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## **EUROPEAN SOCIAL CHARTER**

13<sup>th</sup> National Report on the implementation of the European  
Social Charter

submitted by

### **THE GOVERNMENT OF PORTUGAL**

- Follow-up to collective complaint No. 51/2010
- Complementary information on Article 10§4, 10§5 and 18§1 (Conclusions 2016)

Report registered by the Secretariat on

4 April 2018

**CYCLE 2018**



**REVISED EUROPEAN SOCIAL CHARTER**  
13th National Report on the implementation of  
the revised European Social Charter  
submitted by

**PORTUGAL**

## **I - INFORMATION ON THE FOLLOW-UP GIVEN TO THE DECISIONS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS ON COLLECTIVE COMPLAINTS**

*European Roma Rights Centre (ERRC) v. Portugal (No. 61/2010) Violation of Article E (non-discrimination) in conjunction with Article 31§1 (right to housing - adequate housing); Of Article E (non-discrimination) in conjunction with Article 16 (right of the family to social, legal and economic protection); Of Article E in conjunction with Article 30 (right to protection against poverty and social exclusion); Decision on the merits of 30 June 2011.*

The High Commission for Migration (ACM)<sup>1</sup> is a public institute that, under the direct supervision of the Presidency of the Council of Ministers, collaborates in the definition, implementation and evaluation of public policies regarding the attraction of migrants, the integration of immigrants and Roma communities, and the management and enhancement of the diversity of cultures, ethnicities and religions through the promotion of intercultural and interreligious dialogue. The mission and work of this institution is a good example of Portugal's firm commitment to the protection of the human rights.

The investment by the ACM in work developed with and for the Roma communities has been growing exponentially since 2007.

### **I. Roma Communities Support Unit**

The Roma Communities Support Unit - NACI (previously Roma Communities Support Office) was created in 2007 by the ACM with the purpose of supporting Roma communities in a more systematic and efficient way, by promoting social integration, valuing their cultural heritage, encouraging their participation and role as Portuguese citizens, fighting stereotypes and promoting self-esteem, recognition and mutual respect, thus creating real opportunities for change.

From the very beginning, this Unit focused its intervention in finding out the real necessities of the Roma Communities and field organizations, but also in supporting local entities, Municipalities, Non-Governmental Organizations, among other entities in the planning, implementation and evaluation of interventions, as well as in the establishment of strategic partnerships, national and transnational, for the integration of Roma communities.

NACI also promotes the participation of Roma communities through the mobilization and empowerment of Roma associations, sharing of knowledge, edition and dissemination of publications and various documents and providing training for a variety of audiences, such as professionals from public and private organizations working on the topic of discrimination, Roma history and culture.

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<sup>1</sup> [www.acm.gov.pt](http://www.acm.gov.pt)

NACI's intervention has grown progressively due to the demands in the Roma communities' integration process.

## **II. National Strategy for the Integration of Roma Communities (ENICC)**

The National Strategy for the Integration of Roma Communities (2013-2020)<sup>2</sup> was adopted following an intensely participated process with the involvement of all government departments, civil society organizations, academia, experts and representatives of Roma communities. The Strategy provides 105 measures in the areas of education, health, housing, employment and a cross-cutting pillar covering discrimination, mediation, education for citizenship, social security, promotion of Roma history and culture, and gender equality.

Roma communities in Portugal have been Portuguese citizens for generations, and have benefited, without discrimination, from all measures in place for the general population, including social protection (e.g. Social Insertion Income, housing programmes and access to the National Health Service).

The evaluation of the ENICC for the period 2013-2015 points to a high rate of implementation. The International Roma Day was the selected date by the ACM to reveal the results of the preliminary evaluation of the implementation of the ENICC for 2015. It was announced that up to that moment 668 actions were put in place within the framework of this Strategy, 20% with the contribution of civil society organisations, namely through Roma Associations.

In 2015, due to the ENICC, 520 actions for the integration of the Roma community took place. The overall number for the period 2013-2015 points to 668 actions. The training and awareness raising actions are leading with 70,81% and the implementation of projects/partnerships represent 6,14% of all actions.

Taking into consideration the data available, confronting the expectations, the rate of execution is 96,77%. The various initiatives and projects of civil society organisations and of academia allowed the sociocultural Roma mediators to improve the knowledge of the housing situation of Roma communities and to minister training/information sessions in the areas of education for health and available services.

The following examples of the execution of the Priorities can illustrate the progress in the activities of the ENICC.

