



March 2020

# **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions 2019

**PORTUGAL**

*This text may be subject to editorial revision.*



The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.<sup>1</sup>

The European Social Charter (revised) was ratified by Portugal on 30 May 2002. The time limit for submitting the 14th report on the application of this treaty to the Council of Europe was 31 October 2018 and Portugal submitted it on 8 March 2019.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

Portugal has accepted all the Articles from this group.

The reference period was 1 January 2014 to 31 December 2017.

The present chapter on Portugal concerns 36 situations and contains:

– 21 conclusions of conformity: Articles 7§2, 7§4, 7§6, 7§7, 8§1, 8§2, 8§3, 8§4, 8§5, 17§1, 19§1, 19§3, 19§4, 19§5, 19§6, 19§7, 19§9, 19§11, 27§1, 27§2 and 27§3;

– 9 conclusions of non-conformity: Articles 7§1, 7§3, 7§5, 16, 19§10, 19§12, 31§1, 31§2 and 31§3.

In respect of the other 6 situations concerning Articles 7§8, 7§9, 7§10, 17§2, 19§2 and 19§8, the Committee needs further information in order to assess the situation.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Portugal under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Portugal on the articles in question.

The next report to be submitted by Portugal will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The deadline for submitting that report was 31 December 2019.

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<sup>1</sup> The conclusions as well as state reports can be consulted on the Council of Europe's Internet site ([www.coe.int/socialcharter](http://www.coe.int/socialcharter)).

**Article 7 - Right of children and young persons to protection**  
*Paragraph 1 - Prohibition of employment under the age of 15*

The Committee takes note of the information contained in the report submitted by Portugal.

In its previous conclusion (Conclusions 2011), the Committee took note of the relevant legal framework, namely the applicable provisions of the Labour Code (Law No. 7/2009), the Law No. 105/2009 governing the participation of minors in cultural, artistic or publicity activities as well as the Law No. 101/2009 which regulates the work of minors at home.

The report indicates that amendments to the Labour Code were introduced by Law No. 47/2012 in order to establish that minors under the age of 16 who have not completed compulsory education but who are still attending secondary school, are authorised to exercise a professional activity, including as a self-employed worker. The report states that requirements regarding the type of work that can be performed by those minors remained unchanged, namely the tasks offered to them must be appropriate to their physical and psychological skills, and this must be light work.

The Committee refers to its Statement of Interpretation on Articles 7§1 and 7§3 (Conclusions 2015). It points out that children under the age of 15 and those who are subject to compulsory schooling may perform only “light” work. Work considered to be “light” ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education. The Committee also points out that children should be guaranteed at least two consecutive weeks of rest during summer holidays. The Committee asks for information in the next report on whether the situation in Portugal complies with the above-mentioned principles. It asks, in particular, for information on the daily and weekly duration of any light work that children under the age of 15 are allowed to perform during school holidays. It also asks whether children benefit of at least two consecutive weeks of rest during summer holidays.

As to the length of light work during school term time, the Committee considered that a situation in which children who were still subject to compulsory schooling carried out light work for two hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance, was in conformity with the requirements of Article 7§3 of the Charter (Conclusions 2011, Portugal).

In its previous conclusion (Conclusion 2011), the Committee noted that the working hours for children who were employed in activities of a cultural, artistic or advertising related nature were as below:

- Below the age of 1 year: 1 hour per week.
- Between the ages of 1 and 3: 2 hours per week.
- Between the ages of 3 and 7: 2 hours per day and 4 hours per week.
- Between the ages of 7 and 12: 3 hours per day and 9 hours per week, with an additional three hours added to each limit in cases in which the additional activity took place on a day on which the child had no school activities.
- Between the ages of 12 and 16: 4 hours per day and 12 hours per week, with an additional 3 hours added to each limit in cases in which the additional activity took place on a day on which the young person had no school activities.

The Committee considered that for children aged 7 to 16 years, the daily working hours were excessive, and for children aged 12 to 16 years, the weekly working hours were excessive. It concluded that the situation in Portugal was not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time for children subject to compulsory education was excessive (Conclusions 2011).

The Committee notes from the report that there is no change to the situation which it has previously found in non-conformity. It, therefore, concludes that the situation in Portugal is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 during school term is excessive and therefore such work cannot be qualified as light.

With regard to monitoring, the Committee takes note of the measures taken by the authorities to fight and prevent child labour. The Labour Inspection Authority carries out its activities through 32 units spread around the country, including “Preventing and Fighting Child Labour, in Articulation with the Various Government Departments”. The report states that the labour inspectors notify the Commission for the Protection of Children and Youth at Risk (CPCJ) of child labour situations identified in the respective municipalities and they report to the Public Prosecutors’ Office of situations that may comprise any of the crimes defined as such in either the Penal Code or the Labour Code.

When the Labour Inspection Authority detects an infringement of the law concerning the misuse of a minor under the legal/school age or where the minor is carrying out a prohibited activity, it notifies the offender in writing to immediately cease the activity of the minor, with the warning that if they do not comply, they are found guilty of qualified disobedience.

The report states that the Labour Inspection Authority is not aware of any information provided by public or private organisations or even private individuals of the illegal work of minors. The report adds that considering that the phenomenon of child labour is merely residual, the Labour Inspection Authority limited its controls to vulnerable groups. The Committee takes note of the specific measures taken to eradicate child labour such as the Plan for the Elimination of the Exploitation of Child Labour (PEETI), the Program for Inclusion and Citizenship (PIEC) and the Integrated Education and Training Program (PIEF).

The report provides information on the inspection activities, namely the number of visits of specific inspections carried out in relation to child labour, the number of minors found in illegal situations – namely in violation of the minimum admission requirements (minimum age and compulsory education) or performing prohibited activities. For example, in 2017 the Labour Inspection Authority conducted 21 visits which resulted in the issue of one notification and fines with a total minimum value of EUR 6,630 (two minors and six infractions were detected).

In its last conclusion, the Committee asked how the conditions under which home working was performed were supervised in practice. In particular, it asked whether the Labour Inspection Authority could enter homes, under what conditions and on what legal basis, and it reserved its position on this point (Conclusions 2011).

The report indicates that, regarding the possibility of labour inspectors entering a home where an activity is being carried out, the legislation provides for two schemes:

- Under Law No. 101/2009, working at home is the activity performed without legal subordination, at the residence or at the worker’s place of business, as well as the actions taking place, after the purchasing of raw materials, to supply the finished product at a certain price to its seller, provided that the worker is economically dependent on the beneficiary of the activity. Article 13 of Law No. 101/2009 provides that: “The inspection service of the ministry responsible for employment (ACT) can only make visits to the work places at home: a) In the physical space where the activity is carried out; b) Between 9 am and 7 pm; (c) In the presence of the worker or of a person designated by him aged 16 or over”.
- According to Decree-Law 235/1992, domestic work (subordinated paid employment) is defined as the work that a person is performing, in exchange of financial reward, to another person, on a regular basis, under their direction and authority, of activities designed to meet their own or specific needs of a household, or equivalent, and their members. Concerning a domestic work contract and with reference to Article 34 of the Constitution of the Portuguese

Republic, ACT inspectors may only enter the house of citizens with judicial authorisation.

The Committee asks for updated information in the next report on the activities and findings of the Labour Inspection Authority regarding child labour.

The Committee refers to its General question on Article 7§1 in the General Introduction.

#### *Conclusion*

The Committee concludes that the situation in Portugal is not in conformity with Article 7§1 of the Charter on the grounds that:

- the duration of light work permitted to children under the age of 15 during school term is excessive and therefore such work cannot be qualified as light;
- the legislation on the prohibition of employment under the age of 15 is not effectively enforced.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

The Committee takes note of the information contained in the report submitted by Portugal.

In its previous conclusion, the Committee concluded that the situation was in conformity with Article 7§2 of the Charter (Conclusions 2011).

The Committee noted previously that under Article 72§2 of the Labour Code work whose nature or the conditions under which it is performed, make it prejudicial to the physical, psychological and moral development of minors is either prohibited, or subject to conditions imposed by specific legislation (Conclusions 2011).

The report states that the Law No. 102/2009 of 10 September 2009 regulates the legal framework for the promotion of health and safety at work, namely specifying the activities, agents, processes and conditions of work prohibited/limited to minors. The report indicates that the Law No. 102/2009 has been amended several times. For example, some changes were made to the list of forbidden activities for minors, due to the risks of contact with hazardous substances and mixtures.

The Committee asked previously that next report provide a copy of the list of the prohibited types of work considered hazardous or unhealthy (Conclusions 2011). The report provides the list of activities forbidden to minors which is established by Article 66 of Law No. 102/2009 such as: work with vats, tanks, reservoirs or carboys containing chemical agents, substances or the mixtures; driving or operating transport vehicles, tractors, forklifts and earthmoving machinery; glass-blowing operations; activities performed subsoil; work in wastewater drainage systems; work at airport runways; activities taking place in nightclubs or similar establishments.

The report also provides the list of hazardous substances and mixtures – activities that present a risk of exposure to such hazardous substances and mixtures are forbidden to minors. Moreover, activities involving the risk of exposure to ionising radiation and to a high-pressure atmosphere are forbidden to minors. Concerning biological agents, the law forbids minors to any activities where a risk of exposure to those agents belonging to groups 3 and 4 exists, *i.e.* agents that can cause severe human disease, present a serious hazard to workers and present a risk of spreading to the community, though there is usually effective prophylaxis or treatment available and of which there is usually no effective prophylaxis or treatment available.

The report indicates that under Article 68 of Law 102/2009, the employer is now obliged to report to the Labour Inspectorate his assessment regarding the nature, degree and duration of the young person's exposure to activities, processes and working conditions involving physical, biological and chemical agents legally permitted under Articles 69 to 72 of the Labour Code. Failure to report this assessment amounts to a minor administrative offence.

In its last conclusion (Conclusions 2011), the Committee asked for updated information on the number of inspections carried out with regard to the occupation of persons under the age of 18 in dangerous or unhealthy work, the infringements detected and the sanctions imposed. Moreover, the Committee asked for data relating to fatal accidents, non-fatal occupational accidents and occupational diseases (Conclusions 2011).

The report provides information on the activities of the Labour Inspection Authority. It states that the Labour Inspection Authority is a public authority which aims to promote the improvement of working conditions throughout the country by monitoring compliance with labour regulations within the framework of private employment and by promoting health and safety at work in all sectors of both public and private activity. The inspection methodologies include in-depth inspections of companies where the illegal work of minors has been reported, in relation to general working conditions and health and safety conditions.

Where the Labour Inspection Authority detects an infringement of the law concerning the misuse of a minor under the legal/school age or where the minor is carrying out a prohibited activity, the Labour Inspection Authority notifies the offender in writing to immediately cease the activity of the minor, with the warning that if they do not comply, they are found guilty of the crime of qualified disobedience.

The report provides the number of visits of specific inspections carried out in relation to child labour, as well as the number of minors found in illegal situations, in violation of the minimum admission requirements (minimum age and compulsory education) or in prohibited activity. It also provides information on fatal occupational accidents investigated by the Labour Inspection Authority for employees between 20 and 24 years old.

The Committee asks that the next report provide disaggregated data on the violations detected during inspections and sanctions imposed in practice for breach of the regulations regarding prohibited activities for minors.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 7§2 of the Charter.



## **Article 7 - Right of children and young persons to protection**

### *Paragraph 3 - Prohibition of employment of children subject to compulsory education*

The Committee takes note of the information contained in the report submitted by Portugal.

In its previous conclusion (Conclusion 2011), the Committee noted that the working hours for children who are employed in activities of a cultural, artistic or advertising related nature are as below:

- Below the age of 1 year: 1 hour per week.
- Between the ages of 1 and 3: 2 hours per week.
- Between the ages of 3 and 7: 2 hours per day and 4 hours per week.
- Between the ages of 7 and 12: 3 hours per day and 9 hours per week, with an additional three hours added to each limit in cases in which the additional activity takes place on a day on which the child has no school activities.
- Between the ages of 12 and 16: 4 hours per day and 12 hours per week, with an additional 3 hours added to each limit in cases in which the additional activity takes place on a day on which the young person has no school activities.

The Committee considered that for children aged between 7 and 12 years old, the daily working hours are excessive and for children aged 12 to 16 years old the weekly working hours are excessive. It concluded that the situation in Portugal is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time for children subject to compulsory education is excessive (Conclusions 2011).

