

Article 4 – Right to a fair remuneration

Paragraph 1 – Decent remuneration

The Committee previously concluded (Conclusions 2010) that the minimum wage amounted to € 403 in 2007 and to € 426 in 2008. It noted that the minimum wage is exempted from income tax and only social security contributions are withdrawn at the rate of 11%. Therefore, it noted that the net minimum wage amounted to € 380 in 2008. The Committee noted that the situation in Portugal has deteriorated since the examination of 2002, when the situation was in conformity, and it concluded that the situation in Portugal was not in conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage was clearly unfair.

In 2014 (Conclusions 2014) the Committee noted that the guaranteed minimum monthly wage (RMMG) for the private sector provided for by Article 273, paragraph 1 of the Labour Code, as amended for the 4th time by Law No. 47/2012 of 29 August 2012, has been set at € 485,00 (since 1 January 2011 under Ministry of Labour and Social Solidarity Legislative Decree No. 143/2010 of 31 December 2011). This level was temporarily frozen under the Memorandum of Understanding on Specific Economic Policy Conditionality signed on 3 May 2011 (by the Government and the European Commission, the European Central Bank and the IMF) – financial assistance programme.

Statistics Portugal noted that the net median monthly wage stood at € 808, with low-pay jobs including manual workers and assimilated (€ 466), skilled workers in agricultural, forestry and fishery (€ 557) and workers in trade and service (€ 615); and low-pay sectors including agriculture, forestry and fisheries (€ 615) as well as industry, construction, energy and water (€ 740).

According to EUROSTAT the average annual income of single workers without children was € 17.040,00 gross (€ 1.420,00 per month) and € 13.158,03 net (€ 1.096,50 per month). The gross minimum wage, paid for 14 months, was € 565,83 (adjusted to 12 months). The minimum wage as a proportion of average monthly earnings was 43,30%.

In order to ensure a decent standard of living within the meaning of Article 4§1 of the Revised Charter, wages must be no lower than the minimum threshold, set at 50% of the net average wage.

The Committee noted from previous reports (Conclusions 2011) that the RMMG is exempt from income tax but subject to social contributions of 11,00%. With a view to examining the pay in the public sector, it requested updated information (supported by any specific examples) and it also requested clarification regarding the social contributions and taxes applicable to the lowest wages in the sector.

The Committee concluded that the situation in Portugal was not in conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage for private sector workers did not ensure a decent standard of living.

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Paragraph 2 – Increased remuneration for overtime work

The Committee concluded (Conclusions 2010) that pursuant to the Labour Code overtime work was remunerated at an increased rate of 50% for the first hour, and 75% thereafter. In addition, time-off in lieu of 25% of the hours worked was also granted. The situation in Portugal was previously considered to be in conformity with the Charter (Conclusions 2003).

In 2010, the Committee also requested information on whether the statutory provisions on compensation for overtime applied to all categories of workers and asked whether following the Tripartite Agreement (new system of regulation of industrial relations, employment policy and social protection, signed on 25 June 2008) it would be possible for collective agreements to include pay rates/or time-off in lieu below what was foreseen in the Labour Code.

In 2014 (Conclusions 2014) the Committee noted that the revised Labour Code of 2009 maintained the essential elements of the overtime regime established in the previous legislation. It guaranteed paid compensatory rest and additional pay. Overtime was paid at the normal hourly rate plus 50% for the 1st hour and 75% thereafter. The Labour Code was again revised in 2012 and compensatory rest for overtime was eliminated in all cases and the increase in pay for overtime work was halved. Thus the overtime is paid at 25% increase for the first hour and at 37,5% thereafter.

Answering to the Committee's question, the report states that workers who occupy board director or senior management post or who have the power to take autonomous decisions are not entitled to an increased remuneration for overtime.

The right of workers to an increased rate of remuneration for overtime work can have exceptions in certain specific cases (Conclusions IX-2 (1986), Ireland) – state employees and managers.

The Committee asked whether the legislation complies with this standard.

The Committee noted that under the revised Labour Code of 2012, where the impact of flexible working hours on overtime pay is concerned, the situations described as “adaptability” or “hour bank” regimes (Conclusion under Article 2§1) were not deemed overtime and therefore do not give rise to overtime pay.

Provided that the conditions laid down in Article 2§1 are respected, this type of arrangements do not, as such, constitute a violation of Article 4§2. Conditions: maximum weekly (more than 60) and daily (up to 16) working hours are respected; flexibility measures operate within a legal framework providing adequate guarantees which clearly circumscribe the discretion left to employers and employees to vary, by means of collective agreement, working time; flexible working time arrangements provide for a reasonable reference period for the calculation of average working time.