### **Housing**

In 2013, in order to study the housing conditions of Roma and Ciganos Community in Portugal, it was created a survey that every municipality should answer regarding the communities living in their geographical space. This study, published in 2015, showed that there were over 7.456 home occupied by Roma households, of which over 1900 were informal settlements or inadequate housing.

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<sup>2</sup> [http://www.acm.gov.pt/documents/10181/52642/ENICC\\_en.pdf/bc4d6288-1626-4fcd-baa0-9feb8da7860d](http://www.acm.gov.pt/documents/10181/52642/ENICC_en.pdf/bc4d6288-1626-4fcd-baa0-9feb8da7860d)

In 2016, this study was updated: on one hand, the Institute for Housing and Urban Rehabilitation, I. P. (IHRU) created municipal files regarding the precarious housing and settlements occupied by Roma families, and, on the other hand, these settlements were geo-referenced using Google Earth. Most of these degraded settlements are located in metropolitan areas and cover different types of non-classical accommodation (tents, campsites, caravans and prefabricated).

It was also collected a significant set of photographs of these urban nuclei, in order to identify as closely as possible those situations. The purpose of this update is to frame the resettlement/rehousing operations that may occur, as well as prioritize the needs at the national level.

It should also be noted that two very significant rehousing operations have already taken place: one in Campo Maior and another in Peso da Régua. Both of these were the result of a partnership between several national, regional and local Authorities. In Campo Maior, the rehousing project resulted in the construction of the São Sebastião quarter, consisting of 53 dwellings that accommodated around 220 people, in a total investment of approximately 1.5 million euros, financed by EU funds. In Peso da Régua, the 12 families living in a camp near the Bagaúste dam were rehoused in Alagoas quarter, solving an environmental and social problem that existed on the Douro Rivers shore for over 30 years. Another 11 vacant dwellings were rehabilitated, restoring their housing conditions, with an investment of around €110,000.

Approved by the Resolution of the Council of Ministers no. 48/2015, of July 15, the National Housing Strategy intends to facilitate the access of Portuguese families to housing through concrete measures, structured in three pillars:

- . Urban Rehabilitation
- . House Rental
- . Housing Qualification

The National Housing Strategy provides a set of targeted measures for Roma Communities, including the promotion of the integration of ethnic minorities and migrants and the improvement of housing conditions [Measure 3.1.5].

The following actions are expected to take place:

- Integrate the housing needs of these communities (immigrants, ethnic minorities and / or Roma communities) into a rehousing program to be developed;
- Make social housing available for rehousing.

The ACM, in partnership with the members of the Consultative Group for the Integration of Roma Communities, the Municipalities, local NGOs and local members of the Roma Communities developed mediation activities regarding the situations on the improvement of

the living conditions where the Roma communities with less financial capacity were living, such as in informal settlements and, in some situations, mediation is offered to the beneficiaries of the municipal rehousing programmes. More recently there have been some examples of this mediation in Campo Maior (south of Portugal), in Peniche and Marinha Grande (centre of Portugal).

Also regarding the improvement of the housing conditions of Roma families, we must mention the effort that has been made in the rehabilitation of social housing quarters, where many ethnic minority households live. Interventions of rehabilitation, conservation and qualification of dwellings are essential to ensure the maintenance of the conditions and, consequently, the living conditions of the families that live there. During the year 2014 two projects of great rehabilitation of social districts, Cabo Mor and Contumil were developed; in 2016, the Paranhos quarter was also rehabilitated.

The rehabilitation of the Cabo Mor (Gaia) included the rehabilitation of 4 buildings, with a total investment of € 898,033.00, resulted in 84 rehabilitated dwellings, of which 34 homes are inhabited by Roma households.

Rehabilitation work in Contumil (Oporto) involved the total reconstruction of 14 dwellings in semi-cellars, which had been built clandestinely for 30 years and had no conditions. With a total investment of €2,370,088. This neighbourhood, consisting of 30 buildings, now has 262 homes. It is worth noting that of the households that live in that quarter, 29 are of gypsy ethnicity.

In 2016 it took place the rehabilitation of the Paranhos neighbourhood, in the municipality of Oporto. The housing complex consists of 4 buildings (blocks 1, 2, 3 and 4), a total of 160 dwellings, several of which inhabited by Roma households. The value of this rehabilitation exceeded 1 million euros financed by the IHRU, and was completed on July 15, 2016.

On the 6<sup>th</sup> April 2017, on the occasion of the International Roma Day, the ACM promoted an international seminar with representatives from the Roma Communities, National and Local Authorities and International entities such as the Council of Europe (member of the team of the Special Representative of the Secretary General for Roma Issues), FRA – European Union Agency for Fundamental Rights and OSCE/ODHIR (Roma and Sinti Issues)<sup>3</sup>.

