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Article 11 on the European Social Charter

**-The right to protection of health-**

An abridgement on Portugal's absorption of this social right  
considering the latest conclusions of the European Committee of  
Social Rights



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## **Article 11**

### ***The right to protection of health***

*With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:*

- 1. to remove as far as possible the causes of ill-health;*
- 2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;*
- 3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.*

This article - inserted on the European Social Charter- refers to a social right constitutionally envisaged on the 64th article.

- This right was already introduced in the primary version of the charter dated from 1961 and is embodied on its revised version from 1996, along with more rights that were inserted in this treaty that guarantees fundamental social and economic rights.
- Although social rights are considered fundamental rights there is a big treating difference considering the liberty rights that contrary to social rights usually translate into *non facere* and therefore cost-free obligations.
- Social rights fall into the political field and the effectiveness of these rights depend on the political orientation as well as on the availability of the states' budgets. The enforceability of social rights is far from the level of enforceability of liberty rights. This scission is the reality of most international legislation approved after the Second World War and reflects a profound ideological division and the different levels of relevancy attributed to social rights.

- The reporting system is set out in Part IV of the 1961 Charter as amended by the 1991 Turin Protocol, as a monitoring mechanism of the Revised Charter implementation.
- National reports are examined by the European Committee of Social Rights, which decides whether the national situations described by State's Parties comply with the above referred Charter.

### **Paragraph 1 - *Removal of the causes of ill-health***

Relative to the first paragraph of the 11th article of the European Social Charter Revised the Committee points out on its 2009 Conclusions, referring to the period from January 2005 to December 2007, that Portugal's situation was in conformity with the envisaged although the conclusions were dependent on the state sending requested missed information.

Taking into account general indicators the Committee concludes over the state of health of the population.

- Considering the right to the highest possible standard of health and observing life expectancy and principal causes of death, the Committee noticed a modest boost on life expectancy considering data from 2007, which enabled Portugal to reach the average values in the EU similar to what happens concerning the mortality rate. The Committee remarked a steady decrease in the rate of deaths due to HIV/AIDS regarding the year 2002. However, the mortality rate for this cause continues to be the highest among the States in the EU. Noticing the development of a number of HIV/AIDS prevention programmes by the Ministry of Health, during the reference period, the Committee asks to be kept informed regarding to its implementation and results obtained. Portugal presents also a high mortality rate in the area of pneumonia, showing a situation almost twice as much drastic as the EU average. The Committee asks for more information in this field in a matter of preventive measures.

- Concerning to infant and maternal mortality Portugal has shown positive results, below the European average in relation to the infant mortality. However, the maternal mortality rate was slightly higher than the EU average. The Committee asks for more information relative to the main causes of infant mortality and to the measures being taken to reduce the maternal mortality rate.
- As for health care system and its access the Committee having as reference the complementary private sector on the National Health Service (SNS) underlines that it is the family's income that determines whether the health monitoring is carried out by the private or public sector. The Committee enhances the promoting and improving hospital access measures indicated in the report. As regards the cost of medicines it has been reported a revision of the contribution of the State to the costs of medicine which the Committee finds insufficient in relation to what was asked in the previous conclusions to be reported. The Committee points out other measures that contribute to a better access to medicine, mentioning the liberalization of the pharmacies sector in the field of medicines that do not require prescription. Concerning the Health Care budget it is noted to be in 2006 one of the highest in the EU.
- In respect to Health care professionals and facilities the Committee records that the number of physicians per each 1000 habitants is slightly superior to the OECD average, differently than what happens in what refers to nurses, although a recent increase in the number was noted. As for the number of acute care hospital beds it is under the OECD average admitting that this can be justified with the fact that the decline overlaps with a number of progressive developments in the health care field.
- The Committee asked to be informed of any measures taken to improve services at the regional level, in particular in rural areas based on the reported need for strengthening of both resources as well as powers and responsibilities of the

Regional Public Health Centres in order to acquire developments in the health care field and pursue public health policies.

Apropos to the reference period from January 2008 to December 2011, the Committee concludes on its 2009 conclusions that the situation in Portugal is in conformity with Article 11 paragraph 1 of the Charter, but again under the condition that the required information is sent. They ask for more information:

- Considering that the data in this period relative to mortality rate is virtually identical to the one reported last period, the Committee asks the next report to indicate the other main causes of mortality, as well as information related to preventive measures being taken in respect of the eight priority areas identified under the National Health Plan, i.e., cardiovascular diseases, oncologic diseases, diabetes, respiratory diseases, mental health, HIV/AIDS, the promotion of a healthy diet and the prevention of smoking;
- Taking into account the measures taken by the Portuguese State to enhance access and quality of healthcare through all the territory, the Committee asks to be informed about the implementation and results of the initiatives;
- As regards pharmaceutical products and its access a number of measures are being taken and the committee asks for further information regarding co-payments at this level;
- The Committee asks to be kept informed of the measures introduced to face the challenge of the accelerated demographic ageing of the population;
- The Committee states that in Portugal the ratio of nurses to physicians is much lower than in most countries in the EU;
- Now turning to all EU state members the Committee requires for the next report information regarding the availability and range of facilities and treatment for drug addiction.

## **Paragraph 2 - Advisory and educational facilities**

Now regarding paragraph number 2 of the 11th article of the European Social Charter Revised the Committee defers its 2009 conclusions, referring to the period from January 2005 to December 2007, until receipt of the information requested. This is due to a big amount of information missing, needed to attest the conformity of Portugal's situation with what's foreseen on the article 11§2. It is imperative that this information is provided in the next report so that the Committee can decide.

