2/EN\"}}](http://hudoc.esc.coe.int/eng/#{\)

¹³ [http://hudoc.esc.coe.int/eng/#{\"ESCDcIdentifier\":\"2006/def/PRT/1/2/EN\"}}](http://hudoc.esc.coe.int/eng/#{\)

regarding the right to earn one's living in an occupation freely entered upon, where the Committee questioned if there were any conditions as a form of preventing terrorism.

In relevance to discrimination, the Committee explained its interpretation of the prohibition, as expressed above, as for other Charter's articles involved in article's 14 meaning. Moreover, the Conclusion refers to Portugal's response on foreign citizens access to profession restrictions, stating there were no limitations to state-owned enterprises, which the Committee replies with a request on public sector. As for the legislation, the Committee noted their conformity, especially with the Labour Code revision and Laws 35/2004 as well as 18/2004, which respectively: have created (on articles 22 and 23) an extensive open list of discrimination factors and a consequently strong protection by a reviewed rule of proof in favour of the plaintiff and compensation; in addition to a new Commission for Equality and Non-Discrimination, with higher ranging powers. Regarding such, the Committee wants to be informed apart from if there were established in compensation limits, if there is a collective active legitimacy in judicial discrimination processes, in addition to information on the Commission's competences. Furthermore, it is asked of Portugal communication in relation to examples on genuine occupational requirements as an exception criterion, besides courts' interpretation on indirect discrimination and sex based discrimination notions.

3. The Conclusion 2008 (Reference Period 01/01/2005 to 31/12/2006)¹⁴

In the period between the years of 2005 and 2006, the Conclusion of the Committee on discrimination, begins by afresh the prohibition of discrimination as fixed by itself in its decisions on merits and reporting mechanism. Then it transposes Portugal responses to the last report. Referencing both the general occupational purposes along with indirect and on sex grounded discrimination concepts, facts could not be provided by Portugal because it had never been applied in practice, for so long. Although, when such situations may happen they must be communicated. On the subjects of compensation limits together with the active jurisdictional collective legitimacy, Portugal respects the Charter's interpretation, since there are no limits (as stated on articles 26 and 483, f) of the Labour Code) and it is predicted a right of popular action (on article 52§3 of the Constitution), respectively. In connection with foreign citizens, the existing labour restrictions are related with "the exercise of state authority and to national sovereignty, public order and security" (in order with article 15§2 of

¹⁴ [http://hudoc.esc.coe.int/eng/#{\"ESCDCIdentifier\":\[\"2008/def/PRT/1/2/EN\"\]}](http://hudoc.esc.coe.int/eng/#{\)

the Constitution), although the data solicited on public sector was not received by the Committee, as for the Commission for Equality and Non-Discrimination capacities also.

Apropos the other two extensions of this article there were not delivered any information on terrorism related professional restrictions, as well as on prison work. The Committee reinforces its applications. It is too asked of Portugal figures on the protection of separate private and professional life in the court's reality and in the Law. Lastly, the Committee concludes the State on a disconformity with article due to its unaltered Merchant Navy Criminal and Disciplinary Code.

4. The Conclusion 2012 (Reference Period 01/01/2007 to 31/12/2010)¹⁵

On Conclusion 2012, respecting non-discrimination, the Committee proclaim the Labour Code revision that created a more protective system in cases of unfair dismissal, as well as implemented a more efficiently normative harmony control between collective agreements and legislative norms. Besides, there were positive growing statistics on the efficacious acting of Working Condition Authority discrimination processes. Following Portugal response on the Commission for Equality and Non-Discrimination capacities, the Committee deduced it is an instrument of preventing racial discrimination and requested for information on if it is its only competence on discrimination matters and if not, the relevant specifics. With regard to the foreign citizens, the solely job they cannot exercise are "President of the Republic, President of the Assembly of the Republic, Prime Minister and Presidents of the Supreme Courts, as well as service in the armed forces and the diplomatic corps", in accordance with article 15£3 of the Portugal's Constitution. As so, the Committee asked about public administration jobs, particularly in what concerns to Sate Parties citizens access. Finally, the Committe renews its plea respecting occupational purposes requirement along with indirect and age discrimination judicial processes to exist.