The Committee notes in the information provided in the report that there is no change to the situation which it has previously found in non-conformity. It therefore reiterates its conclusion of non-conformity on this point.

The Committee refers to its Statement of Interpretation on Articles 7§1 and 7§3 (Conclusions 2015). It points out that children under the age of 15 and those who are subject to compulsory schooling may perform only "light" work. Work considered to be "light" ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work", particularly the maximum permitted duration. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week to avoid any risk to their health, moral welfare, development or education. The Committee also points out that children should be guaranteed at least two consecutive weeks of rest during summer holidays.

The Committee asks what is the maximum daily and weekly duration children who are still subject to compulsory education could work during school holidays.

With regard to the rest period during summer holidays, the report indicates that the school calendar year for each educational levels is approved every year through an Order. For example the duration of the summer holiday 2017 lasted approximately 11 weeks (between June 2017 and September 2017). The Committee asks confirmation whether the rest period free of any work has a duration of at least two consecutive weeks during the summer holiday.

The report provides the number of visits of specific inspections carried out in relation to child labour, as well as the number of minors found in illegal situations, in violation of the minimum admission requirements (minimum age and compulsory education) or in a prohibited activity. The Committee asks that the next report provide disaggregated data on the violations detected during inspections and sanctions imposed in practice for breach of the regulations regarding work performed by children who are still subject to compulsory education.

### *Conclusion*

The Committee concludes that the situation in Portugal is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time during school term for children subject to compulsory education is excessive.

### **Article 7 - Right of children and young persons to protection**

#### *Paragraph 4 - Working time*

The Committee takes note of the information contained in the report submitted by Portugal.

In its previous conclusion, the Committee concluded that the situation was in conformity with Article 7§4 of the Charter (Conclusions 2011).

The current report indicates that under Article 69 (1) (3) of the Labour Code, minors are entitled to benefit from working student status if:

- (i) they are aged less than sixteen and have completed their compulsory education or are enrolled and attending the secondary level, but do not hold a professional qualification;
- (ii) they are aged sixteen or over but have not completed their compulsory education, are not enrolled or attending the secondary level or hold any professional qualification whatsoever.

The Committee previously asked for information on the working time for young workers under 18 (Conclusions 2011).

The report indicates that under Article 73 of the Labour Code, the maximum daily working time and weekly working time for persons under 18 years of age is, respectively, 8 hours and 40 hours. Notwithstanding, collective agreements must strive, whenever possible, to reduce those limits. For light work carried out by young people under the age of 16, the maximum limit on daily and weekly working time is 7 hours and 35 hours.

The report adds that under Article 77 of the Labour Code a rest break between 1 and 2 hours shall be granted so that persons under the age of 16 or over 16 do not work more than four consecutive hours or four and a half consecutive hours, respectively (Article 77 (1) of the Labour Code).

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). It asks that the next report provide information on the activities of the Labour Inspection Authority of monitoring whether the above mentioned standards are observed, any violations detected and sanctions imposed on employers for breach of the regulations regarding working time for young persons under 18.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 7§4 of the Charter.

**Article 7 - Right of children and young persons to protection**  
*Paragraph 5 - Fair pay*

The Committee notes the information in the Portuguese report.

It notes that there were no changes to the legislation and regulations during the relevant period.

The report states that under Article 275§1 of the Labour Code, apprentices, trainee workers and interns receive 80% of the statutory minimum wage. Employees falling into one of these categories have entered into an employment contract which specifies that the reduction in their pay is applicable for up to twelve months, or six months if the employee concerned is completing a technical/professional course or a course forming part of the vocational training scheme qualifying for the relevant profession or occupation. The report explains that age is not a relevant factor in determining employees' pay and that young workers are entitled to the same wage as workers aged over 18.

The report states that young workers and apprentices rarely have employment contracts. They are more likely to have training contracts, as opposed to employment contracts, which are confined to those undertaking vocational training. Apprentices with training contracts are entitled to insurance and to an allowance of up to 10% of the social support index, or € 428.90 per month. Under ministerial order 60-A/2015 of 2 March 2015, as amended by orders 242/2015 of 13 August 2015, 122/2016 of 4 May 2016 and 129/2017 of 5 April 2017, trainees also receive support for study materials, transport costs and food related expenses, including cafeteria meals. The total of the last two categories may not exceed 75% of the value of social support.

The legislation on occupational and vocational training described in the last report, specifically ministerial order 129/2009 of 30 January 2009, has been repealed. The ministerial order now in force is no. 131/2017 of 7 April 2017. Article 4 of the order states that occupational training courses are intended for young persons who have completed secondary education or have a level 3 or higher qualification in accordance with Council Decision 85/368/EEC of 16 July 1985. The age limit does not apply to persons with disabilities.

Under the order, trainees are eligible for a monthly allowance ranging from 1.2 times the social support index (IAS) for trainees with a level 3 qualification to 1.75 times the IAS for ones with level 8. Trainees with another qualification level receive the IAS. These percentages are below those reported in the previous cycle.

Lastly, the new measure also provides for awards to firms or other bodies that give permanent contracts to trainees to encourage the hiring of unemployed persons.

In 2011 the Committee deferred its conclusions pending receipt of information on young workers' minimum wage and the minimum allowances paid to apprentices – information that does now appear in the current report.

The Committee notes that young workers earn the same wages as their adult counterparts, while under apprenticeship and training contracts they receive 80% of the statutory minimum wage for normal employment contracts. Payments under apprenticeship contracts are well below the relevant minimum wage and are lower than in the last reference period.

The Committee recalls that in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. The situation in Portugal was previously found to be incompatible with Article 4§1 of the Charter on the grounds that, at the time, the minimum wage for private sector workers did not ensure a decent standard of living (Conclusions 2014, Portugal, Article 4§1). However, there has not been an Article 4§1 assessment for the 2014-2017 reference period. The Committee asks for the next report to provide information on minimum wage and average wage of workers.

### *Conclusion*

The Committee concludes that the situation in Portugal is not in conformity with Article 7§5 of the Charter on the ground that it has not been established that young workers wages are fair and apprentices allowances are adequate.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 6 - Inclusion of time spent on vocational training in the normal working time*

The Committee notes the information in the Portuguese report, according to which the legislation and regulations have remained unaltered since the 6<sup>th</sup> report.

The report states that, under Articles 69 (1) (3) of the Labour Code, employed young persons are entitled to “working student” status in two cases, namely when they are:

- - aged under sixteen and have completed their compulsory education or are enrolled in and attending secondary school, but do not have a vocational qualification;
- - aged sixteen or over but have not completed their compulsory schooling, are not enrolled in or attending secondary school and do not have any vocational qualification.

As noted in previous conclusions, under Article 90§2 of the Labour Code, “worker-students” may be released from work to attend their courses without losing their rights, the courses being counted as work performed. Young persons are entitled to continuing training on the same basis as other employees (Conclusions 2011, Portugal, Article 7§6).

### *Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 7§6 of the Charter.

**Article 7 - Right of children and young persons to protection**

*Paragraph 7 - Paid annual holidays*

The Committee notes the information in the Portuguese report.

In its last conclusion, it found that the situation in Portugal was compatible with Article 7§7 of the Charter (Conclusions 2011).

The report states that the current leave system is the same as under the former legislation. There is one change, introduced by Article 264 (2) of the Labour Code, whereby employees are entitled to a holiday allowance equivalent to basic pay plus other benefits, according to the specific form of employment. Employees receive the same pay during annual leave as they would have received when working.

*Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 7§7 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 8 - Prohibition of night work*

The Committee notes the information in the Portuguese report, which states that the relevant legislation and regulations remain unaltered.

In its last conclusion, it found that the situation in Portugal was compatible with Article 7§8 of the Charter (Conclusions 2011).

In answer to the Committee's questions, the report states that young persons under 16 are not authorised to work at night, other than in exceptional circumstances such as those detailed in Conclusions 2011. Collective agreements may authorise night work for young persons aged 16 or over in certain sectors of activity, but not between midnight and 5 am. Young persons who do work at night must be supervised by an adult if this is necessary to protect their health or safety. There is no specific authority responsible for issuing exceptional night work authorisations for young persons aged 16 or over.

In its last conclusion, the Committee asked about the Labour Inspectorate's findings regarding the number of young persons working these extended early and late hours and the main sectors of activity that employed them. It repeats its request.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 9 - Regular medical examination*

The Committee notes the information in the Portuguese report, which states that the relevant legislation and regulations remain unaltered.

In its last conclusion, it found that the situation in Portugal was compatible with Article 7§9 of the Charter (Conclusions 2011).

The Committee had asked to be informed of the labour inspectorate's findings regarding employers' compliance in practice with their obligations to arrange for medical examinations of young workers; In reply, the report provides general statistics on the labour inspectorate's activities and penalties imposed. The figures do not relate specifically to young persons. The Committee therefore repeats its request for information in the next report on whether, in practice, employers are meeting their obligations to organise regular medical examinations of young workers.

### *Conclusion*

Pending the information requested, the Committee defers its conclusion.



**Article 7 - Right of children and young persons to protection**  
*Paragraph 10 - Special protection against physical and moral dangers*

The Committee takes note of the information contained in the report submitted by Portugal.

***Protection against sexual exploitation***

The Committee notes from the report developments in the legislative framework protecting children against various forms of sexual exploitation. In particular it takes note that the Criminal Code, as amended, criminalises such acts as:

- forced marriage and preparatory acts, such as luring the victim to a territory other than his or her place of residence with the intention of forcing him or her to marry or enter into a union comparable to marriage (Article 154-B);
- inducing children under the age of 14 to observe sexual abuse or sexual activity (Article 171);
- sexual abuse of dependent minors, or the attempt to do so, with the intention of making a profit (Article 172);
- attempting or engaging in a sexual act with a minor aged between 14 and 16, or inciting him or her to engage in a sexual act with another person by taking advantage of his or her inexperience (Article 173);
- engaging in prostitution with a child aged between 14 and 18 for payment or other compensation (Article 174);
- incitement to child prostitution (Article 175);
- grooming of minors for sexual purposes (a system of registration of persons convicted of crimes against sexual self-determination and sexual freedom of minors has been established – Article 176A);
- aiding or facilitating access to a "pornographic representation" involving children under the age of 16, either personally or by electronic means (Article 176-6).

The Committee notes that Article 176 of the Criminal Code (child pornography) criminalises the acquisition, possession, access, obtaining or facilitating access by a computer system or any other means to materials such as pornographic photography, film or recording, whatever their support. A rule has been introduced according to which any person who, in person or by means of a computer system or by any other means, being of legal age, aids or facilitates access to a pornographic performance involving the participation of minors under 16 years of age, shall be punished by imprisonment, as well as any person who performs such acts with the intention of making a profit.

The Committee recalls that Article 7.10 requires states to take measures to criminalise all acts of sexual exploitation under 18 years of age and asks the next report to provide confirmation that all acts of sexual exploitation of a child under the age of 18 years are criminalised.

The Committee refers to the Concluding observations of the Committee on the Rights of the Child on the combined fifth and sixth periodic reports of Portugal (CRC/C/PRT/CO/5-6, 2019), in which the Committee expressed concern at the low level of awareness of child sexual abuse and the lack of defined procedures for a professional response to it, about the low level of reporting rates on online grooming and the insufficient resources allocated to the timely and effective identification and investigation of sexual abuse of children, including in religious institutions and online, as well as the insufficient data on sexual abuse of children and exploitation of children in prostitution.

The Committee asks the next report to provide updated information on all measures taken to combat the sexual exploitation of children.

***Protection against the misuse of information technologies***

The Committee asks the next report to provide information on the supervisory mechanisms and sanctions for exploitation of children through information technologies. It also asked whether legislation or codes of conduct for Internet service providers are foreseen in order to protect children.

### ***Protection from other forms of exploitation***

The Committee notes from the report that the Lisbon Declaration on the establishment of common measures to prevent and combat trafficking in human beings, including children, was adopted in 2013.

It also notes that the crime of trafficking (Article 160 of the Criminal Code, as amended by Law 60/2013) includes child trafficking for purposes of sexual exploitation, labour exploitation, begging, slavery, organ harvesting, adoption and other criminal acts.

