



CATHOLIC UNIVERSITY OF PORTUGAL

Article 19 of the European Social Charter (Revised)

The European Committee of Social Rights' 2011
Conclusions (Reference Period: 01/01/2005 -
31/12/2009) regarding Portugal

Seminar: The Multilevel Protection of Fundamental Social
Rights

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Article 19 of the European Social Charter: The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

- 1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;*

The European Committee of Social Rights (ECSR) concluded that the situation in Portugal is in conformity with Article 19, paragraph 1 of the European Social Charter (ESC).

Portugal began receiving high inflows of migrants from Portuguese-speaking countries in Africa in the mid-70's. In the 1990's, with economic growth, labour migrants from Brazil and some Eastern European countries also increased. In 2010, there were over 445,000 regular migrants residing in Portugal, equating to about 4 per cent of the total population. The most recent data is from 2015 and these figures are now closer to 8 per cent (over 837,000 migrants).¹

From 2007 to 2009, the Portuguese Government implemented a “Plan for the Integration of Immigrants” which referred various aspects related to the integration of migrant workers in social life. Law No. 23/2007 governed the entry, stay, departure and removal of foreigners into, in and from national territory, and transposed various European Union (EU) Directives into national law. The Labour Code (*Código do Trabalho – CT*), amended in 2009, regulates foreign nationals’ work in Portugal.

As a security service operating under the aegis of the Ministry of Home Affairs, the Foreigners and Borders Services’ (*Serviço de Estrangeiros e Fronteiras – SEF*) objectives and measures encompass border control of persons and activities of foreigners in Portugal.

The High Commissioner for Immigration and Intercultural Dialogue (*Alto Comissariado para a Imigração e Diálogo Intercultural – ACIDI*) is a public institute operating under

¹ Source: International Organization for Migration (IOM) internet home page on Portugal

the aegis of the Presidency of the Council of Ministers that contributes to public policies that are relevant to the integration of immigrants and ethnic minorities.

The ACIDI created the “SOS Immigrant Line” to provide information related to the reception and integration process of immigrants, in more than 60 different languages and dialects.

Two National Immigrant Support Centres (*Centros Nacionais de Apoio ao Imigrante* – CNAIs) provide support on legal, family reunion, employment and recognition of qualifications issues. The ACIDI also created a network of Local Immigrant Integration Support Centres (*Centros Locais de Apoio à Integração de Imigrantes* – CLAIs) that help with reception and integration needs.

Immigrants can register at a Job Centre if they are seeking for a job on the condition that they hold a valid document permitting them to remain or reside in Portuguese territory and exercise a subordinate professional activity.

The “Portugal Welcomes Programme” – revised in 2008 and now known as “Portuguese for All Programme” – aims to improve basic competencies of immigrants in Portugal in the fields of Portuguese Language and Citizenship. The Portuguese Language modules have a set of “Short-Duration Training Units”, namely in Technical Portuguese.

The ECSR requested more information on free services as well as on the information available for national workers who wish to move out of Portugal.

The ACIDI defined several measures in order to raise public awareness of the need to integrate immigrants, namely through the Immigration Observatory which seeks to obtain more knowledge about the reality of immigration in Portugal so as to improve public immigrant integration policies.

The ACIDI also produces Education, Information and Communication materials and distributes them free of charge via the CNAIs and CLAIs, immigrants’ associations and government departments and services.

In its last report on Portugal, the European Commission against Racism and Intolerance (ECRI) noticed that immigrants are sometimes unjustly accused of contributing to a rise in the crime and unemployment rates. The ECRI recommended that the Portuguese authorities continue their efforts to raise public awareness of human rights and the need to fight against racism and intolerance.² The ECSR requested information on the implementation of measures to combat these tendencies.

² Source: Third Report by the ECRI on Portugal / CRI (2007) 4

2. *to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;*

The ECSR deferred its conclusion regarding Portugal's conformity with Article 19, paragraph 2 of the ESC as they are pending receipt of information on the measures adopted to facilitate the departure, journey and reception of migrant workers and their families as well as on the services for health, medical attention and hygienic conditions during the journey.

3. *to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;*

The ECSR concluded that the situation in Portugal is in conformity with Article 19, paragraph 3 of the ESC.

The 2007 "Plan for the Integration of Immigrants" had a chapter on "Solidarity and Social Security" with measures related to social security conventions with countries of immigrants residing in Portugal such as Ukraine and Moldova. The chapter on the "Relations with Countries of Origin" included the promotion of several measures on this matter. The execution rate for these measures exceeded 80%.