Concerning the forced labour prohibition, Portugal presents to the Committee a reality of non-application in practice of the disconformities articles discussed above, once employees are mostly regulated by collective agreements, as well as the Constitutional Court decision 527/95 that has found part of these normative rules contrary to the Constitution, having been unapplied in the last 30 years. Furthermore, the hierarchic superior position of the Constitution makes their utilization contrary to Constitutional principles, such as the principle of most favourable treatment of workers. Nevertheless, the Committee reiterated its

¹⁵ [http://hudoc.esc.coe.int/eng/#{"ESCDIdentifier":\["2012/def/PRT/1/2/EN"\]}](http://hudoc.esc.coe.int/eng/#{)

judgement of non-conformity with article 1£2. As to prison work, the Committee states Portugal's juridical regime as defined in the Country's report. Under this dimension it is also emphasised the problem of coercion in connection with domestic work, as characterised on the General Interpretation.

Identical utterance was made on regards of the third dimension of this article, relating to minimum periods of service in the armed forces apart from privacy at work. In respect of this last subject, Portugal affirmed it was consecrated on articles 14 to 22 of the Labour Code, being only admissible restrictions that are proportional and appropriated.

5. The Conclusion 2016 (Reference Period 01/01/2011 to 31/12/2014)¹⁶

Concerning discrimination, the Committee highlights, for this period, the self-employment discrimination prohibitions of Law 3/2011, as an expression of European Directives 2000/43/EC, 2000/78/EC and 2006/54/EC. On other hand, the questions and requests posed on last report on the judicial concepts of indirect and sex based discriminations, as well as the Commission for Equality and Non-Discrimination were not provided. As so, the Committee reiterates its entreaties and ask for the composition and independence of the Commission, in addition to communication on solved judicial cases and their compensation values, besides governmental policies to avert discrimination.

Respecting to the other two extents of article 1£2, the normative regime of the Merchant Navy Criminal and Disciplinary Code continues as established, which assured Portugal, one more time, the non-conformity grade. Regarding prison and domestic work, there were given no information, which configured a violation on the questions posed on the General Introduction to the Conclusions, and if maintained in the next report, a contravention of the meaning of this article by omission. Equal reasonings have to be made on the right to earn one's living in an occupation freely entered upon, in which concerns to minimum periods of service in the armed forces, requirements to accept the offer of a job or training and privacy at work, as such are the possible consequences of non-conformity.

6. Conclusion

Apart from some difficulties to allocate counted, punctual information's with respect to the prohibition of discrimination, Portugal's reality and legal system is without exception in conformity with the interpretation of the article 1£2. More discussed may be the situation

¹⁶ [http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":\["2016/def/PRT/1/2/EN"\]}](http://hudoc.esc.coe.int/eng/#{)

towards the right to earn one's living in an occupation freely entered upon, which lacking communication seems to be the trend. Apropos the prohibition of forced labour, both the States' legislative inaction on revoking some unapplied normative sections, as well as a strict, verbatim interpretation of the Committee, repeatedly guarantee Portugal a non-conformity statement.

IV. The Interpretation of article 1 § 3¹⁷

"With a view to ensuring the effective exercise of the right to work, the Parties undertake to establish or maintain free employment services for all workers."

Article 1§3 grants the right to free employment services, for all workers in all economic sectors and all geographical areas, all around the national territory. These services must be effective in the tasks of placing and offering employment to those who are looking for a job, even if they are already employed and want to exercise their right to freely change their professional life. The efficiency of services is evaluated by vital statistics like placement rates, as well as their respective market shares of both public and private services.

Those operations should be cost free, which includes all vacancy notification proceedings. Lastly, acting services should be assisted not only by trades unions but also by employers' organizations.

IV.I. The application of article 1 §3 in Portugal

1. The Conclusion XVII-1 (Reference Period 01/01/2001 to 31/12/2002)¹⁸

In this Conclusion the Committee, seeing that General Labour Inspectorate is responsible for the continuous record of private placement agencies, grades Portugal with a conformity rank, in line with the last decision. Besides, in its response to such Conclusion Portugal

¹⁷ As stated in the Digest of the Case of Law of the European Committee of Social Rights

¹⁸ [http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":\["XVII-1/def/PRT/1/3/EN"\]}](http://hudoc.esc.coe.int/eng/#{)

affirms that the two existing private agencies placements have almost none influence on the market.

2. The Conclusion 2006 (Reference Period 01/01/2003 to 31/12/2004)¹⁹

Once again, and while laying emphasis on 2003 as well as 2004 placements' rates (of 58% and 59%, respectively), the Committee gave Portugal a positive grade.