The Committee further notes from the Report of GRETA concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal (2017) that during the period 2012 to June 2016, a total of 36 children (32 girls and 4 boys) were formally identified as victims of trafficking (31 of them were aged 10-17 and five were younger than 10). Most of the children originated from Nigeria (15), Angola (10), Guinea-Bissau (3) and Bulgaria (3). There were no Portuguese children among the victims. Most of the children were trafficked for the purpose of sexual exploitation, but there were also three victims trafficked for the purpose of labour exploitation and two for the exploitation of criminal activities.

According to the report, a new cooperation policy has been defined by Council of Ministers Resolution No. 17/2014 which, with regard to the rights of the child, recalls that the challenges facing children are diverse, and include the fight against crimes such as trafficking in human beings and sexual exploitation, the fight against child labour. It highlights that the approach must be based on a comprehensive and universal vision of the rights of the child and be part of a set of broader development and poverty eradication strategies.

The National Commission for the Promotion of the Rights and Protection of Children and Young People (CNPDPJC) recently approved the National Strategy for Children's Rights (2017-2020), which seeks to contribute to a holistic and structural implementation of the United Nations Convention on the Rights of the Child. This strategy should be implemented in Portugal, when it is officially published, with the coordination and monitoring of the National Commission.

The Committee requests that information on the implementation of the National Strategy for Children's Rights, and on the above-mentioned cooperation policy as it relates to child trafficking.

The report indicates that in 2017, there were a higher number of reported cases of child labour (38.5%), followed by the use of children in begging (26.9%).

In its previous conclusion (Conclusions 2011), the Committee asked to be informed about the incidence of children in street situations and the measures taken to protect and assist them. The report does not provide this information.

The Committee asks to be informed of the measures taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.

In this context, the Committee refers to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child, which has been ratified by Portugal.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

### **Article 8 - Right of employed women to protection of maternity**

#### *Paragraph 1 - Maternity leave*

The Committee takes note of the information contained in the report submitted by Portugal.

#### ***Right to maternity leave***

In its previous conclusion (Conclusions 2011), the Committee noted that the situation was in conformity with Article 8§1 with regard to the length of leave and compulsory maternity leave: under Article 41, paragraphs 1 and 2, of the Labour Code, women employees are entitled to 30 days' leave before childbirth and there is a compulsory 6 weeks' postnatal leave. The report confirms that the same rules apply in the public sector.

#### ***Right to maternity benefits***

The Committee previously noted that the law provided for maternity benefits amounting to 100% of the employee's reference earnings, paid during the whole period of leave. In order to be entitled to this benefit, the beneficiary must have worked for 6 months (consecutive or otherwise). The report confirms that the same rules apply in the public sector.

The Committee requests that the next report should provide information regarding the right to any kind of benefits for the employed women who do not qualify for maternity benefit during maternity leave.

The Committee recalls that, under Article 8§1, the level of income-replacement benefits should be fixed so as to stand in reasonable proportion to the previous salary (these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage) and it should never fall below 50% of the median equivalised income (Statement of Interpretation on Article 8§1, Conclusions 2015). If the benefit in question stands between 40% and 50% of the median equivalised income, other benefits, including social assistance and housing, will be taken into account. On the other hand, if the level of the benefit is below 40% of the median equivalised income, it is manifestly inadequate and its combination with other benefits cannot bring the situation into conformity with Article 8§1.

According to Eurostat data, the median equivalised income in 2017 was €9,071 a year, or €756 a month. 50% of the median equivalised income was therefore €4,536 a year, or €378 a month. In 2017, the gross minimum monthly wage in Portugal was €649.83. In the light of the above, the Committee finds that the situation is in conformity with Article 8§1 on this point.

### *Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 8§1 of the Charter.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 2 - Illegality of dismissal during maternity leave*

The Committee takes note of the information contained in the report submitted by Portugal.

***Prohibition of dismissal***

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§2 of the Charter. As there has been no change in the situation, it repeats its previous finding of conformity.

***Redress in case of unlawful dismissal***

In its previous conclusion (Conclusions 2011), the Committee asked if an upper limit was applied to the amount that could be awarded as compensation. If so, it asked whether this upper limit covered compensation for both pecuniary and non-pecuniary damage or whether compensation with no upper limit for non-pecuniary damage could also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It asked whether both types of compensation were awarded by the same courts, and how long on average it took courts to make their rulings.

In reply, the report states that under Article 26 of the Labour Code, cases of dismissal of women who are pregnant, have recently given birth, are nursing an infant or are on parental leave must be given priority and treated as emergencies. If the court declares the dismissal unlawful, the employer may not object to the reinstatement of the employee, but she may also claim compensation in lieu. Employees who do not want to be reinstated are entitled to compensation ranging from 30 to 60 days of their base remuneration plus any additional amounts for seniority (the total cannot be less than the amount equivalent to six months of remuneration and the applicable seniority bonuses). The report states that in the event of unlawful dismissal, compensation is not generally awarded for non-pecuniary damage. However, the report does state that under recent case law, an order to pay compensation for non-pecuniary damage in an employment relationship is possible if the employer has been found guilty of a serious breach of his/her contractual obligations and if he/she has harmed the worker's dignity. Under Article 28 of the Labour Code, employees may claim non-pecuniary damages through other legal avenues, particularly anti-discrimination legislation. This applies to employees in both the public and private sectors. The Committee notes from the report that the average length of proceedings concerning the unlawful dismissal of a woman who was pregnant, had recently given birth or was nursing an infant was 11 months in 2016.

In its previous conclusion, the Committee also asked if the same rules applied to women employees in the public sector, particularly those on fixed-term contracts. On this subject, the report states that the rules on termination of the employment relationship for public sector employees who are pregnant, have recently given birth or are nursing an infant are now contained in the General Public Service Labour Law (Law No. 35/2014), which came into force on 1 August 2014. However, this legislative amendment did not give rise to any substantial reform and the same rules apply regardless of whether the women concerned are employed in the public or private sectors, including women on fixed-term contracts.

***Conclusion***

The Committee concludes that the situation in Portugal is in conformity with Article 8§2 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

The Committee takes note of the information contained in the report submitted by Portugal.

The report indicates that the situation, which had previously been found to be in conformity with Article 8§3 of the Charter (Conclusions 2011), is unchanged. A woman who is breastfeeding the child is entitled to two breastfeeding breaks of up to one hour each. She must present a medical certificate if breastfeeding continues beyond the first year of the child's life. When the child is not breast-fed, the mother or father has the right, by joint decision, to the breastfeeding break until the child is one year old. Part-time workers are also entitled to these breaks, in proportion to their working hours, but breaks cannot be less than 30 minutes.

In its previous conclusion, the Committee asked for confirmation that these breastfeeding breaks continued to be remunerated. In response, the report indicates that Article 392 (3) of the Labour Code establishes a ceiling for the amount that can be paid. The ceiling is 60 days' pay plus any additional amounts due for seniority.

The report confirms that the provisions of the Labour Code concerning breastfeeding breaks also apply to women in the public sector (Article 4(1) (e) of the General Law on Public Service Employment).

### *Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 8§3 of the Charter.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 4 - Regulation of night work*

The Committee takes note of the information contained in the report submitted by Portugal.

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation was in conformity with Article 8§4 of the Charter and asked whether the same protection also applied to women employed in the public sector. The report confirms that it does.

The report indicates that the legal framework has not changed during the reference period. Under Article 60 of the Labour Code, pregnant women, women who have recently given birth and women breastfeeding their child are exempted from night work (from 8 pm to 7 am) (i) for a period of 112 days before and after childbirth, at least half of which must be before the expected date of birth; (ii) during the remaining period of pregnancy, if made necessary for their own and the child's health (medical certificate); (iii) throughout the entire duration of breastfeeding, if necessary for their own and the child's health. Under Article 60 (4), women wishing not to perform night work have to provide a medical certificate ten days in advance. However, in case of emergency, they can be moved to daytime work based on a medical certificate at any time.

In its previous conclusion, the Committee also noted that, where possible, the workers concerned were assigned to daytime work or granted leave. A specific risk allowance was paid if the employer could not transfer the employee concerned to another post.

The Committee refers to its Statement of Interpretation on Articles 8§4 and 8§5 (Conclusions 2019) and asks the next report to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave; it furthermore asks the next report to confirm that the women concerned retain the right to return to their previous employment at the end of the protected period.

*Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 8§4 of the Charter.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

The Committee takes note of the information contained in the report submitted by Portugal.

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§5. It has already examined the situation regarding the prohibition of dangerous, unhealthy or arduous work. Therefore, it will only consider the recent changes and relevant additional information.

In its previous conclusion, the Committee asked whether the same rules applied to women employed in the public sector. The report confirms that they do and indicates that the references to the Labour Code and the supplementary legislation applicable to public sector workers concerning the promotion of occupational health and safety (particularly Law No. 102/2009 of 10 September 2009) are set out in Article 4§1(j) of the General Law on Public Service Employment.

The report also indicates that the legislation on the prohibition of dangerous, unhealthy or arduous work has not changed during the reference period. However, the Committee notes from the report that Law No. 3/2014 of 28 January 2014, Decree-Law No. 88/2015 of 28 May 2015 and Law No. 64/2017 of 7 August 2017 regarding the exposure of workers to the risks arising from chemical and mutagenic agents and risks arising from physical agents (electromagnetic fields) were adopted during the reference period.

The Committee points out that Article 8 of the Charter provides specific rights protecting employed women during pregnancy and maternity (Statement of Interpretation on Articles 8§4 and 8§5, Conclusions 2019). Since pregnancy and maternity are gender-specific, any less favourable treatment due to pregnancy or maternity is to be considered as direct gender discrimination. Consequently, the non-provision of specific rights aimed at protecting the health and safety of a mother and a child during pregnancy and maternity, or the erosion of their rights due to special protection during such a period are also direct gender discrimination. It follows that, in order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation, also with regard to their income, if an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. It follows that, in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. Further, she should have the right to return to her previous post. In this respect, the Committee asks the next report to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in case of exemption from work related to pregnancy and maternity the woman concerned is entitled to paid leave; it furthermore asks the next report to confirm that the women concerned retain the right to return to their previous posts at the end of the protected period.

*Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 8§5 of the Charter.

## **Article 16 - Right of the family to social, legal and economic protection**

The Committee takes note of the information contained in the report submitted by Portugal.

### ***Legal protection of families***

#### ***Rights and obligations, dispute settlement***

As regards **rights and obligations of spouses**, the Committee previously noted (Conclusions 2011) that under civil law parents have equal rights and responsibilities with regard to family life and the raising of children whether or not they are married. It takes note of the additional detailed information provided in the report concerning parental responsibilities, including as regards the amendments introduced during the reference period, the legal arrangement for the **settlement of disputes** (also in the light of the changes introduced by Law No. 122/2015 in respect of alimony rights) and **mediation services**.

Issues related to **restrictions to parental rights** and **placement of children** are examined under Article 17§1.

#### ***Domestic violence against women***

The Committee takes note of the comprehensive information detailed in the report concerning the developments occurred since its latest assessments (see Conclusions 2006 and 2011), in particular as regards on the one hand, the information and awareness-raising measures taken to improve prevention of violence and protection of victims in the context of the 5th National Plan against domestic violence 2014-2017 (see details in the report). The Committee also takes note of the information provided as regards prosecution of domestic violence and case-law examples. With regard to integrated policies, the Committee notes from the report the creation end of 2016 of the Special Programme for the Policing of Domestic Violence, which aims to bring together the various measures, initiatives and projects in this area.

Insofar as Portugal has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in Portugal on 1 August 2014), the Committee refers to the assessment procedure which took place in the context of this mechanism. It notes that in January 2019, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first baseline evaluation report on Portugal. GREVIO experts recognised progress in developing comprehensive policies to address violence against women and preventive measures, in particular by promoting gender equality and combating gender stereotypes. It found nevertheless that further progress was needed to intensify interinstitutional cooperation and strengthen the response of the judiciary to protect victims and their children, as well as to hold perpetrators to account.

The Committee asks the next report to provide updated information on domestic violence against women and related convictions, as well as on the use of protection orders, the implementation of the various measures described in the report and their impact on reducing domestic violence against women, also in the light of the abovementioned GREVIO recommendations.

### ***Social and economic protection of families***

#### ***Family counselling services***

In response to the Committee request for for up-to-date information on family counselling services (Conclusions 2006, 2011), the report refers to the Family Support Centres and Parental Counselling social response (CAFAP's) which provide a specialized support service



for families with children and young people, aimed at preventing and repairing situations of psychosocial risk by developing the parental, personal and social skills of families. The Committee takes note of the information provided on the tasks of these centres and asks the next report to provide information on their geographical coverage.