The Committee asked whether the adaptability or hour bank regimes (flexible working time regimes) satisfy these conditions.

In 2014, the Committee also took note of the comments received from the European Council of Police Trade Unions (CESP) – Complaint No. 60/2010.

In its decision on the merits of 17 October 2011 the Committee held that there was a violation of Article 4§2 of the Revised Charter on the ground that the police officers on

active prevention duties (“prevenção ativa”) were remunerated at a rate lower than the basic hourly rate of pay and the extra supplement paid for shift duty (“serviço de piquete”) amounted to an hourly rate which is hardly any higher or slightly lower than the basic hourly wage. Active prevention duties and shift duties may fall outside the normal working hours.

The Committee noted that its decision has not been implemented by the Government and the situation of non-conformity remains prejudicial for the police officers who are often required to perform overtime hours. It noted that the situation has not changed and concluded that the situation in Portugal is not in conformity with Article 4§2 of the Charter on the ground that police officers on active prevention duties and shift duties do not receive increased remuneration as required nor even remuneration equivalente to their basic hourly pay.

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Paragraph 3 – Non-discrimination between women and men with respect to remuneration

In the General Introduction to Conclusions 2002 on the Revised Charter, the Committee indicated that national situations in respect of right to equal pay (Article 4§3) would be examined under Article 20 of the Charter. States which had accepted both provisions (like Portugal) were no longer required to submit a report on the application of Article 4§3. In 2006 we had a new system of presentation of reports (four thematic groups system) and the Committee decided to change the above mentioned rule. The examination of the right to equal pay must be under article 4§3 and article 20, thus every two years (under the group “employment, training and equal opportunities” as well as “labour rights”). The Committee invited Portugal to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

In 2014 (Conclusions 2014) the Committee referred to its conclusions under Article 20 (Conclusions 2012) where it considered that the situation was in conformity with the Revised Charter.

It noted that the principle of equal pay for equal work was enshrined in Article 59(1)(a) of the Constitution. This principle was also enshrined in Article 270 of the Labour Code, and it also stipulated that workers had a right to equal working conditions, in particular with regard to pay.

The Committee noted that in the area of salary discrimination, the Commission for Equality at Work and in Employment (CITE) plays an important role as the national mechanism for equality – it receives and analyses complaints.

CITE opinions are non-binding administrative decisions and the Committee asked how court decisions have dealt with CITE opinions.

Under Article 4§3 of the Revised Charter domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination.

Employees who claim that they have suffered discrimination must be able to take their case to court and anyone who suffers wage discrimination on grounds of gender must be

entitled to adequate compensation – compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay (Conclusions XVI-2, Malta).

When the dismissal is the consequence of a worker's complaint concerning equal wages, the employee should be able to file a claim for unfair dismissal. The employer must reintegrate the employee in the same or a similar post and if it is not possible the employer has to pay compensation, which must be sufficient to compensate the worker and to deter the employer (courts should have the competence to fix the amount of this compensation) – Conclusions XIX-3, Germany.

The Committee asked how the legislation complies with these standards.

In 2008 (Conclusion on Article 20), the Committee took note of the argument presented by the Government that it did not seem possible to compare two or more enterprises for wage purposes as the differences in wages could be attributable to the differences in organisation of work, investment, type of business, which are the key elements determining workers remuneration. In 2012 (Conclusion 2012) it noted that according to the report it was not possible to oblige an employer to pay his or her employees on the basis of comparisons with other employers/employees but equal pay comparisons should be allowed outside the company in at least one or more of the following situations: cases in which statutory rules apply to the working and pay conditions in more than one company; cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment; cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding company or conglomerate.

The workers should try their equal pay case by comparing their pay with that another worker performing the work of equal value in another company.

The Committee asked the next report to provide more information.

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Paragraph 4 – Reasonable notice of termination of employment

State Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined in accordance with the length of service. It is accepted that the period of notice may be replaced by severance pay, such pay should be at least equivalent to the wages that would have been paid during the corresponding period of notice.

In 2010 (Conclusions 2010) the Committee noted that under the tripartite agreement, notice periods for collective dismissal were amended as follows: 15 days notice for employees with less than one years' service; 30 days notice for employees with one to five years' service; 60 days notice for employees with five to ten years' service; 75 days notice for employees with over ten years' service.