3. The Conclusion 2008 (Reference Period 01/01/2005 to 31/12/2006)²⁰

On account of an unaltered panorama associated with the right of free employment services, the Committee reinforces its previous judgements.

4. The Conclusion 2012 (Reference Period 01/01/2007 to 31/12/2010)²¹

Due to an innocuous, non-informative report delivered by Portugal, the Committee retracted on its evaluation tendency, stating the State as in non-conformity with the article 1§3. In fact, there was nothing to display an effective employment services structure in the Country.

In order to accomplish its commitment to inform as a Party in the Charter's reporting system, Portugal must communicate up to date information on the Public Employment Services (PES) acting, especially regarding statistics on placement staff to registered individuals looking for employment, involved counsellors as well as made placements.

5. The Conclusion 2016 (Reference Period 01/01/2011 to 31/12/2014)²²

In this periods' report, Portugal characterised PES proceeding as a public employment policies implementation instrument on assisting jobseekers and employers searching for professionals, with no payment due. The Committee states some renewed normative measures in both social concertation, as for public and private employment partnerships programmes promotion. Moreover, the Conclusion highlighted PES's initiatives like Matching Intervention Model (MIA). Consequently, the Committee requested for updating of those programmes and PES' performance for the next report.

All the same, the Committee expressed concern on the calculous impossibility of PES' market shares, asking for such information in respect of private and public placement

¹⁹ [http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":\["2006/def/PRT/1/3/EN"\]}](http://hudoc.esc.coe.int/eng/#{)

²⁰ [http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":\["2008/def/PRT/1/3/EN"\]}](http://hudoc.esc.coe.int/eng/#{)

²¹ [http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":\["2012/def/PRT/1/3/EN"\]}](http://hudoc.esc.coe.int/eng/#{)

²² [http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":\["2016/def/PRT/1/3/EN"\]}](http://hudoc.esc.coe.int/eng/#{)

services, on the next report. On other hand, the Committee worried about a need of uninterrupted monitoring of PES procedure in order to assure its efficiency in profiling, counselling and assistance offered, and required requirements to search for a job violation, uttered by the European Commission report on Portugal. Therefore, Public Employment Services were heavily case loaded.

On condition of delivering the information demanded, Portugal was concluded in conformity with this article.

6. Conclusion

The article 1£3 practice in the Portugal's actuality seems to be habitually positive. Notwithstanding that the inconsistencies occur when Portugal fails to provide the information request on its report.

V. The Interpretation of article 1 § 4²³

"With a view to ensuring the effective exercise of the right to work, the Parties undertake to provide or promote appropriate vocational guidance, training and rehabilitation."

On this article the Charter asserts the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. This norm is a general principle on the rights enounced on articles 9, 10£3 and 15§1, that must be applied to States who have not adopted these articles and also article 10§1. States have, under this regulation, the duty to ensure the existence and access to services with this functions in equal footing to both national and foreign citizens of other States part in the Charter, with peculiar relevance for persons with disabilities.

²³ As affirmed in the Digest of the Case of Law of the European Committee of Social Rights

V. I. The application of article 1 § 4 in Portugal

For this article, within the period analysed in the present text, the Committee has spoken in different Conclusions, respectively: Conclusion 2008 (Reference Period 01/01/2005 to 31/12/2006), Conclusion 2012 (Reference Period 01/01/2007 to 31/12/2010) and Conclusion 2016 (Reference Period 01/01/2011 to 31/12/2014).

In all monitoring mechanisms Portugal is concluded as being in conformity with article since this country is a Signatory Party of the articles 9, 10£3 and 15£1 and owing to implement effectively in their territory the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities.

VI. Conclusion – Portugal's enforcement of article 1 of the (Revised) Charter of Social Rights

In closing, the right to work as defined on article 1 of the Revised Social Charter of Social Rights is overall an effective, applied right in Portugal. The continuously positive considerations of article 1§4 are a proof of such. Despite, the Country have received some disconformities analysis, that may be explained by a poor economic, financial panorama (in which refers to article 1§1) as well as a neglecting attitude of including some requested statistics on their report (which is the case of article 1§3, as well as some dimensions of article 1£2) or even an confrontation between a stringent interpretation by the examiners and an absence of (dis)regulation by the examined (as regards to article1§2 prohibition of forced labour and its consequently interdiction of implementing penal sanctions).

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