### ***Childcare facilities***

As regards childcare facilities, the report indicates that during the reference period efforts have been made to modernise and diversify the offer of childcare solutions, with a special focus on socially and economically disadvantaged categories. According to the report, childcare services in Portugal are provided mostly by private, not-for-profit bodies (Private Institutions for Social Solidarity), supported by State budget. The report explains that the rules governing childminding activities have been revised during the reference period (Decree Law No. 115/2015 of 22 June 2015, Ordinance No. 232/2015 of 6 August 2015) and provides details of the new provisions, which have notably introduced a specific training and a license to work as a childminder, either in care institution or on a self-employed basis (see report for details). The Committee asks the next report to clarify how the quality of childcare services is monitored.

The Committee takes note of the statistical information provided in the report, which shows that the number of users covered by leisure-time activity centres (CATLs) has fallen (from 57 040 in 2014 to 49 850 in 2017) while the number of users of crèches has increased (from 70 992 in 2014 to 72 365 in 2017). Although the report does not provide the information requested (Conclusions 2011, Article 27§1) on the number of childcare places still needed across the whole country to meet the demand, the Committee notes that the EU Commission report on Barcelona objectives (2018) confirms that more than 50% of children in Portugal have access to childcare. It asks the next report to provide updated information on the adequacy between childcare demand and offer, also in terms of geographical coverage.

### ***Family benefits***

#### ***Equal access to family benefits***

In its previous conclusion (Conclusions 2011) the Committee asked for specific information regarding the length of residence required for foreign nationals to be equally treated as regards family benefits. The Committee notes from the report that the Basic Law No. 32/2002 states in its Article 6427 that the residence in the national territory is a general rule for access to the benefits of the subsystem of family protection, without any minimum period for their entitlement. The same rule is foreseen in Article 47 of the current Basic Law (Law No. 4/2007) which repealed the aforementioned law. Also Decree-Law No. 176/2003, in its current wording provides that, in addition to nationals, foreign citizens, refugees or stateless persons with a valid residence permit in the Portuguese territory or in a similar situation, are entitled to social protection and does not require any minimum period of residence for access to family allowances. The Committee considers that the situation is in conformity with the Charter on this point.

#### ***Level of family benefits***

In its previous conclusion (Conclusions 2011) the Committee considered that the amount of family benefits was sufficient.

The Committee takes note of the Decree-Law No. 133/2012 and Decree-Law No. 77/2010, which introduced some changes to the means-test and revaluation of family income, following the changes in the reference income. It also notes that following the Decree-Law No. 116/2010 the award of family allowances to the highest levels of income were ceased (i.e. incomes in the references year above € 8 847). The Committee notes that as regards

the amounts of family allowances in 2017, the family with the income of the first (the lowest) level received € 146 for a child of up to 12 months of age, € 73 for the first child aged between 12 and 36 months and € 36 for the child aged 36 months and over. The Committee also notes that in the third family income level the amount of child benefits stood at € 95 for the child up to 12 months, €49 for the first child between 12 and 36 months and at € 27 for a child of 36 months or older. The Committee notes from Eurostat that the median equivalised income in 2017 stood at € 751 per month.

The Committee observes that the amounts of child benefit have gone down since the previous examination of the situation. Moreover, with the changes to the granting conditions, now fewer families are entitled to them. In particular, in 2009 1 858 183 families received family benefits and 1 211 494 families in 2017. Nevertheless, the Committee notes that the amount of the benefit ranges between 3.6% -12% of the median equivalised income. In addition, the Committee takes note of other benefits available for families with children. Therefore, the Committee considers that the situation is in conformity with the Charter as regards the level of family benefits.

### ***Measures in favour of vulnerable families***

In its previous conclusion (Conclusions 2011) the Committee asked what measures were taken to ensure the economic protection of various categories of vulnerable families, including Roma families. It takes note from the report of the National Strategy for the Integration of Roma Communities 2013-2020, which has set as its priority to develop an integrated approach with the active participation of roma families in social action; strengthen the qualification of professional skills in support of social accompaniment of the Roma people and their families. The Committee wishes to be informed of the outcomes of the strategy.

### ***Housing for families***

As all the aspects of families' housing covered by Article 16 also fall within the scope of Article 31, the Committee refers to its examination of Article 31, including the follow-up to violations relating to housing conditions identified in collective complaints from the standpoint of Article 16 (for more details, see Conclusions 2019, Article 31§1).

The Committee concluded in its Findings of 6/12/2018 that the violation of Article E read in conjunction with Article 16 in respect of the housing conditions of Roma families identified in the collective complaint European Roma Rights Centre (ERRC) v. Portugal (Complaint No. 61/2010, decision on the merits of 30 June 2011), had not yet been remedied. It observes that the reference period for the current conclusions is covered by those findings. The Committee will next assess the follow-up to the complaint when it examines the report that Portugal is due to submit before 31/12/2019.

In the light of the above, the Committee can only conclude, on the same grounds, that the situation is not in conformity with Article 16 of the Charter on account of the substandard housing conditions of Roma families.

### ***Participation of associations representing families***

In response to the Committee's question (Conclusions 2011) concerning the participation of associations representing families in the framing of family policies, the report refers to the CONFAP (National Confederation of Parents' Associations) which groups, coordinates, promotes, defends and represents at a national level the movement of Parent Association and intervenes as a social partner with State authorities and institutions in order to help parents and guardians comply with their responsibility to guide and actively participate in the integral education of their children and pupils. The Committee notes however from the report that the CONFAP deals specifically with issues related to education, it accordingly asks whether family associations are also involved in the drafting of other types of family policies.



### *Conclusion*

The Committee concludes that the situation in Portugal is not in conformity with Article 16 of the Charter on account of the substandard housing conditions of Roma families.

## **Article 17 - Right of children and young persons to social, legal and economic protection**

### *Paragraph 1 - Assistance, education and training*

The Committee takes note of the information contained in the report submitted by Portugal.

#### ***The legal status of the child***

The Committee has noted with concern the increasing number of children in Europe registered as stateless, as this will have a serious impact on those children's access to basic rights and services such as education and healthcare.

According to EUROSTAT in 2015 there were 6,395 first time asylum applications in the EU by children recorded as stateless and 7,620 by children with an unknown nationality. This figure only concerns EU states and does not include children born stateless in Europe, nor those who have not applied for asylum. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals.

The Committee asks what measures have been taken by the State to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures for obtaining nationality, and taking measures to identify children unregistered at birth).

The Committee asks further what measures have been taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular situation.

#### ***Protection from ill-treatment and abuse***

The Committee notes that it previously found the situation in conformity with the Charter (Conclusions 2011), it recalls all forms of corporal punishment are prohibited in all settings.

The report further adds that Law 19/2013 on domestic violence also prohibits corporal punishment.

#### ***Rights of children in public care***

The Committee previously asked what measures have been taken to decrease the institutionalisation of children and in the meantime it reserved its position on this point (Conclusions 2011)

According to the report the vast majority of protection measures adopted to assist children in difficult situations take place in the home environment i.e. don't involve the placement of children outside the home, these protection measures usually involve support to parents or other guardians.

The number of children placed in institutions has decreased over the reference period from 3737 in 2014 to 2971 in 2017. However only a small number of children are in foster care 0.59% to 0.3% of all placements. The Committee asks the reason for this and asks what measures have been taken to increase foster care.

The Committee asks to be kept informed of the number of children in institutions, and in foster care and of the progress made in de-institutionalization.

In its previous conclusion the Committee asked for information on the number of violations of the rights of children in care and whether there was a specific procedure for complaining about the care and treatment in institutions (Conclusions 2011).

According to the report all institutions are required to have a complaints book, in addition other complaints bodies exist (SOS Child Service, the Ombudsman's Office, the Social Emergency Line of the Social Security Institute) to whom children and young people can appeal in case of complaint. Legislation also provides for the appointment of a case

manager. The case manager is appointed by the Commission for Protection of Youth or a Court to monitor the implementation of the promotion and protection measures ordered in respect of the child.

The Committee previously asked what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asked what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances and whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family (Conclusions 2011).

According to the report in cases of a present or imminent danger to life or a serious impairment of the physical or psychological integrity of the child or young person any of the competent organisations in matters of childhood and youth or (CPCJ), take the appropriate measures for the person's immediate protection and request the intervention of the court or police authorities. If necessary, until an intervention by the court is possible, the police authorities remove the child or young person from the danger she or he is in and ensure her or his emergency protection in a foster family, in a specialist childhood and youth organisation or at another suitable place.

A court may order the disqualification of parental responsibilities when any of the parents culpably infringes the duties towards the child, resulting in serious prejudice to them, or when, due to inexperience, illness, absence or other reasons, she or he is not able to carry out those duties. It may be a full disqualification or limited to the representation and administration of the children's assets; it may cover either parents or only one and refer to all children or only one.

Where the safety, health, moral upbringing or education of a minor is in danger the court may, put in place the appropriate measures, namely entrust the children to a third person or to an education or care institution. If the minor has been entrusted to a third person or to an education or care establishment, a system of parental visits shall be established, unless this is not in the child's best interests.

### ***Right to education***

As regards education, the Committee refers to its conclusion under Article 17§2.

### ***Children in conflict with the law***

The Committee notes that the age of criminal responsibility is 16 years. Only children who have committed serious offences maybe deprived of their liberty. Deprivation of liberty takes place in a closed educational centre. Children may only be placed in a closed educational centre for a minimum period of 6 months and a maximum period of three years. Sentences are regularly reviewed and children may be moved to an open or semi open regime.

The Committee understands from the report that the maximum duration of pretrial detention is 3 months, which may in exceptional circumstances be extended by three months. It seeks confirmation that this is the case.

The Committee asks whether children may ever be placed in solitary confinement, and if so, under what circumstances and for how long.

### ***Right to assistance***

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors to care and assistance, including medical assistance and appropriate accommodation[International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, Decision on the merits of September 2004, § 36, *Defence for Children International (DCI) v. the Netherlands* Complaint No.47/2008, Decision on the

merits of 20 October 2009, §§70-71, European Federation of National Organisations working with the Homeless (FEANTSA) v, Netherlands, Complaint No.86/2012, Decision on the merits of 2 July 2014, §50].

The Committee considers that the detention of children on the basis of their immigration status or that of their parents is contrary to the best interests of the child. Likewise, unaccompanied minors should not be deprived of their liberty, and detention cannot be justified solely on the grounds that they are unaccompanied or separated, or on their migratory or residence status, or lack thereof.

It requests information as to whether children who are irregularly present in the State accompanied by their parents or not, may be detained and if so under what circumstances. The Committee also requests further information on measures taken to ensure that accommodation facilities for migrant children in an irregular situation, whether accompanied or unaccompanied, are appropriate and are adequately monitored.

The Committee asks what assistance is given to children in an irregular situation to protect that against negligence, violence or exploitation.

The Committee asks whether children in an irregular situation have access to healthcare.

As regards age assessments, the Committee recalls that, in line with other human rights bodies, it has found that the use of bone testing in order to assess the age of unaccompanied children is inappropriate and unreliable [European Committee for Home Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, Decision on the merits of 24 January 2018, §113]. The Committee asks whether Portugal uses bone testing to assess age and, if so, in what situations the state does so. Should the State carry out such testing, the Committee asks what potential consequences such testing may have (e.g., can a child be excluded from the child protection system on the sole basis of the outcome of such a test?).

### ***Child poverty***

The prevalence of child poverty in a state party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children and young persons to social, legal and economic protection. The obligation of states to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the state's obligations in terms of Article 17 of the Charter.

The Committee notes that according to EUROSTAT in 2017 24.2% of children were at risk of poverty or social exclusion.

The Committee asks the next report to provide information on the rates of child poverty as well as on the measures adopted to reduce child poverty, including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc. Information should also be provided on measures focused on combatting discrimination against and promoting equal opportunities for, children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care.

States should also make clear the extent to which child participation is ensured in work directed towards combatting child poverty.

### ***Conclusion***

Pending the receipt of the information requested the Committee concludes that the situation in Portugal is in conformity with Article 17§1 of the Charter.

## **Article 17 - Right of children and young persons to social, legal and economic protection**

### *Paragraph 2 - Free primary and secondary education - regular attendance at school*

The Committee takes note of the information contained in the report submitted by Portugal.