The Committee noted that a 15-day notice period has already considered not to be in conformity for an employee with over six months' service (Conclusions 2007, Volume 2, Romania).

It concluded that the situation in Portugal was not in conformity with the Article on the ground that 15 days' notice was insufficient for employees with over six months' service. The Portugal situation was found (Conclusions XVI-2) not to be in conformity with Article 4§4 of the Revised Charter because some categories of employee on probationary periods lasting up to eight months could be dismissed without notice.

The Committee asked for the next report to state whether the longer notice periods provided for in the tripartite agreement applied to all employees, and whether the 15 days' notice also applied to employees on probationary periods.

In 2014 (Conclusions 2014) the Committee noted that dismissal during probationary periods is authorised without prior notice or compensation unless the probationary period has exceeded 60 days, in which case employers must give 7 days' notice, or 120 days in which case they must give 15 days' notice.

Probationary periods are limited to 90 days, 180 days for workers whose post is technically complex, involves a high level of responsibility or trust requires special qualifications, and 240 days for directors and senior managers.

It is limited to 15 days for fixed-term or piece-work contracts of less than 6 months and to 30 days for fixed-term contracts lasting 6 months or more.

The Committee noted that the total length of fixed-term contracts is limited to 3 years or even to 2 years for recruitment of the long-term unemployed or for the launch of a new company or new activity, and to 18 months for employees being hired for the first time (collective agreements may make exceptions to the rules in respect of first employment contracts or long-term unemployed persons).

The total length of piece-work contracts is limited to 6 years and that of seasonal or show contracts, to 60 days per year.

The Committee also noted that dismissal on legitimate grounds is authorised without notice or compensation when it is the result of improper conduct by an employee, the seriousness and consequences of which jeopardize the employment relationship. For example: deliberately disregarding instructions; repeated incitement of conflicts with colleagues; false statements to justify absences; abnormal decrease in productivity...

The Committee noted from the report that the rules on termination of employment in the public sector were aligned with those in the private sector.

It points out that protection by means of notice periods or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). This protection includes probationary periods.

It considers that the notice periods applicable to probationary periods for fixed-terms contracts and for seasonal or show contracts are insufficient under Article 4§4 of the Revised Charter and that those applicable to standard probationary periods are insufficient below 4 months of service.

In order to guarantee that the protection granted by the Article is effective, the notice period or compensation in lieu should not be left to the discretion of the parties but be governed by legal instruments (legislation, case law, regulations or collective agreements).

The Committee asked for information on the notice periods or compensation applicable to fixed-term or piece-work contracts outside probationary periods.

The Committee concluded that the situation is not in conformity with Article 4§4 of the Revised Charter on the grounds that: 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.

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Paragraph 5 – Limits to wages deductions

In 2010 (Conclusions 2010) the Committee noted that there have been no changes in the situation it previously considered to be in conformity with the Revised Charter.

In 2014 (Conclusions 2014) it noted that the only deductions permitted are: those intended to compensate employers in execution of judicial decisions or conciliation agreements; pecuniary sanctions imposed in disciplinary proceedings; the repayment of loans granted by the employer; the cost of meals taken at the workplace and other benefits in kind incurred by the employer; the repayment of loans or advances on pay (Article 279, paragraph 1 to 4 of the Labour Code, updated by Law No. 47/2012 of 29 August 2012). Such deductions may not exceed 1/6 of the worker's wage net of deductions in favour of the state or the social security service or in enforcement of judicial decisions or conciliation agreements. The price of meals/other benefits in kind provided by consumers'co-operatives upon the employee's agreement are not subject to this ceiling of a sixth of the worker's wage.

The Committee points out that the aim of this Article is to guarantee that workers protected by this provision are not deprived of their means of subsistence (Conclusions XVIII-2 (2007), Poland).

It also points out that, under Article 4§5 of the Revised Charter, employees may not waive their right to the restriction on deductions from wages and the way in which such deductions are determined should not be left at the disposal of the parties to the employment contract (Conclusions 2005, Norway). It notes that section 219 of the RCTFP (Law No. 59/2008 of 11 September 2008 establishing civil service employment contract rules), by authorising deduction at the express request of tenured civil servants or civil service contractual staff put the salary at the disposal of the parties to the employment contract, without providing for adequate guarantees against the deprivation of means of subsistence.

The Committee asked for information on the “conditions prescribed by law” as stated in section 219 of the RCTFP and any restrictions applicable to authorised deductions. It concludes that the situation is not in conformity with Article 4§5 of the Revised Charter on the ground that 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.

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