Among other issues, the reflection on housing conditions was one of the topics in debate.

In 2017, in response to the Recommendation of the Parliament nº 48/2017, the Portuguese Government asked the IHRU to produce a national diagnosis of all housing needs in Portugal, mainly of the people living in dwellings that must be demolished or are not meant to be housing dwellings, where there is housing precariousness and constitute the permanent address of the families living there. This diagnosis has been developed in cooperation with the Municipalities, many of which have been reporting Roma Communities in their territory that

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<sup>3</sup> <http://www.acm.gov.pt/-/seminario-internacional-comunidades-ciganas-assinala-dia-internacional-dos-ciganos>

need resettling. At this moment this inquiry is still undergoing, and for that reason it is impossible for the IHRU to report more specific data regarding the Roma Communities.

### **The Observatory of Roma Communities**

At the end of 2014, the Observatory of Roma Communities (ObCig) was created within the framework of the National Strategy for the Integration of Roma Communities, in order to promote a solid diagnosis of this reality, taking into consideration the implementation of effective measures in the field.

The improvement of knowledge of Roma communities is part of the ObCig attributions, which aims to promote cooperation, and academic, scientific and institutional networks, as well as the dialogue between academia and political decision makers, in order to combat existing myths and stereotypes still present in Portuguese society that lead to situations of discrimination.

### **National Study on Roma Communities**

The National Study on Roma Communities had the contribution of 149 municipalities, and their collaboration gave access to crucial data regarding the Roma communities in Portugal. This study was concluded by the end of 2014 and launched in 20 January 2015.

More than 24.000 Roma were contacted in half of the Portuguese municipalities in the course of the study.

We would like to highlight the following conclusions:

- 92% of the respondents mentioned that all the members of their families have a family doctor from the National Health Service;
- The number of youngsters from the Roma Communities with the second and third educational cycle (6 and 9 years of school) has risen;
- 57,5% of the respondents have children or grandchildren attending the school;
- Concerning employment, 23% of the respondents are self-employed and 15,8% are employees;
- 66,6% of the respondents are living in conventional dwellings (apartments and houses) and 27,5% are living in more informal constructions, e.g. wood;
- More than 90% have permanent access to public water supply and electricity;
- 77,2% have regular relations with citizens from other communities.

To complement this information with data from the remaining municipalities with no previous answer, between 25 May 2015 and 1 March 2016, ObCig's fieldwork covered 129 municipalities, as well as the 30 municipalities from Madeira and Azores.

Until the end of 2015, 145 answers were received (91,19%) and the remaining 14 were received by the 1<sup>st</sup> of March of 2016. These results demonstrated the existence of 12.879 more Portuguese Roma/ Ciganos. Between April 2014 and March 2016, this report was able to cover all 308 Portuguese Municipalities, allowing for the first time in Portugal to collect data from all



parts of the country and registering a total number of 37.089 women and men Portuguese Roma/ Ciganos residents in Portugal.

Within the sample of 308 municipalities 101 revealed not having knowledge of Roma communities residing in the territory. In accordance with the 2015 update, Roma communities in Portugal are residing in 207 municipalities and 704 counties. A disaggregated list of the number of Roma residents per area is available.

### **III - The Consultative Group for the Integration of Roma Communities**

The Consultative Group for the Integration of Roma Communities (CONCIG)<sup>4</sup> was created in 2013 under the National Strategy for the Integration of Roma Communities. It offers an important contribution for the improvement of the quality of the Strategy's monitoring and evaluation process, as well as for the monitoring of the Roma Communities situation. CONCIG is constituted by 22 representatives of Governmental Departments (Ministry of Interior, Ministry for the Environment, Ministry of Education, Ministry of Justice, Ministry of Health, Ministry of Labour, Solidarity and Social Security, Madeira and Azores Regional Governments) and other public and private entities (such as universities and research centres), as well as representatives of the Roma Communities.

The new CONCIG representatives<sup>5</sup> were appointed on 5 July 2016. During this ceremony, the role of CONCIG and its fundamental contribution to the promotion of equality and integration of Roma Communities was reaffirmed. In this new Consultative Group there are 4 members representing the Roma Communities Associations.

Usually, there are two formal meetings per year, nevertheless, in terms of the regular functioning of this Consultative Group numerous informal contacts and bilateral meetings take place, in order to analyse and solve concrete situations.