The International Organisation for Migration (IOM) Kyiv and Lisbon missions, alongside the SEF and the Institutes for Employment and Professional Training from both countries, developed a strategy to accompany labour migration from Ukraine to Portugal as well as the returns from Portugal to Ukraine, considering the already existing bilateral agreement on temporary migration between these two countries.³

The ECSR requested information on the issue of services for emigration, as well as on the implementation of chapters from the 2007 "Plan for Integration of Immigrants" on the effective cooperation between social services.

4. *to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of*

³ Source: IOM internet home page on Portugal

administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

- a. remuneration and other employment and working conditions;*
- b. membership of trade unions and enjoyment of the benefits of collective bargaining;*
- c. accommodation;*

The ECSR concluded that the situation in Portugal is in conformity with Article 19, paragraph 4 of the ESC.

The CT – approved by Law No. 7/2009 – combines provisions contained in the previous CT (2003) and in Law No. 35/2004. The CT establishes that foreign workers have the same rights and duties as national workers if they have authorisation to exercise a subordinate professional activity in national territory. The CT also refers to positive legislative measures that benefit groups that are discriminated by factors such as nationality.

The Working Conditions Authority (*Autoridade para as Condições do Trabalho – ACT*) made 2,861 inspection visits related to the integration of immigrant workers in 2008 and 3,282 in 2009 which resulted in the issuance of 297 and 332 official notifications of infractions, respectively. ACT also issued 89 warning notices regarding irregularities in 2008 and 145 in 2009. ACT's Inspection Action Plan for 2008 and 2009 included an intervention programme on the prevention and control of discrimination, the working conditions and the conditions of employment of vulnerable groups of workers, with a specific action for the integration of migrant workers.

Immigrant citizens can register at a Job Centre and enjoy the same rights as Portuguese citizens if they are seeking for a job on the condition that they hold a valid document permitting them to remain or reside in Portuguese territory and exercise a subordinate professional activity. Immigrants can also receive information and vocational guidance counselling as well as access to employment and training programmes.

Article 24, No. 2 of the CT establishes the right to equal treatment regarding membership of or participation in collective representative organisational structures.

Migrant workers may join trade unions and benefit from collective agreements. The 2007 “Plan for the Integration of Immigrants” reinforced the rights to trade union membership among immigrants. The ACIDI and the two most representative trade

unions also produced varied information material and signed several cooperation protocols.

The Constitution of the Portuguese Republic (*Constituição da República Portuguesa* – CRP) consecrates the “Right to Housing” in Article 65, No. 1.

The government created the “Special Rehousing Programme” and the Funding for Access to Housing Programme (*Programa de Financiamento para Acesso à Habitação* – PROHABITA), in order to fund access to housing. The Incentive for Young Rentals” (*Incentivo ao Arrendamento por Jovens* – IAJ) programme – later replaced by the Young Person at Number 65 (*Porta 65 Jovem* – P65J) programme – was created to facilitate young persons’ access to the rental market. All of the referred programmes benefit immigrants as well as Portuguese nationals.

5. *to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;*

The ECSR concluded that the situation in Portugal is in conformity with Article 19, paragraph 5 of the ESC as there have been no changes to the situation which was previously considered in conformity with the ESC. The ECSR requested up-to-date information on this point.

The CRP guarantees equal treatment of migrant workers and nationals. The CT establishes that foreign workers have the same rights and duties as national workers if they have authorisation to exercise a subordinate professional activity in national territory. The CT specifically prohibits that workers and job seekers be prejudiced, benefited, deprived of rights or exempted from duties for reasons such as nationality, ethnic origin, language, and religion.

6. *to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;*

The ECSR deferred its conclusion regarding Portugal’s conformity with Article 19, paragraph 6 of the ESC as they are pending receipt of information on the level of the means of subsistence and accommodation necessary in order to be eligible for family reunion as well as on the possible requirement of a length of residence of the migrant

worker before family members can join them. The ECSR also requested information on whether any application for family reunion has been rejected on this ground from 2005 to 2009.

The EU Directive 2003/86/CE on the right to family reunification was transposed into the national legal system by Law No. 23/2007 on the entry, stay, departure and removal of foreigners into, in and from national territory. Law No. 23/2007 establishes that for the foreign worker with a valid residence permit to exercise his right to family reunion with the spouse and minor children, the applicant must have accommodation and subsistence means. This law also refers that if the family member's presence on national territory poses a threat to public order, public safety or public health, the application for family reunification can be turned down.