#### ***Enrolment rates, absenteeism and drop out rates***

According to UNESCO in 2017 the net enrolment rate for primary education for both sexes was 97.56%, the corresponding rate for secondary education was 87.69%. The Committee notes that the enrolment rate in secondary education is low and asks for the Government's comments on this.

The Committee takes note of the significant range of measures taken to improve the educational system, make it more flexible and reduce early leaving. According to the report the National Program for the Promotion of Success (PNPSE) was adopted in 2016. The PNPSE is based on the principle that it is the educational communities that best know their situation, difficulties and potentialities. Therefore they are better prepared to find local solutions and devise strategic plans of action, designed at the level of each school, with the objective of improving the educational practices and the learning of the students.

The Committee further notes the Priority Intervention Educational Territories (TEIP) programme which is intended for schools with a high number of students at risk of social and school exclusion. Schools integrated into the TEIP program, with the support of the governing area of education, implement a multi-year improvement plan (PPM) for a duration of three academic years. The plan provides for four areas of intervention: improvement of teaching and learning (focused on the diversification of classroom strategies), prevention of school dropouts, absenteeism and indiscipline, management and organization of the school and the relationship between school, family and community. In order to implement the measures foreseen in the PPM, the governing area of education assigns additional resources to schools depending on the objectives to be achieved and the actions to be implemented. The resources provided may include the hiring of additional teaching staff and specialists such as psychologists, social service specialists, sociocultural assistants and mediators. In addition, the TEIP Program provides funding for the training of teachers and other staff as well as for the hiring of an external expert who supports the school group in the implementation, monitoring and evaluation of their improvement plan. The TEIP Program is currently implemented in 137 schools'/school groups.

The Committee asks the next report to provide updated information on enrolment rates absenteeism and drop out rates as well information on measures taken to address issues related to these rates.

#### ***Costs associated with education***

The Committee notes that the report refers to school social aid which aims to reduce the impact of inequalities among pupils, and provides free textbooks to pupils in the first years of secondary education. The Committee asks for further information to be provided on this scheme in the next report.

The Committee asks the next report to provide information on any other measures taken to mitigate the costs associated with education, i.e. transport, books, uniforms and stationary.

#### ***Vulnerable groups***

The Committee previously asked whether effective access to education is guaranteed for Roma children and whether measures are taken to calculate the school enrolment and drop out rates for this group (Conclusions 2011).

According to the report, the educational system seeks to ensure that Roma children have access to quality education, while respecting Roma culture. "A European framework for national Roma integration strategies to 2020", the National Strategy for the Integration of



Roma Communities (ENICC) was approved by Resolution No. 25/2013 of March 27th of the Council of Ministers, published in the Official Gazette on April 17, 2013.

The priorities set out in the area of education are to increase school attendance for children and young people in Roma communities, prevent absenteeism and early school leaving, and ensure the successful completion of compulsory education.

Measures adopted include a basic Tutoring Program which is aimed at students attending lower secondary education who failed to pass an academic year more than twice throughout their schooling.

The pre-school education network was expanded with the goal of effective global access from the age of 3 by 2019. Vocational education, with a view to diversifying the training pathways in secondary education has also been expanded.

Another measure to assist vulnerable children was the creation of Phoenix Classes, where students who need more support are temporarily integrated into a “nest”, allowing more individualized teaching. According to the report, this has proved to be a successful educational strategy. Nests operate at the same school time as the original class, which allows students not to be overloaded with extra educational support. Once the expected performance level is reached, the students return to their original class.

The "Choices" Programme developed by the High Commission for Migration, promotes the social inclusion of children and young people from vulnerable socio-economic backgrounds, particularly children and young people who are descendants of immigrants and ethnic minorities. Between 2013 and 2015, there were 85,160 children and young people from disadvantaged social backgrounds, many of whom are immigrant descendants or Roma children living in vulnerable places in the different “Choices” Programme projects. Over 2,400 children and young people were reintegrated into school, and 7,000 into employment and vocational training through the “Choices” Programme, with a rate of academic success of 76.5% for all participants.

The Committee takes note of the data provided in the report on Roma children enrolled in school and leaving early, however it finds the data difficult to interpret.

The Committee notes from ECRI [report on Portugal, fifth monitoring cycle CRI(2018)35, 2018] (outside the reference period) that progress has been made in improving the educational outcomes of Roma children. However, according to a study conducted on a national scale and published in 2016, only 42% of Roma children (31% of girls and 51% of boys) were in pre-school education. Segregation at school was still substantial, with 11% of Roma children schooled in classes of entirely Roma pupils. 90% of Roma children left school prematurely (compared with 14% of the overall population), often at the age of 10-12 years.

The Committee notes the measures taken to improve educational outcomes for children from vulnerable groups. However it finds the situation of Roma children concerning both regarding the de facto segregation of children and high drop out rate. It asks the next report to provide updated information on the situation of Roma children, including data on the percentage of Roma children in education, percentage of Roma children in education in mainstream education, the percentage of Roma children in education in separate special education, the percentage in de facto segregated schools and the drop out rate. Meanwhile reserves its position on this point.

The Committee asks whether children in an irregular migration situation have access to education.

As Portugal has accepted Article 15§1 of the Charter the Committee will examine the rights of children with disabilities to education under that provision.

### ***Anti-bullying measures***

The Committee asks what measures have been taken to introduce anti bullying policies in schools, i.e., measures relating to awareness raising, prevention and intervention.

***The voice of the child in education***

The Committee notes that securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 17§2 This requires states to ensure child participation across a broad range of decision-making and activities related to education, including in the context of children’s specific learning environments.

According to the report the Directorate General of Education (DGE), promoted the Voice of Students initiative, aiming to understand student perception of the curriculum, the content they learn, the skills they develop, the educational environments they attend, the methodologies used in the teaching-learning process and their respective contributions to the future. This initiative led to the “Curriculum for the 21st Century – The Voice of Students” of November 4th, 2016. According to the report, the results of this conference have shown that students have strong opinions on the usefulness of what they have learned, the role of the teacher, the school of the future, and the areas of knowledge that are considered essential for understanding the world and which are necessary for the making of students as human beings and citizens. Several schools have decided to create specific spaces and to replicate this initiative in 2016 and 2017.

The right of students to participate in school life is provided for in Law 51/2012, which provides that all children in school have the right and the opportunity to freely express their views, to be heard and to contribute to decision-making on matters that concern them.

The Committee asks how Law 51/2012 is implemented in practice and further more generally asks to be kept informed of all development regards the right of the child to be heard.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 1 - Assistance and information on migration*

The Committee takes note of the information contained in the report submitted by Portugal.

### ***Migration trends***

The Committee refers to its previous conclusions ([Conclusions 2011](#)) for a description of the general migration trends in Portugal.

The report states that there have been some changes in the country of origin of migrants. Although the four most representative nationalities remained unchanged (Brazil, Cape Verde, Ukraine and Romania), the number of registered citizens from France and Italy raised significantly. The number of foreign citizens residing in Portugal stood in 2017 at 421,000 (approximately 4% of the total population).

### ***Migration policy and the legal framework***

As regards the policy and the legal framework governing the assistance for migrants, the Committee refers to its comprehensive assessment in its previous conclusions ([Conclusions 2011](#)), where it found the situation to be in conformity with the Charter.

The report informs about developments, in particular about revision of the Plan for the Integration of Immigrants 2010-2013. In 2014, acknowledging the change in migration flows the need to define a national integrated vision on migration through a whole-of-government approach, the government decided to expand the action plans focused only on the integration of immigrants. Accordingly, it defined a national strategy for migration flows globally, including measures to target not only immigrants, but also Portuguese emigrants and refugees. The newly adopted Migration Strategic Plan 2015-2020 reinforces the former Plans for the Integration of Immigrants and contains more than one hundred measures in five fundamental areas:

- immigrant integration policies;
- policies to promote the integration of the "new Portuguese";
- policies of migration flows coordination;
- policies strengthening the migratory legality and quality of migration services;
- incentive policies, monitoring and supporting the return of national emigrant citizens.

The holistic action plan involves 13 ministries. The main body responsible for collaborating in the definition, implementation and evaluation of public policies regarding migrants, is the High Commission for Migration.

### ***Free services and information for migrant workers***

The Committee recalls that this provision guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate (Conclusions I (1969), Statement of Interpretation on Article 19§1). Information should be reliable and objective, and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health) (Conclusions III (1973), Cyprus).

The Committee considers that free information and assistance services for migrants must be accessible in order to be effective. While the provision of online resources is a valuable service, the Committee considers that due to the potential restricted access of migrants, other means of information are necessary, such as helplines and drop-in centres (Conclusions 2015, Armenia).

The Committee again refers to its previous conclusion for the detailed description of services and information for migrant workers, which it considered to be in conformity with the Charter ([Conclusions 2011](#)).

In addition to the information submitted before, the report informs about reform of support networks in 2016: National Support Network for the Integration of Migrants (CNAIM) composed of three National Centres and ninety four Local Centres and the Local Support Centres for the Integration of Migrants (CLAIM), which, in partnership with municipalities and civil society organisations, provide decentralized information, support and response to migrants` questions and problems.

Services include, among others, the provision of information and direct assistance regarding legalization and visa issues, family reunification, educational system, access to healthcare, professional and educational skill recognition, social security and welfare issues, employment concerns, legal aid and support for immigrant associations. All services are provided free of charge.

Furthermore, the Directorate-General for Consular Affairs and Portuguese Communities was established in the reference period as a central service of the state administration. It plays a fundamental role of economic and social support for emigrants and their families, through action aimed both to facilitate their integration into active life and information campaigns for citizens intending to live or work abroad. This action covers a wide range of initiatives ranging from vocational training, assistance provided by specialists, to migrants` guidance on various subjects (social security, employment, tax benefits and social, economic and legal issues) or to promote the teaching of the Portuguese language and culture among migrant communities.

Finally, specific leaflets were produced on the main destination countries of Portuguese emigration, covering important issues, such as, taxes, social security, health care, labour market, education, cost of living, to be consulted before a decision to go to live and work in another country.

### ***Measures against misleading propaganda relating to emigration and immigration***

#### ***Anti-discrimination measures***

The Committee recalls that measures taken by the government should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter (Conclusions XIV-1 (1998), Greece).

The Committee considers that in order to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia, as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary, *inter alia*, to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease (Conclusion XV-1 (2000), Austria).

The Committee has assessed the measures taken in this respect in its previous conclusion ([Conclusions 2011](#)) and found them to comply with the requirements of the Charter.

According to the report, a new anti-discrimination law entered into force in the reference period, strengthening the legal framework for the prevention, prohibition and combat of discrimination. In addition to the prohibition of discrimination based on race, colour, nationality and ethnic origin, new forms of discrimination have been included, such as discrimination based on descent and place of origin, multiple discrimination and discrimination by association. The concept of discriminatory practices has been developed. The Commission for Equality Against Racial Discrimination was introduced in the High Commission for Migration and its competence in the field strengthened.

The High Commission also invested in the promotion of interculturality in Portuguese society and the promotion of mutual understanding and positive interaction amongst all citizens and resident groups, namely by the Intercultural Dialogue Unit with a network of around 20 trainers. Numerous awareness-raising sessions were conducted in the reference period in the field of interculturality and migration through schools, municipalities, Social Security and immigrant associations. The Committee asks that the next report elaborates on the anticipated and / or noted impact of these measures.

### ***Hate-speech***

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views.

The report submits, in this respect that various activities have been developed by the High Commission in combating racism and discrimination, in particular through awareness-raising campaigns in social media and schools.

### ***Monitoring system***

The Committee recalls that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The report explains that apart from the criminal procedure, allegations of racial discrimination can also be the basis of an administrative procedure against any public authority, service or individual person and can be made to the Commission for Equality and Against Racial Discrimination chaired by the High Commissioner for Migration.

The High Commission for Migration, through the Commission for Equality Against Racial Discrimination, is responsible for all phases of the administrative offences procedure within their areas of competence, from reception and analysis of complaints to decision, as well as the coordination of action in the prevention, inspection and combat of discriminatory practices. The scope of its intervention is increased with the mandate to determine the fines and additional sanctions to be applied in the administrative procedure. The Committee asks about the relevant statistics in this respect.