## **II - FOR THE ACCEPTED PROVISIONS OF THE THEMATIC GROUP "EMPLOYMENT, TRAINING AND EQUAL OPPORTUNITIES": ARTICLES 1, 9, 10, 15, 18, 20, 24 AND 25: INFORMATION REQUIRED BY THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS IN CASE OF NON-CONFORMITY FOR LACK OF INFORMATION (CONCLUSIONS 2016)**

### **ARTICLE 10 - RIGHT TO VOCATIONAL TRAINING**

#### **PARAGRAPH 4 – LONG TERM UNEMPLOYED PERSONS**

*The Committee concludes that the situation in Portugal is not in conformity with Article 10§4 of the Charter on the ground that it has not been*

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<sup>4</sup> <http://www.acm.gov.pt/-/grupo-consultivo-para-a-integracao-das-comunidades-ciganas>

<sup>5</sup> <http://www.acm.gov.pt/-/novos-conselheiros-do-concig-tomam-posse>

*established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted.*

Long-term unemployed (LTU) have always been a priority target group in the scope of the active labour market programs developed by the Portuguese Public Employment Services (PES), as it can be demonstrated from the list below that summarizes a set of actions aimed at promoting employment and training and retraining of LTU during the reference period.

#### **Measures for LTU started or changed during the period ranging from 2011 to 2014:**

Recruitment incentives through the reimbursements of Social Security contributions. This measure was created by Ordinance No. 229/2012, of 3 August, and amended by Ordinance No. 65-A/2013, of 13 February. The beneficiaries were young unemployed registered in public employment services for, at least, 12 consecutive months (Ordinance No. 229/2012) or not registered in social security in the previous 12 months prior to their application submission deadline (Ordinance No. 65-A/2013). The measure was in force until the 18 of July of 2013, date of the repeal of the referred amended Ordinance by Ordinance No. 204-A/2013, of 18 June.

Incentives to hire unemployed aged 45 or over through Social Security contributions reimbursements. The measure was created by Ordinance No. 3-A/2013, of 4 January and amended by Ordinance No. 97/2013, of 4 March. Initially the measure included unemployed persons who were not registered in PES nor in social security in the previous 12 months, but Ordinance No. 97/2013 replaced such group of beneficiaries by unemployed registered in PES but not registered in social security in the previous 12 months. The measure ceased with the enter into force of Ordinance No. 204-A/2013, of 18 June.

“Estágio-património” (part of the scheme “Património activo”). The measure was created by Ordinance No. 33/2013, of 29 January. One of the aims of this measure was to increase the qualifications of participants. The target groups included the unemployed aged 35 or over who were registered in PES at least in the previous 12 months. The measure was repealed by Ordinance No. 204-B/2013, of 18 June.

“CEI-património” (part of the scheme “Património activo”). The measure was created by Ordinance No. 33/2013, of 29 January and its main goal was to provide to the unemployed with an occupation of interest for the community, in order to increase their employability. LTU were one of the priority target groups. Furthermore, training was mandatory in all the approved projects (a minimum of 50 hours). This measure ceased with the enter into force of Ordinance No. 378-H/2013, of 31 December.

“Estímulo 2013” launched by Ordinance No. 106/2013, of 14 March. The objective was to grant the employer with financial support to conclude an employment contract with unemployed registered in PES with the obligation to provide vocational training. The vocational training could take place at the workplace (throughout the supported period) or provided by an official

accredited entity (a minimum of 50 hours). Among other target groups, beneficiaries included also unemployed registered in PES but not registered in social security in the previous 12 months. This measure was in force until the adoption of Ordinance No. 194-A/2014, of 24 July, that creates “*Estímulo emprego*” (see below).

“Estágios profissionais”, namely with the amendment of Ordinance No. 92/2011, of 28 February by Ordinance No. 120/2013, of 26 March, which added the occupational integration of unemployed with disadvantages in labour market to the objectives of the measure. Therefore, unemployed aged 30 or over who were registered in PES but with no remuneration records in social security in the previous 12 months were encompassed as target group also. Although this measure was replaced by “*Estágios emprego*”, through Ordinance No. 204-B/2013, of 18 June with the repeal of the above Ordinances, both the objective and the target group mentioned above were not changed.

“Estímulo emprego”. Established by Ordinance No. 149-A/2014, of 24 July, the objective of this measure was to grant the employer with financial support to conclude an employment contract with unemployed registered in PES, namely unemployed without remuneration records in social security in the previous 12 months. One of the mandatory requirements to grant financial support was to provide vocational training throughout the entire period of the measure. This measure came to an end after 2014.