7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

The ECSR concluded that – similar to the 2006 Conclusions – the situation in Portugal is in conformity with Article 19, paragraph 7 of the ESC. The ECSR is, however, pending receipt of up-to-date information on whether domestic legislation consecrates the provision of free counsel for migrant workers who are involved in legal or administrative proceedings and who do not have counsel of their own choosing as well as on whether migrant workers may have the free assistance of an interpreter and a translator if they cannot properly understand or speak the national language used in the proceedings.

In regard to legal aid, there is equality between nationals and migrant workers

8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

The ECSR concluded that the situation in Portugal is no longer in conformity with Article 19, paragraph 8 of the ESC.

Article 134 of Law No. 23/2007 states that foreign citizens can only be expelled from Portuguese territory in exceptional circumstances defined by law, namely if “they abusively interfere with the exercise of rights of political participation that are reserved

to Portuguese citizens”⁴ or if “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”⁵.

The ECSR requested further information on how the referred subparagraphs are interpreted and what circumstances may give rise to expulsion on these grounds and considered that the grounds listed in subparagraphs d) and f) may go beyond what is permitted by Article 19, paragraph 8 of the ESC.

Article 135 of Law No. 23/2007 defines the situations in which there is a limit on expulsion if the foreign citizen: was born in Portuguese territory and resides there; is responsible for children of theirs who are minors, hold Portuguese nationality and reside in Portugal; has children for whom they exercise parental duties and are responsible for their living expenses and education who are minors, nationals of another state and reside in Portugal or; have been in Portugal since before the age of ten and still reside here.

The ECSR requested information on rights of appeal following a deportation order and rights of family members.

9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

The ECSR concluded that – similar to the 2006 Conclusions – the situation in Portugal is in conformity with Article 19, paragraph 9 of the ESC.

Portugal permits the transfer of money and savings both via financial institutions that exist for that purpose and via the banks that operate there.

In 2008, the ACIDI created a specific area within its website with information about remittances to support foreign citizens.

10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;

The ECSR concluded that the situation in Portugal is not in conformity with Article 19, paragraph 10 of the ESC since the same grounds for which it is not in conformity with Article 19, paragraph 8 of the ESC apply to self-employed workers.

There is no discrimination between migrant employees and self-employed migrants.

⁴ Source: Article 134, paragraph 1, subparagraph d) from Law No. 23/2007

⁵ Source: Article 134, paragraph 1, subparagraph f) from Law No. 23/2007

11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

The ECSR concluded that the situation in Portugal is now in conformity with Article 19, paragraph 11 of the ESC, despite pending receipt of requested information.

In 2005, the Ministry of Education presented a Guideline Document to “Portuguese as a Non-Mother Tongue in the National Curriculum” to promote the integration of students in primary, secondary and further education who do not have Portuguese as their mother tongue. Consequently, schools implemented guidelines and created materials on the teaching and learning of Portuguese as a Non-Mother Tongue (*Português Língua Não Materna* – PLMN).

The “Portuguese for All Programme” offers free basic Portuguese courses to immigrants and their families in order to facilitate their integration into Portuguese society. The ECSR requested to know whether there are waiting lists for attendance on these courses.

The Ministry of Education’s schools and the IEF’s Job and Vocational Training Centres offer courses in technical Portuguese in the areas of retailing, the hotel trade, beauty care and civil construction. The ECSR requested to know whether they are free of charge.

The Portuguese Government also provided financial support to the immigrants’ associations that offer Portuguese Language teaching.

From 2007 to 2013, the budget allocated for the teaching of the Portuguese Language to foreigners amounted to over 11 million Euros. In 2008 and 2009 a total of 7,213 persons aged between 15-45 received language teaching. The ECSR requested further information on the data supplied, namely if the data includes persons receiving Portuguese Language teaching within the educational system, how many children benefitted from language teaching within the educational system, how many children over the age of 15 years benefitted from language teaching within the educational system, and if there are language classes open to those over 45 years.

12. to promote and facilitate, as far as practicable, the teaching of the migrant worker’s mother tongue to the children of the migrant worker.

The ECSR deferred its conclusion regarding Portugal's conformity with Article 19, paragraph 12 of the ESC as they are pending receipt of information on how many children benefit from mother tongue language teaching and what languages are taught.

In Portugal, it is mainly through private initiatives – some of which are partially supported by education authorities – that immigrants are taught their mother tongue. In 2005, the Ministry of Education delivered recommendations on the promotion of mother tongues and cultures of origin as well as on the development of projects in this field.

There are also schools with programmes that cover the languages and cultures of students of other nationalities in their education project.