The Observatory for Migration publishes data as indicators of immigrant integration, taking into account fifteen dimensions of integration and more than two hundred indicators. Its annual report is the most important publication of official data on immigration in Portugal.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 19§1 of the Charter.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 2 - Departure, journey and reception*

The Committee takes note of the information contained in the report submitted by Portugal.

#### ***Immediate assistance offered to migrant workers***

This provision obliges States to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception (Conclusions III (1973), Cyprus).

Reception means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty (Conclusions IV, (1975) Statement of Interpretation on Article 19§2). It must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures (Conclusions IV (1975), Germany). The Charter requires States to provide explicitly for assistance in matters of basic need, or demonstrate that the authorities are adequately prepared to afford it to migrants when necessary (Conclusions XX-4 (2015), Poland).

The Committee also reiterates that equality in law does not always and necessarily ensure equality in practice. Additional action becomes necessary owing to the different situation of migrant workers as compared with nationals (Conclusions V (1977), Statement of Interpretation on Article 19).

At the previous examination, the Committee deferred its conclusion, requesting information on measures adopted to facilitate the reception, and possibly the journey of migrants ([Conclusions 2011](#)). The report submits information on the change in the policy framework, which aimed at reinforcing the integration of migrants, assisting them in the fields of employment, health, education, justice, housing, culture and language.

The Committee notes, in particular, that the National Support Centres for the Integration of Migrants (CNAIM) and the Local Support Centres for the Integration of Migrants (CLAIM) provide integrated support in the hosting, resettlement, relocation and integration of refugees at the national and local level. The report further states that all residents can benefit from healthcare.

The Committee acknowledges that the information provided is positive and extensive. However, it finds that the report lacks some specific elements which are systematically examined to assess the situation from the angle of its compliance with the requirements of Article 19§2. Accordingly, the Committee exceptionally defers its conclusion for the second time, requesting that the next report replies to the detailed questions which define its case-law under this Article, namely:

- what services are available for newly arrived migrants to support them upon reception; what specific steps are taken in the period following the arrival of migrants to assist them with matters such as those mentioned in the case-law of the Committee?
- what assistance, financial or otherwise, is available to migrants in emergency situations, in particular in response to their needs of food, clothing and shelter?
- is other help available from the state, in particular are there limits or restrictions on the access of working migrants to state welfare provision, and if so, what those limits are?
- what rules govern the access to healthcare for migrants, in particular in emergency?
- is there any mechanism for monitoring and dealing with complaints?

### ***Services during the journey***

As regards the journey, the Committee recalls that the obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the state is not responsible. In such cases, the need for reception facilities would be all the greater (Conclusions V (1975), Statement of Interpretation on Article 19§2).

The Committee notes that no large scale recruitment of migrant workers has been reported in the reference period. It asks what requirements for ensuring medical insurance, safety and social conditions are imposed on employers, shall such recruitment occur, and whether there is any mechanism for monitoring and dealing with complaints.

#### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 3 - Co-operation between social services of emigration and immigration states*

The Committee takes note of the information contained in the report submitted by Portugal.

The Committee recalls that the scope of this provision extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin (Conclusions XIV-1 (1998), Belgium).

It also recalls that formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient. Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1996), Norway), it holds that there must still be established links or methods for such collaboration to take place.

The co-operation required entails a wider range of social and human problems facing migrants and their families than social security (Conclusions VII, (1981), Ireland). Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The Committee recalls that it has previously assessed the co-operation between social services of emigration and immigration states ([Conclusions 2011](#)) and found it to be in conformity with the Charter. It will focus in the present assessment on any changes or outstanding issues.

The report informs about implementation and revision of the First Plan for Intergration of Immigrants during the period 2011-2013. The new strategy took into consideration the importance of reinforcing the variety of sectors where integration should occur: employment, health, education, justice, housing, culture and language, civic participation, human trafficking, including crosscutting themes such as gender issues, racism and discrimination, and also the promotion of diversity and intercultural dialogue. Migration Strategic Plan was adopted for the period 2015-2020, characterised by a holistic approach, involving 13 ministries and being defined around practical measures and organized into thematic sections.

The High Commission for Migration is a public institute responsible for collaborating in the definition, implementation and evaluation of public policies regarding migrants. Under its supervision, in particular, runs the Migrant Support Program aimed at sharing knowledge, good practices and cooperation to improve care, information, protection and the monitoring of migrants and refugees.

National support networks were established, providing a range of Government and non-Government services and assistance for migrants under one roof in a variety of languages.

Finally, the report states that the Convention of Social Security, a bilateral convention between Portugal and a number of other states, plays a central role at the level of the cooperation between the social services of emigrant and immigrant countries. The Committee notes the information about the possible new cooperation agreements, above these which it has already acknowledged in its previous conclusions, and asks to be informed about any developments.



## *Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 19§3 of the Charter.

### **Article 19 - Right of migrant workers and their families to protection and assistance**

#### *Paragraph 4 - Equality regarding employment, right to organise and accommodation*

The Committee takes note of the information contained in the report submitted by Portugal.

It has already assessed the situation in this respect in its previous conclusion ([Conclusions 2011](#)) and found it in conformity with the Charter. It will focus its assessment on any changes or outstanding issues.

### ***Remuneration and other employment and working conditions***

The Committee recalls that States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training, promotion, as well as vocational training (Conclusions VII (1981), United-Kingdom).

The situation has not changed in this respect. Foreign workers with authorisation to exercise a subordinate professional activity in the national territory enjoy the same rights and are subject to the same duties as national workers (see for more details [Conclusions 2011](#)). To provide a full picture of the legal framework, the report submits that in the reference period a short-stay visa for seasonal work for a period equal to or less than 90 days was introduced, followed by a temporary stay visa for 90 days to 9 months. The 6-month visa was eliminated. All unemployed immigrant citizens or employees who intend to change their employment can still be registered for employment provided that they have a valid title or stay or a residency qualifying them for the exercise of subordinate professional activity. Similarly, they have access to specialists interventions, including vocational guidance and employment measures and integration into the labour market, same as national citizens.

### ***Membership of trade unions and enjoyment of the benefits of collective bargaining***

The Committee recalls that this sub-heading requires States to eliminate all legal and de facto discrimination concerning trade union membership and as regards the enjoyment of the benefits of collective bargaining (Conclusions XIII-3 (1995), Turkey). This includes the right to be founding member and to have access to administrative and managerial posts in trade unions (Conclusions 2011, Statement of interpretation on Article 19§4(b)).

The Committee refers to its previous conclusion, where it noted that migrant workers were entitled to join and form trade unions and benefit from collective agreements. No changes have been reported.

### ***Accommodation***

The Committee recalls that States shall eliminate all legal and de facto discrimination concerning access to public and private housing (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§111-113). It also recalls that there must be no legal or de facto restrictions on home-buying (Conclusions IV (1975), Norway), access to subsidized housing or housing aids, such as loans or other allowances (Conclusions III (1973), Italy).

The Committee notes in this respect that there have been no changes to the housing rights for migrant workers; governmental housing programmes benefit immigrants on the same footing as Portuguese nationals (see [Conclusions 2011](#)).

### ***Monitoring and judicial review***

The Committee recalls that it is not enough for a government to demonstrate that no discrimination exists in law alone but also that it is obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning the rights secured by Article 19§4 of the Charter (Conclusions III (1973), Statement of interpretation).

In particular, the Committee considers that in order to monitor and ensure that no discrimination occurs in practice, States Parties should have in place sufficient effective monitoring procedures or bodies to collect information, for example disaggregated data on remuneration or information on cases in employment tribunals (Conclusions XX-4 (2015), Germany).

The Committee further recalls that under Article 19§4(c), equal treatment can only be effective if there is a right of appeal before an independent body against the relevant administrative decision (Conclusions XV-1 (2000) Finland). It considers that existence of such review is important for all aspects covered by Article 19§4.

In addition to the extensive information assessed by the Committee in its previous conclusion (see for more details [Conclusions 2011](#)), the report submits that the National Plan for Integration of Immigrants 2010-2013 intensified inspections in the workplace, promoting citizenship and gender equality and combating illegal use of labour. The Committee asks the next report to provide more details on how it benefits migrant workers in practice.

Finally, the report provides extensive statistics on immigrant workers and unemployed foreigners.

#### *Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 19§4 of the Charter.

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 5 - Equality regarding taxes and contributions*

The Committee takes note of the information contained in the report submitted by Portugal.

The Committee recalls that this provision recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions (Conclusions XIX-4 (2011), Greece).

There have been no changes to the situation which it has previously considered to be in conformity with the Charter. The report confirms that foreign or stateless person who is authorized to carry out a subordinate professional activity in Portugal enjoys the same rights and is subject to the same obligations as an employee with a Portuguese nationality.

The Committee asks that the next report provide up-to-date information, including explicit reference to equal treatment in relation to employment contributions other than taxes, such as mandatory pension payments, unemployment insurance payments or social insurance contributions.

*Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 19§5 of the Charter.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 6 - Family reunion*

The Committee takes note of the information contained in the report submitted by Portugal.

### ***Scope of the provision***

This provision obliges States Parties to allow the families of migrants legally established in the territory to join them. The worker's children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age of majority in the receiving State. "Dependent" children are understood as being those who have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies (Conclusions VIII (1984) Statement of Interpretation on Article 19§6).

The Committee has assessed the scope of the right to family reunion in its previous conclusions (most recently in [Conclusions 2011](#)) and considered it to be in conformity with the Charter. No changes have been reported.

### ***Conditions governing family reunion***

The Committee recalls that a state must eliminate any legal obstacle preventing the members of a migrant worker's family from joining him (Conclusions II (1971), Cyprus). Any limitations upon the entry or continued present of migrant workers' family must not be such as to be likely to deprive this obligation of its content and, in particular, must not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands; Conclusions 2011, Statement of Interpretation on Article 19§6).

The Committee furthermore recalls taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not adopt a blanket approach to the application of relevant requirements, so as to preclude the possibility of exemptions being made in respect of particular categories of cases, or for consideration of individual circumstances (Conclusions 2015, Statement of Interpretation on Article 19§6).

The Committee has assessed the conditions governing family reunion in its previous conclusions ([Conclusions 2011](#), [Conclusions 2006](#)) and deferred its decision, awaiting additional information on relevant requirements for an unification.

In reply, the report submits that there is no requirement regarding the length of residence prior to the exercise of the right to the family being reunited. As for requirement of sufficient means, these are defined in a Ministerial Order from 2011 and based on the minimum wage (the first adult is entitled to 100% of the minimum wage, the second adult or more is entitled to 50%, and children up to the age of eighteen years old are entitled to 30%).

The Committee notes that during the reference period there were 145 rejections of requests for family reunification and that data on the reasons for rejection are not available. It requests the next report to provide statistics on the numbers of applications granted. Most importantly, it asks, in this respect, whether an effective mechanism of appeal or review exists, providing an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness (see Conclusions 2015, Statement of Interpretation on Article 19§6).

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 19§6 of the Charter.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 7 - Equality regarding legal proceedings*

The Committee takes note of the information contained in the report submitted by Portugal.

### ***General principles***

The Committee recalls that States must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals (Conclusions 2015, Armenia).

It further recalls that any migrant worker residing or working lawfully within the territory of a State Party who is involved in legal or administrative proceedings and does not have counsel of his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings (Conclusions 2011, Statement of interpretation on Article 19§7).

### ***Assessment of the situation in the reference period***

The Committee notes that it previously assessed the legal framework relating to access to free legal assistance, legal aid and interpreter for migrant workers in judicial proceedings concerning the rights guaranteed by Article 19§7 ([Conclusions 2011](#)) and found it to be in conformity with the requirements of the Charter, pending information on whether the relevant principles applied also to administrative proceedings.

In reply, the report confirms that legal aid is provided in the national law to both Portuguese nationals and foreign citizens in equal terms and it applies to legal and administrative proceedings. It includes legal advice – consultation with a lawyer for technical clarification on the law applicable to specific questions or cases involving legitimate personal interests or rights being infringed or threatened and legal aid – appointment of lawyer and payment of his fees or payment of the fees of the public defender, waiver of legal costs or the possibility of paying them in instalments and assignment of an implementing agent.

The obligation of having assistance by an interpreter in legal proceedings is provided for in the Civil Proceedings Code. When foreigners are to be heard in the course of the proceedings, an interpreter must be appointed when the interest of justice so require. When written documents in a foreign language are presented without translation, the judge, either officially or at the request of one of the parties, orders the translation to be included by the presenter.