**Measures for LTU which started before 2011 but that were in force during the reference period:**

Exemption from social security contributions to promote recruitment of long-term unemployed. This measure was governed by Decree Law No. 89/95, of 6 May, with the amendments introduced by Decree Law No. 34/96, of 18 April and Law No. 110/2009, of 16 September. This measure came to an end after 2014 and was replaced by a new measure.

“Placement prize for very long-term unemployed”. Ordinance No. 247/95, of 29 March introduced this measure, which was destined for the very long-term unemployed registered in PES (registered for, at least, 24 months). They received a monetary prize on the condition that they create self-employment. This measure ceased after 2014.

“Escolas-oficinas” The measure was set up by Ordinance No. 414/96, of 24 August and its goal was to enable participants to enter into dependent employment or self-employment through vocational training in the traditional handicraft professions and in activities related to the environment. The target groups included the LTU registered in the PES. The duration of vocational training was one year, involving four months' of theoretical training and eight months' of practical training. This measure came to an end after 2014.

“Empresas de inserção”. This measure was put in place by Ordinance No. 348-A/98, of 18 June, with the aim to fight poverty and social exclusion through social and professional (re)integration, to promote the acquisition and development of personal, social and professional skills required in the exercise of an activity, to encourage the creation of jobs and

the fulfilment of social needs unmet by the regular labour market, and to promote the local social development. The target groups included LTU and the measure contained a vocational training component (up to 6 months). This measure ended after 2014.

“Contrato emprego-inserção” and “Contrato emprego-inserção+”. These measures were created by Ordinance No. 128/2009, of 30 January. Their aim is to provide the unemployed with an occupation of interest for the community as far as no work or vocational training alternatives exist in order to keep them in touch with the labour market and, so, preventing their social isolation and a tendency to demotivation and exclusion. The LTU are among the priority target groups. These measures are still currently in force.

The Working Life Measure is targeted at young and adult unemployed persons registered in the employment services of the Institute for Employment and Vocational Training, I.P. (IEFP), regardless of their academic qualifications. It was created in 2013 by the Ministerial Order No. 203/2013, of 17 June 2013, with a view to monitor unemployed persons more regularly and effectively, and enhance the likelihood of their rapid return to the working life.

Concerning IEFP’s interventions designed to increase employability, we should note the launch in October 2013 of a training module called Cross-cutting Training – Activation and Job-Search Techniques, which attendance is a mandatory stage in the Personal Employment Plan for all registered unemployed who have either never taken part in job-search technique actions, or the last time they did so was more than two years ago.

This format is based on three Short-Duration Training Modules (UFCDs) that last 25 hours each and can be taken autonomously in the light of each unemployed person’s profile. The actions are organised by IEFP, IP’s own centres, the shared-management vocational training centres and other certified external training entities.

Between November 2013 and the end of December 2014, 510 persons attended this type of training, of which 176 were long-term unemployed, as illustrated by the tables below:

**Short-Duration Training Units – No. of unemployed persons covered**

<b>Table 1 - No. of unemployed persons integrated</b>		<b>2013</b>	<b>2014</b>	<b>Total</b>
<b>0795</b>	<b>Personal Development and Job-Search Techniques</b>	5	157	<b>162</b>
<b>0796</b>	<b>Assertive Communication and Job-Search Techniques</b>	10	251	<b>261</b>
<b>0797</b>	<b>Entrepreneurial Competencies and Job-Search</b>	1	86	<b>87</b>

Techniques			
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**Table 2 - No. of long-term unemployed persons integrated**

		2013	2014	Total
0795	Personal Development and Job-Search Techniques		51	51
0796	Assertive Communication and Job-Search Techniques	1	97	98
0797	Entrepreneurial Competencies and Job-Search Techniques		27	27

Source: IEFP

In addition to this measure, many other forms of training have included LTU, as shown in the following table:

**Table 3 - Long-term unemployed persons covered in vocational training measures**

Vocational Training Measures	No. of long-term unemployed persons	
	2013	2014
Learning Courses	3 550	3 040
Education and Training Courses for Young People	304	126
Technological Specialisation Courses	50	189
Portuguese for All Programme	362	434
Modular Training	9 521	27 008
Modular Training - External Entities	982	3 915
Working Life Measure	68 351	83 144
Adult Education and Training Courses (EFAs)	16 579	16 430
Basic Competency Training Programme	3 332	4 056
Training for Trainers	686	869