- Based on the need for states to demonstrate the measures taken in order to implement an accurate public health education policy, the Committee asks for the description of the national legislation in this matter. The Portuguese State is one more time asked for information regarding public information and awareness campaigns related to health risks.
- Relative to the health education in schools and recalling that Portugal was not in conformity with this provision according to the preceding Committee's conclusions, it was acknowledged a well evaluated programme being delivered in elementary schools aiming drug prevention in the school context. Also a number of projects in the areas of healthy diet, physical activity and sexual and reproductive health were reported. The Committee requests, in order to make a conclusion on this point, information confirming that health education is now included in the school curricula of all Portuguese schools and benefiting the majority of national students.
- Regarding screening and counselling, despite previous requests, Portugal did not report any information on this matter. The Committee again asks for information on consultations and screening, specifically in respect to diseases responsible for high levels of early death.

- Once again Portugal refrains from informing the Committee about its situation considering pregnant women, children and adolescents healthcare. The Committee asks information about the estimated percentage of all school children who are examined and vaccinated under the reported national projects. Also it requests data regarding the existence of free and regular consultations and screening for pregnant women all over the country territory.

In sequence to the information requirement and the State's absence of response, the Committee on its 2013 conclusions decides on the lack of conformity of the situation in Portugal with what's foreseen in the article.

- Even though acknowledging the reported confirmation that health education was included in the school curricula of all Portuguese schools, the Committee could not ignore the shortage of description of concrete public information campaigns in these grounds. The Committee asks for the next report to include information regarding this aspect.
- For the second time in a row important information on counselling and screening in the national context is not provided in the report. The Committee accentuates the importance of systematic screening for an accurate popular state of health. Again information in this matter is required. Meanwhile, the Committee concludes that prevention through screening is not being adopted, as a way of contributing to a better national health system in Portugal.

In conformity with what's intended in the Committee of Ministers adopted reporting system, Portugal was invited to report by 31 October 2014 in the sequence of the non-conformity Committee's 2013 conclusions for repeated lack of information. Although again under the condition of more information being received the Committee concludes in 2015 that the situation in Portugal is in conformity with this article of the Charter, as regards the use of screening as a contribution to the health of the population. The Committee asks for the next report to include new information on:

- Different screening programmes in respect of, for example, other health issues as cardiovascular diseases;
- Screening coverage rates and the impact of all the existing screening programs.

### **Paragraph 3 - Prevention of diseases**

In 2009 the Committee deferred its conclusions referring to the period of January 2005 to December 2007 to the receipt of the information requested since the reported information was insufficient to demonstrate the State's situation conformity to this paragraph of the article.

- As regards policies on the prevention of avoidable risks together with the reduction of environmental risks, the Committee noted the Portuguese State's intention to implement a national plan (PNAAS), that promotes health and underlines the link between the environment and health. The Committee requires to be kept informed of all new initiatives in this area. Again information on reducing the level of greenhouse gases is also required.
- The Committee seeks confirmation the use, sale and production of asbestos and products containing it are prohibited in the context of the transposition of the European Directive no. 2003/18/EC.
- Relative to noise questions executive laws were created transposing the European Directive no. 2002/49/EC of 25 June 2002. The Committee asks for information regarding the monitoring of noise pollution.
- Now regarding food safety the Committee again requires information on national legislation on this matter.
- Referring to the measures adopted to combat smoking, alcoholism and drug addiction and on the context of the implementation of the provisions of the WHO Framework Convention on Tobacco Control the Committee asks for information



relative to the effectiveness of the solutions adopted. Information is also required regarding alcohol sale and consumption regulation, as well as on the trends in smoking, alcohol and drug abuse.

- The Committee asks for information relative to preventive initiatives of certain types of domestic and leisure-related accidents. It is acknowledged the efforts to diminish the number of deaths caused by road accidents.
- Data is required relative to eventual Epidemiological monitoring.
- Considering immunisation the Committee asks for information on the vaccination coverage rate.

On its 2013 conclusions the Committee decided that the Portuguese situation was in conformity with this paragraph of the article but again pending receipt of the information requested, concretely on:

- Measures adopted in the field of environmental health as for the protection of air quality, water safety, noise, ionising radiation, asbestos and food safety, as well as on the levels of air pollution, and on cases of water and food intoxication during the reference period from January 2008 to December 2011;
- The implementation and results of the reported projects and campaigns on child injury prevention, road safety and home accidents involving elderly people.

## **Brief Reflection on the implementation of the right to protection of health envisaged on the 11th article of the European Social Charter in Portugal**

In parallel with the persistent lack of information provided by the Portuguese State a gradual evolution can be noted on its situation, which translates into a greater realization of the right to protection of health on the national territory. Policies have been adopted as a way of developing a national health service that possesses a decentralised and participatory management system, as well as allowing the right to health protection to be fulfilled by adopting both preventive and restorative intent measures that shall benefit every citizen equally.

- The preventive initiatives and its absorption by the individuals' behavior play a fundamental role on the pursuit of a healthy society. The technological development of medicine itself reveals to be insufficient as a way of ensuring the fulfillment of what's intended to be achieved with the establishment of the right to protection of health. Other questions must be faced such as the access to health and measures must be taken as per environmental policies, as well as initiatives that can help shaping Portuguese people's life style, slowly diminishing the adoption of risk behaviors. These behaviors together with an increase in the average life expectancy, reflect on a population that is "living more but worse" as Dr. Luís Campos, internist doctor and President of the Portuguese Society of Internal Medicine, referred on an interview last July.
- Relative to risks behaviors I believe that it is important, towards cultural interpretation, to adapt the national society to the regional culture but also to adapt more and more the regional culture itself to a healthy and conscious society model.