The report states that the Administrative Proceedings Code contains no provisions on interpreters or translations. The Committee asks whether parties to administrative proceedings may request translation or interpretation and what would be the prerequisites to grant it.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 19§7 of the Charter.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 8 - Guarantees concerning deportation*

The Committee takes note of the information contained in the report submitted by Portugal.

### **General principles**

The Committee has interpreted Article 19§8 as obliging 'States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality' (Conclusions VI (1979), Cyprus). Where expulsion measures are taken they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of Interpretation on Article 19§8, Conclusions 2015).

### **Guarantees concerning deportation**

In its previous conclusion (Conclusions 2011) the Committee considered that the situation was not in conformity with Article 19§8 of the Charter on the grounds that migrant workers might be expelled on grounds which possibly went beyond what was permitted by the Charter: interference with the exercise of political rights reserved to Portuguese citizens and justified suspicion of committing or intention to commit serious criminal acts. The Committee sought further information on how these grounds were interpreted.

The report states that the Portuguese Constitution ensures foreigners and stateless persons residing in Portugal have the same right to equal treatment as Portuguese nationals. The equal treatment does not, however, include political rights, restricting them to Portuguese citizens. A foreigner who illegally exercises political rights may endanger national security and thus a deportation ordered on this ground is justified under the Charter. Another ground for deportation transposes to the national legal framework the Convention Implementing the Schengen Agreement for situations in which a threat to public policy, public security or to national security may arise. Accordingly, an alien of whom there are serious grounds to believe that s/he has committed serious criminal offences or in respect of whom there is clear evidence of an intention to commit such offences in the territory of a state party may be deported. In both cases, the expulsion may only be determined by a domestic court and there is a right to appeal against the decision with a suspensive effect.

The Committee considers that the grounds for expulsion referred to above fall within the scope of permissibility under the Charter. In the light of its Statement of Interpretation, it asks for a detailed information on the assessment of proportionality of an expulsion order in this respect by the domestic courts. In particular, it wishes to know whether the courts take into account all aspects of the non-national's behaviour and all relevant circumstances, as well as the length of time of his/her presence in the territory of the State, connection or ties with both the host state and the state of origin, as well as the strength of any family relationships.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.



**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 9 - Transfer of earnings and savings*

The Committee takes note of the information contained in the report submitted by Portugal.

This provision obliges States Parties not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country (Conclusions XIII-1 (1993), Greece).

The Committee notes that there have been no changes to the situation (described in detail in the preceding report) which it has previously found to be in conformity with the Charter ([Conclusions 2011](#)).

*Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 19§9 of the Charter.



**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 10 - Equal treatment for the self-employed*

The Committee takes note of the information contained in the report submitted by Portugal.

On the basis of the information in the report the Committee notes that there continues to be no discrimination in law between migrant employees and self-employed migrants in respect of the rights guaranteed by Article 19.

However, in the case of Article 19§10, a finding of non-conformity in any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under that paragraph, because the same grounds for non-conformity also apply to self-employed workers. This is so where there is no discrimination or disequilibrium in treatment.

The Committee has found the situation not to be in conformity with Article 19§12. Accordingly, for the same reason as stated in the conclusion on the abovementioned Article, the Committee concludes that the situation in Portugal is not in conformity with Article 19§10 of the Charter.

*Conclusion*

The Committee concludes that the situation in Portugal is not in conformity with Article 19§10 of the Charter as the ground of non-conformity under Article 19§12 applies also to self-employed migrants.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 11 - Teaching language of host state*

The Committee takes note of the information contained in the report submitted by Portugal.

The Committee recalls that the teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into the world of work and society at large. States should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age (Conclusions 2002, France).

Article 19§11 requires that States shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities. It considers that a requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible (Conclusions 2011, Norway).

The language of the host country is automatically taught to primary and secondary school students throughout the school curriculum but this is not enough to satisfy the obligations laid down by Article 19§11. The Committee recalls that States must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country (Conclusions 2002, France).

The Committee notes that the situation which it previously found to be in conformity is unchanged (see [Conclusions 2011](#) for a comprehensive assessment).

The report provides further details concerning language courses and technical language courses addressed to migrant communities, available free of charge and without any waiting lists to all foreign citizens (employed or unemployed) aged 18 years and above. In 2017, the program covered 425 training sessions for over 10,000 participants. Children and students under 18 years old receive language education within the education system, which provides Portuguese as a Foreign Language classes at the primary education level, as well as in the scientific-humanistic courses and in the specialized artistic courses at the secondary education level. The classes aim to provide a response to the urgent needs of students who have recently entered the education system and are at a disadvantage compared to students who are native speakers of Portuguese and who have followed the national curriculum.

The report also submits the most recent relevant statistical data.

### *Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 19§11 of the Charter.

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 12 - Teaching mother tongue of migrant*

The Committee takes note of the information contained in the report submitted by Portugal.

The Committee recalls that according to its case law, States must promote and facilitate, as far as practicable, the teaching in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory. In practical terms, States should promote and facilitate the teaching of the mother tongue where there are a significant number of children of migrants who would follow such teachings (Conclusions 2011, Statement of interpretation on Article 19§12).

The Committee deferred its previous conclusion ([Conclusions 2011](#)), considering it lacked information necessary to assess whether the situation was in conformity with the Charter; in particular, on how many children benefited from mother tongue language teaching and what were the languages taught.

No report was submitted in 2015. The present report states that the Portuguese education system does not offer the teaching of a mother tongue to migrant children. The Plan for Integration of Immigrants is oriented towards the learning of Portuguese as a foreign language. As regards mother tongue, the Plan encourages the reading of literary works in several languages to be developed in schools.

The Committee notes from previous report that some voluntary private initiatives provide mother tongue lessons to migrants (see [Conclusions 2011](#)), however, no detailed information has been submitted in this respect. The Committee has accepted in its case-law under Article 19§12, that the teaching of the migrants' mother tongue may take place in other contexts than within the school systems, namely through voluntary associations or non-governmental organisations supported in this task by the public authorities. It requests detailed information and statistics concerning any entities which provide education in a language other than Portuguese and asks what steps the government has taken to facilitate the access of migrant children to such education. In the meantime, the Committee considers that the information in its disposal is not sufficient to demonstrate that the situation is in conformity with the Charter.

*Conclusion*

The Committee concludes that the situation in Portugal is not in conformity with Article 19§12 of the Charter on the ground that it has not been established that the teaching of the mother tongue to migrant workers' children is adequately promoted and facilitated.

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 1 - Participation in working life*

The Committee takes note of the information contained in the report submitted by Portugal.

It already examined the situation with regard to the right of workers with family responsibilities to equal opportunity and treatment (employment, vocational guidance and training, conditions of employment, social security, child day care services and other childcare arrangements). It will therefore only consider the recent developments and additional information.

### ***Employment, vocational guidance and training***

In its previous conclusion (Conclusions 2011), the Committee asked whether the measures mentioned included specific programmes for workers with family responsibilities.

The report indicates that there are no specific training programmes for workers with family responsibilities, but there is financial support to subsidise expenses arising from having dependent family members while attending training (up to the monthly maximum of 50% of the value of the social support index). However, the financial support for covering care for children or other dependants when employees attend training does not apply to employees in the public sector.

According to the report, employers must provide employees returning to work after leave for family reasons with training and continuous professional development to promote their full reintegration.

### ***Conditions of employment, social security***

The Committee understands that the situation which it previously found to be in conformity with the Charter (Conclusions 2011) has not changed during the reference period, and therefore reiterates its finding of conformity on this point.

### ***Child day care services and other childcare arrangements***

The Committee recalls that, as Portugal has accepted Article 16 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

### *Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 27§1 of the Charter.

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 2 - Parental leave*

The Committee takes note of the information contained in the report submitted by Portugal.

It has already examined the situation on parental leave in its previous conclusion (Conclusions 2011). It found that the situation was in conformity with Article 27§2 of the Charter. It will therefore only consider the recent developments and additional information.

The report points out that Article 51(1) of Law No. 7/2009 of 9 April 2009 revising the Labour Code provides that the father and mother are entitled to supplementary parental leave of three months (for each parent) to care for a child. The leave is an individual, non-transferable entitlement. It may be taken up to the child's sixth birthday, on a full-time basis for three months, on a part-time (50%) basis for a period of 12 months per parent or on an alternating basis.

This supplementary parental leave is remunerated at 25% of average earnings for three months for each parent. The report indicates that only applicants who, alone or together with other household members, have assets not exceeding 240 times the value of the social support index (€421.32 in 2017) are entitled to parental social allowances.

### *Conclusion*

The Committee concludes that the situation in Portugal is in conformity with Article 27§2 of the Charter.

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 3 - Illegality of dismissal on the ground of family responsibilities*

The Committee takes note of the information contained in the report submitted by Portugal.

#### ***Protection against dismissal***

The report states that protection from dismissal is governed by the Labour Code (as amended) in the private sector, and by the General Public Service Labour Law (Law No. 35/2014) which came into force on 1 August 2014, in the public sector. The dismissal of a worker on parental leave is automatically presumed to be unlawful, and the employer must provide evidence that the grounds for dismissal are valid. Moreover, the dismissal of workers on parental leave requires a prior formal opinion of the competent authority in the field of equal opportunities between men and women (CITE).

In its previous conclusion (Conclusions 2011), the Committee asked if employees were also protected against dismissal because of obligations towards other members of their immediate family who required care (elderly parents, for example). In reply, the report states that under Article 252 of the Labour Code, workers have the right to be absent from work for up to 15 days a year to provide urgent and essential assistance in the event of the illness or injury of a family member (spouse, partner, parents and in-laws, grandparents, brothers or sisters). A further 15 days a year may be requested to provide urgent care in the event of a disability or chronic illness affecting a spouse or a non-marital partner. Any dismissal on the ground of such absences is considered unlawful.

#### ***Effective remedies***

In its previous conclusion (Conclusions 2011), the Committee asked if there was an upper limit on the sum that could be awarded as compensation. If so, it asked whether this upper limit covered compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage could also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It asked whether both types of compensation were awarded by the same courts, and how long on average it took courts to make their rulings.

In reply, the report states that, if the dismissal is found to be unlawful, employers are ordered to pay workers compensation for any pecuniary or non-pecuniary damage incurred and may not refuse to reinstate them (without prejudice to their job category or length of service), save in the circumstances provided for in Articles 391 and 392 of the Labour Code. If the employee does not wish to be reinstated or if this solution proves impossible, the court will award compensation ranging between 30 and 60 days of the base remuneration, plus any additional amounts for seniority for each year of service (the total cannot be less than the equivalent of six months of remuneration and the applicable seniority bonuses). The Committee understands from the report that there is no upper limit on the sum that can be awarded as compensation.

The Committee also refers to its conclusion under Article 8§2 of the Charter (Conclusions 2019) with regard to effective remedies, and considers that the situation is in conformity on this point.

#### ***Conclusion***

The Committee concludes that the situation in Portugal is in conformity with Article 27§3 of the Charter.

**Article 31 - Right to housing**  
*Paragraph 1 - Adequate housing*

The Committee takes note of the information contained in the report submitted by Portugal.

In its previous conclusion (Conclusions 2011) the Committee asked whether discrimination on grounds other than racial and ethnic origin (such as those mentioned in Article E of the Charter) is forbidden with respect to the right to housing in general.

The report states that the right of access to housing programmes is guaranteed to all social groups, communities and ethnic groups, on the basis of the non-discrimination principle. Access to social housing is based exclusively on each household's socio-economic conditions.

***Criteria for adequate housing***

The Committee refers to its previous conclusion (Conclusions 2011) for a description of the constitutional framework for the protection of the right to adequate housing (Article 65§1 of the Constitution). In response to the Committee's request on whether the constitutional provision at issue had been interpreted as including all the characteristics of "adequate housing" according to its case-law, the report stresses that "adequate housing" has been interpreted as the house or building for housing that is capable of adequately satisfying the housing needs of a particular person or household, taking into account, in particular, its composition, the typology of housing and habitability and safety conditions (it refers to the Council of Ministers Resolution 50-A, of 2 May 2018, outside the reference period).