Source: IEFP

As regards the impact of training on the integration of these unemployed into the labour market, according to IEFP statistics, a total of 128 344 long-term unemployed persons were integrated on the labour market, by the employment services or by their own means:

**Table 4 - Number of Long-term unemployed persons which have been integrated into the labour Market**

<b>Year:</b>	2013	2014
<b>Number:</b>	54 690	73 654

Source: IEFP

In Portugal, foreign nationals who attend training courses, if they are granted long-term resident status (that is, residence for five consecutive years in national territory), permanent resident or granted international protection (refugees), or are subject to special regimes contained in international conventions to which Portugal is a party or to which it is attached, may access to all training and retraining modalities, for young or long-term unemployed persons, in equality and same conditions with national citizens, as regulated by Law no. 23/2007, of 4 July, Law no. 27/2008 of 30 June, and Law no. 37/2006, of 9 August.

#### **ARTICLE 10 - RIGHT TO VOCATIONAL TRAINING**

##### **PARAGRAPH 5 - FULL USE OF FACILITIES AVAILABLE**

*The Committee concludes that the situation in Portugal is not in conformity with Article 10§5 of the Charter on the ground that it has not been established that foreign nationals, lawfully resident have equal access to financial assistance for studies.*

#### **Fees and financial assistance**

The conditions of stay in the Portuguese territory as well as the long-term resident statuses are regulated by Law no. 23/2007, of 4 July 2007.

According to Article 83, the holder of a resident permit in Portugal has the right, among others, to education and training, to undertake professional activity under employment contract, to undertake an independent professional activity, to professional guidance, training and improvement and to have access to goods and services available to the public. The same Article, in its no. 2, ensures equal access to foreign citizens in matters of social security, fiscal benefits, and workers' union registration, recognition of diplomas, certificates or other professional titles, or access to any services made available to the public, in addition to any dispositions granting them special rights.

A resident permit in Portugal can be obtained under several circumstances, such as:

- Resident permit to study, to participate in student exchange, traineeship or voluntary work [Article 62];
- Resident permit to undertake a professional activity under employment contract [Article 88];
- Resident permit to undertake an independent profession [Article 89];
- Resident permit to family members of lawfully residents in Portugal [Article 107] due to the right of family reunification [Article 98 and Article 118];
- Resident permit to nationals of other State Parties victims of human trafficking and as assistance to illegal immigration [Article 109];
- Long-term resident-permit [Article 126] with equal treatment to nationals in several matters [Article 133].

All minor foreign citizens, legal or not, with ages between 6 and 18 years old, have access to education with the same rights the law assigns to minors legally living in national territory. Furthermore, since 2012 compulsory education in Portugal applies to children and young people between the ages of 6 and 18 (Decree-Law no. 176/2012 of 2 August 2012), and so no fees are payable in the public school system, both for nationals, those with a resident permit (Decree-Law no. 35/90 of 25 January 1990) and those registered under the provisions of Decree-Law no. 67/2004, of 25 March.

Portugal has specific legislation for the registration for irregular minor foreign citizens, regulated by Decree-Law no. 67/2004, of 25 March, allowing them access to education, with the same rights and obligations of children in a regular situation in national territory.

If the child has already attended school in their birth country, there is specific legislation to obtain equivalences. The equivalence should be requested to the director of the school of the residence area or any school the child wants to attend, as regulated by Decree-Law no. 227/2005, of 28 December. Any situation not specifically covered by existing legislation falls under the responsibility of the Director-General of Education.

On the subject of assistance, students in need who are subject to compulsory education, both nationals, those with a resident permit and those registered under the provisions of the Decree-Law no. 67/2004, of 25 March, can receive support under the School Social Action system (ASE), regulated by Decree-Law no. 55/2009, of 2 March, and by a series of other legislative acts that annually establish ASE measures for each academic year. Thus, nationals of third countries who already have a resident status in Portugal receive equal treatment to Portuguese citizens in matters of access to vocational education and financial aid for education.

### **Training during working hours and efficiency of training**

The Portuguese Labour Code, approved by Law no. 7/2009, of 12 of February 2009, establishes the conditions of workers' continuous training in Article 131. Each worker, either Portuguese or a national of other State Parties with a resident permit in Portugal, each year has the right to a minimum of 35 hours of continuous training. Workers under a fixed-time contract for a period of three months or more are entitled to a minimum of training hours proportional to the duration of the contract that year.

This training can be organized by the employer, by a certified training provider or by an educational institution and allows the award of a certificate and its record in an instrument of individual guidance and registration of qualifications and competencies under the legal regime of the National Qualifications System (Decree-Law no. 396/2007, of 31 December 2007, amended by Decree-Law no. 14/2017, of 26 January 2017).

The 35 hours of continuous training that workers are entitled to every year are considered time off work to attend training and to develop a Recognition, Validation and Certification of Competences process (RVCC process), thus meaning that these hours spent in vocational training are included in the normal working hours.

Overall, the main evaluation of the results of the education and training programs is done through the verification of employability, 6 months after the completion of the training courses, and is carried out by AD & C - The Agency for Development and Cohesion, I.P. that is underpinned by a set of tasks in three areas: Regional Development Policy, European Structural and Investment Funds (FEEL) and Cohesion Policy Funds, or the Operational Programs of Portugal's strategy for the implementation of the European Union Funds).

In the specific case of the IEFP, since 2014 (reporting to the education and training courses completed in 2013), the process of evaluating the employability of the different training measures and programs, is carried out through the crossing of the data of the trainees with the Social Security Remuneration, with the purpose of evaluating the employability in 5 different moments: 1, 3, 6, 9 and 12 months after the end of their participation in training courses.

In Portugal there is a large participation of employers' and workers' organizations in the implementation of policies regarding vocational education and training of young people and adults, as well as in the management and quality assurance of the tools of the National Qualifications System that regulate the initial and continuous training in Portugal.

Take note that the Employers' Associations and Trade Unions are represented:

- In the General Council of the National Agency for Qualification and Vocational Education and Training (ANQEP). This Council supports and participates in the definition of the general lines of action of ANQEP whose mission is to coordinate the implementation of policies regarding the vocational education and training of young people and adults and to ensure the development and management of the National System for the Recognition, Validation and Certification of Competences (RVCC System). One of the competences of the Council is to give its view on the general policy and on the intervention strategy of ANQEP and to present suggestions to foster or to improve the activities of the Agency;
- In the Sector Councils for Qualification, which are working groups with technical and advisory competences, created by ANQEP to participate in the updating and development of the National Catalogue of Qualifications that regulates all Vocational Education Training (VET) courses for young people and adults and the RVCC standards. Therefore, these Councils validate and control the quality of the curricula in the National Qualifications System;



- In the jury that evaluates the Final Professional Test which is part of all education and training courses for young people and for adults and in the Jury of Certification of the RVCC professional process.

Furthermore, in Portugal all VET courses for young people and adults (which award double certification: school and professional) include on-the-job training, whose plan is developed by both the training provider responsible for the course and by the enterprise where the training takes place, in order to meet the standards of quality of the course.

## **ARTICLE 18 - RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER STATES PARTIES**

### **PARAGRAPH 1 – APPLYING EXISTING REGULATIONS IN A SPIRIT OF LIBERALITY**

*(A) The Committee asks the next report to clarify the impact of the abovementioned amendments by Law no. 29/2012 on the access to Portugal of employed or self-employed workers from non-EEA States Parties to the Social Charter, and to provide comprehensive and up to date information on the other visas and residence permits (on a temporary or long term basis) which are available to them.*

The amendment to the Law no. 23/2007 of July 4 (foreigners' Law) by Law no. 29/2012, of August 9, basically aimed to implement, at national level, the Regulation (EC) no. 810/2009 of the European Parliament and of the Council, of July 13, establishing a Community Code on Visas, and for the purposes hereof, to transpose the following directives of the European Union:

- a) Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (“Blue Card Directive”);
- b) Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

They were therefore common amendments to all Member States of the European Union, in particular as regards the Blue Card Directive. As in most EU Member States, the Blue Card Directive did not generate significant quantitative impacts or changes in migratory labour flows in Portugal.

Nevertheless, it should be pointed out that Law no. 23/2007<sup>6</sup>, of July 4, has undergone new amendments, the most recent of which by Law no. 102/2017, of August 28.

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<sup>6</sup> Amended by Laws no. 29/2012, of August 9, no. 56 / 2015 of June 23, no. 63/2015 of June 30 and no. 59/2017 of July 31.

Law no. 23/2007, of July 4, which approves the legal regime for entry, stay, departure and removal of foreigners from national territory, transposed the following directives into the national legal order:

- a) Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers;
- b) Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer;
- c) Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

Therefore, in the national legal order, there are available the following residence permits for the exercise of a professional activity:

- a) Residence permit for the exercise of subordinate professional activity (Article 88);
- b) Residence permit for the exercise of independent professional activity (self-employed) or for entrepreneurial immigrants (Article 89);
- c) Residence permit for teaching activity, highly qualified or cultural (Article 90).

In addition, there are available the following consular visas that allow the exercise of a professional activity:

- a) Short-term visa for seasonal work for a period equal to or less than 90 days (Article 51-A);
- b) Temporary stay visa (Article 54) for a stay in national territory for a period of less than one year, namely:
  - Transfer of nationals of States Parties to the World Trade Organization, in the context of the provision of services or the provision of vocational training in Portuguese territory (b);
  - Exercise in the national territory of an independent professional activity (c);
  - Exercise in national territory of a scientific research activity in research centres, a teaching activity in a higher education institution or a highly qualified activity during a period of time of less than one year (d);
  - Exercise in the national territory of an amateur sport activity, certified by the respective federation (e);
  - Seasonal work for a period exceeding 90 days (h).

Regarding the Committee's question, in general terms, the legislative changes introduced by Law no. 29/2012 to the Law no. 23/2007 did not have a significant impact on migratory flows, namely in quantitative terms.

The table below concerns the first residence permits issued to third-country nationals in the period 2012-2016, and the figures show a remarkable constancy over the reference period, with the exception of so-called high-qualified workers, which number of permits increased significantly between 2012 and 2014.

In any case, it wouldn't be accurate to say that such an increase in high-qualified workers was due to changes in the foreigners' Law, and it seems perhaps more credible that this effect is justified by the needs of the labour market.

**Table 5 - Residence permits - first concessions**

	2016	2016	2014	2013	2012
Residence permits for the exercise of subordinate professional activity (Article 88)	2.941	4.591	3.458	4.479	4.720
Residence permits for the exercise of independent professional activity or for entrepreneurial immigrants (Article 89)	174	104	102	117	112
Residence permits for teaching activity, highly qualified or cultural (Article 90)	770	953	993	771	315
<b>Total:</b>	<b>3.885</b>	<b>5.648</b>	<b>4.553</b>	<b>5.367</b>	<b>5.147</b>

Source: Sefstat

*(B) The Committee points out that, in order to assess the situation, it needs to know the number of permits (first permits and renewals) granted or refused, against the number of applications, concerning specifically nationals of non-EEA States Parties to the Charter, and the grounds for refusals of applications. It accordingly reiterates its request for information. Therefore, the Committee concludes that the situation in Portugal is not in conformity with Article 18§1 of the Charter on the ground that it has not been established that the existing regulations are applied in a spirit of liberality.*

The statistical criteria adopted in Portugal for residence permits are in line with the Regulation (EC) No. 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection. Accordingly, data are collected by typology (first concessions, changes in status and renewals) disaggregated by reason of attribution of the title (family reunification, education, work or other).

Although Portugal does not have statistical data on refused permits, since such a change is technically complex and an economic burden, empirically it can be stated that the percentage of refusals is very small compared to the total number applications for residence permits. Due

to the obligation to pay the application fee at SEF, most of the foreign citizens, when submitting their application ensure that the conditions for the grant and issuance of the title are met.

We cannot agree with the Council of Europe's view that the absence of a statistical indicator can support a conclusion of non-compliance with the Social Charter, more specifically with Article 18 (1) of the Social Charter – *to apply existing regulations in a spirit of liberality*.

Evaluative processes of this nature presuppose the existence of rigorous, objective and scientifically sound substantive criteria. Therefore, it is surprising that the absence of statistical data (number of rejected applications and percentage value between applications accepted and rejected) can be understood as a reasonable and rigorous criterion to conclude that a given State does not apply existing regulations in a so-called "spirit of liberality", in the perspective of Article 18 (1) of the Social Charter.

Similarly, it's not comprehensible how one can, reasonably and rigorously, conclude that, in the abstract, a large number of negative decisions demonstrates the absence of a "spirit of liberality" in law enforcement. In fact, in a State governed by the rule of law, the rule of law prevails, particularly regarding administrative decisions, which legal compliance is assessed by administrative hierarchies and by the judiciary. It is also clear that the access to a resident statute implies the fulfilment of legally defined objective requirements, and therefore does not constitute a discretionary decision subsumed under a concept of "spirit of liberality".

Also, according to the principles applicable to evaluation processes of this nature, States have the right to have the criticisms directed against them sustained by objective elements, such as denunciations, complaints, international reports, judicial decisions or even media information.

From all of the foregoing, the Committee's understanding cannot be accepted, unless it proves, through objective, credible and appropriate arguments, that Portugal does not apply its laws with a "spirit of liberality", which is certainly not the case of the invoked argument of the lack of a statistical tool.