The Committee notes in this connection that Portugal did not have a national housing framework law, despite the existence of a strong constitutional provision such as the one mentioned above (see Report of the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 28 February 2017, following her mission to Portugal in 2016). The Committee asks the next report to specify whether there are any concrete regulations on health and sanitation requirements of residences as well as on the conditions (i.e. the minimum living space size) under which housing is considered overcrowded. It also asks the report to specify whether these rules apply to the entire housing stock (new buildings and existing housing stock).

The Committee takes note of the information provided in the report concerning the measures that have been taken to improve the situation of inadequately housed persons. The report refers to the special rehousing programme created in 1993 (*Plano Especial de Realojamento*, PER), aimed at the eradication of shacks in the metropolitan areas of Lisbon and Porto. Although the programme reached an implementation rate of 72%, there were still 2 531 families waiting to be rehoused under the PER. Furthermore, according to the National Survey of Rehousing Needs (2017), 18 696 families were registered as in need of rehousing. The report stresses that in the metropolitan areas of Lisbon and Porto there has been an increase in the construction of shacks or similar in areas not fit for construction. The report also mentions other programmes managed by the Institute for Housing and Urban Rehabilitation (IHRU) which are aimed at urban rehabilitation and resolution of cases of severe precarious housing, including cases of destruction of dwellings by calamities, weather conditions or other natural disasters (for example, following the fires of August 2016 in Madeira). The Committee asks the next report to provide updated information on the implementation of these and other measures aimed at improving adequate housing.

Despite the Committee's request (Conclusions 2011), the report does not provide relevant figures or statistics on adequacy of dwellings. The Committee asks the next report to provide such figures (living space, water, heating, sanitary facilities, electricity).

Pending receipt of the information requested, the Committee reserves its position as regards the effective access to and enjoyment of adequate housing.

### ***Responsibility for adequate housing***

In its previous conclusion (Conclusions 2011), the Committee asked whether the Institute for Housing and Urban Rehabilitation (IHRU) could impose sanctions on those who disregarded construction and/or maintenance obligations. It also asked what guarantees existed with respect to the provision of essential services such as water, electricity and telephone.

In response to the Committee's requests, the current report states that it is not legally foreseen that the IHRU may exercise sanctioning power against owners and/or landlords who do not comply with construction and/or maintenance obligations. Concerning the provision of essential services, it explains that there are social tariffs for water, electricity and gas for families in situation of socioeconomic vulnerability.

The Committee asks the next report to explain how the adequacy of the entire housing stock (whether rented or not, privately or publicly owned) is checked, in particular whether regular inspections are carried out and by which authorities. Meanwhile, it reserves its position on this point.

### ***Legal protection***

The Committee previously asked (Conclusions 2011) for detailed information on the legal protection of the right to housing, in particular as regards access to available remedies. The report provides no information.

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies (administrative review, etc.) (Conclusions 2003, France). Any appeal procedure must be effective (European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §78).

The Committee reiterates its question and asks the next report to describe which cases concerning the right to adequate housing might be brought before the courts and whether extra-judicial remedies are also available concerning this right. In this connection, the Committee notes from the Report of the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (28 February 2017, following her mission to Portugal in 2016) that the Ombudsperson may receive complaints against actions or omissions by public authorities and submit recommendations, for example in cases concerning eviction and demolition of unauthorized constructions. The Committee asks the next report to provide information on the types of housing complaints that may come before the Ombudsperson and their outcome. It would also like the next report to provide information on any existing case-law of the Constitutional Court on the right to adequate housing.

The Committee further notes that Portugal has recently passed a basic housing law (Law No. 83/2019, outside the reference period). It asks the next report to describe what are the legal remedies provided for by this law for the protection of the right to adequate housing.

In the meantime the Committee reserves its position on this point. If the necessary information is not provided in the next report, there will be nothing to demonstrate that the situation in Portugal regarding the legal protection of the right to adequate housing is in conformity with Article 31§1.

### ***Measures in favour of vulnerable groups***

The Committee previously concluded (Conclusions 2011) that the situation in Portugal was not in conformity with Article 31§1 of the Charter on the ground that the measures taken by public authorities to improve the substandard housing conditions of most Roma were inadequate.



The Committee also refers to its Findings 2018 on the follow-up to decisions on collective complaints (decision on the merits in *European Roma Rights Centre v. Portugal*, Complaint No. 61/2010, 30 June 2011). The Committee took note of the measures adopted in the framework of the National Strategy for the Integration of Roma Communities (2013-2020), including rehousing operations and rehabilitation of neighbourhoods where Roma people lived.

The Committee referred to the latest ECRI report on Portugal (2018) which stated that the positive initiatives adopted by the Portuguese authorities were still far from reaching all Roma communities, particularly in Lisbon. In the light of this report, the Committee considered that, despite the progress made, the situation had not been brought into conformity with Article 31§1 of the Charter.

The present report refers to a number of rehousing and rehabilitation operations completed during the reference period. It also mentions a study on the characterization of housing conditions of Roma residents in Portugal that was carried out in 2013-2014, within the framework of the National Strategy mentioned above. According to this study, 7 456 houses were occupied by Roma families, with more than 1 900 shacks among them.

The Committee further notes that other international bodies and actors have expressed concern about the housing situation of Roma in Portugal during the reference period (see United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Portugal, 8 December 2014; Report of the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 28 February 2017, following her mission to Portugal in 2016, §43 and 70-73).

In the light of the foregoing, the Committee considers that the situation is not in conformity with Article 31§1 of the Charter on the ground that the measures taken by public authorities to improve the substandard housing conditions of Roma in Portugal are inadequate. It requests the next report to provide detailed information on all the steps taken to improve the situation.

The Committee also notes from the report that some measures have been adopted to guarantee the right to adequate housing for victims of domestic violence and refugees, making the price of housing more accessible to persons belonging to these groups. The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015) and asks the next report to provide updated information on the measures taken to ensure adequate housing to refugees.

The Committee observes that according to the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (report of 28 February 2017, following her mission to Portugal in 2016, § 74-75), some persons of African descent are among the most deprived in terms of access to adequate housing and live in informal settlements in inadequate conditions. It therefore asks the Portuguese Government to comment on this information in its next report and to specify whether there are any specific measures or programmes with regard to adequate housing targeting these persons.

The Committee finally notes from the report that some housing measures targeted young people. For example, the Porta 65 Youth Programme- Housing for Youth aims at supporting young tenants (aged between 18 and 35) with rent subsidies. Since its creation, this programme has supported approximately 104,176 beneficiaries. The Committee notes however that the proportion of young people (aged between 18 and 24 years) overburdened by housing costs in Portugal has considerably increased from 2007 to 2017 (+36%) (see the European Index of Housing Exclusion 2019, FEANTSA and Abbé Pierre Foundation). According to the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this

context (report of 28 February 2017, following her mission to Portugal in 2016, §35), about 57% of the population between 18 and 34 years of age continued to live with their parents, mostly owing to unemployment, low wages and the temporary nature of many work contracts. The Committee asks the next report to provide information on the evolution of the housing cost for young people.

#### *Conclusion*

The Committee concludes that the situation in Portugal is not in conformity with Article 31§1 of the Charter on the ground that the measures taken to improve the substandard housing conditions of Roma in Portugal are inadequate.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

The Committee takes note of the information contained in the report submitted by Portugal.

The previous report indicated that a survey of 2009 had indicatively identified 2 126 homeless persons in Portugal. The current report indicates that in 2016 the Social Security registered a total of 4 003 beneficiaries of “active processes of homelessness”. It appears from the report that there are no consistent data on the overall number of homeless persons. This lack of reliable data has been highlighted by the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (report of 28 February 2017 following her mission to Portugal in 2016, §49; see also FEANTSA country fiche Portugal, 2017).

The Committee asks the next report to provide up-to-date and reliable figures on the overall number of homeless persons, including those who are not registered as Social Security beneficiaries.

### ***Preventing homelessness***

In its previous conclusion (Conclusions 2011), the Committee asked about the results in the implementation of the National Strategy for the Integration of Homeless Persons (ENIPSA 2009-2015), the first national strategy in this field.

In its reply, the report indicates that an evaluation report of the strategy was produced in July 2017 and presented at the National Assembly. The conclusions of this evaluation report highlighted several positive results in areas such as the dissemination of a single definition of “homeless person” at the national level; the creation of Centres for Planning and Homeless Intervention (NPISA); measures targeting prisoners at the time of release; the operation of a national service emergency line for emergency accommodation; ensuring specialist support when leaving temporary accommodation; providing vocational training and employment solutions; and ensuring access to health care, in particular for homeless persons with mental health issues.

The Committee further notes from the report that on 25 July 2017 a new strategy was approved by the Council of Ministers for the period 2017-2023 (ENIPSA 2017-2023). The new strategy is based on three strategic areas: promoting awareness of the homelessness phenomenon; strengthening intervention aiming at promoting the integration of homeless persons; and coordination, monitoring and evaluation mechanisms. An Inter-ministerial Commission has been created to ensure the definition, articulation and execution of the ENIPSA 2017-2023. To develop and monitor the strategy, a group constituted with representatives from public and private entities, has also been established. For instance, the Institute of Employment and Vocational Training is part of this group and promotes action to raise the awareness of employers on the importance of the reintegration of homeless people.

The Committee takes note of all the positive measures mentioned in the report. It observes that several stakeholders have recognized that the development and adoption of the ENIPSA, the first of its kind in southern Europe, led to positive change in encouraging local responses to homelessness (United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, report of 28 February 2017 following her mission to Portugal in 2016, §52). However, several failures were also identified, in particular the lack of transparency in resource allocation, weak horizontal coordination at the State level, and a failure to implement monitoring and evaluation mechanisms (ibid., §53; see also FEANTSA country fiche Portugal 2017). The Committee asks the next report to provide up-to-date information on the implementation and assessment of the new strategy 2017-2023. In

particular, it asks whether enough resources (human, financial, etc.) have been allocated to guarantee its effective implementation.

### ***Forced eviction***

In its previous conclusion (Conclusions 2011), the Committee asked about the legal protection of persons threatened by eviction and the rules governing the procedures of eviction. The Committee also asked the next report to include figures concerning evictions, rehousing or financial assistance provided following eviction. The Committee also noted that there had been allegations of arbitrary evictions and demolition of Roma housing without any alternative accommodation being offered.

The report refers to the Special Rehousing Programme (PER) created in 1993 and aimed at the eradication of shacks and precarious housing units in the metropolitan areas of Lisbon and Porto (see conclusion under Article 31§1). To this end, the municipalities concerned and the central governmental agencies entered into an agreement with the commitment to carry out a census of precarious housing units in their respective territories and to relocate the families and demolish the houses in which they lived. The report mentions two main rehousing operations carried out in 2014 and 2015. In both operations Roma people were concerned.

The Committee observes that the report does not provide any of the information requested concerning the general legal framework for the protection of persons threatened by eviction, including rehousing operations. The Committee observes however from the report that Law no. 43/2017 introduced significant changes to the New Urban Lease Regime (NRAU) established in 2012. In this respect, as part of the process of transition from the old rents to the new scheme, some adjustments were made with a view to extending the transition period to eight years for tenants with low incomes. The Committee notes that some concerns have been raised about the NRAU, in particular with regard to a “fast-track” or special eviction procedure, which is mainly an extrajudicial mechanism based on the online National Rental Counter administered by the Ministry of Justice (see the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, report of 28 February 2017 following her mission to Portugal in 2016, §§37-38).

The Committee thus reiterates its request for information on the legal framework for the protection of persons threatened by eviction and asks the next report to provide information regarding the procedural guarantees applicable to the special eviction procedure mentioned above. In particular, the Committee asks for the next report to clarify whether tenants subject to this procedure (cases of rent arrears or termination of contract) have effective access (in terms of time, legal aid, etc.) to a court with a view to challenging an eviction order. The Committee also asks the next report to make reference to any relevant case-law on persons threatened by eviction.

As regards forced evictions and demolitions of shacks and unconventional dwellings without guarantees or alternative accommodation being offered, the Committee notes that such cases continue to be reported, in particular concerning people of African descent (United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, report of 28 February 2017 following her mission to Portugal in 2016, §§43-44; see also the latest ECRI report on Portugal of 2018, §§58 and 82, outside the reference period). The Committee therefore asks the next report to provide complete and up-to-date figures on the number of such operations and to clarify whether any procedural guarantees for the protection of the persons concerned exist.

In the meantime, the Committee considers that the situation in Portugal is not in conformity with Article 31§2 on the ground that it has not been demonstrated that there is adequate legal protection for persons threatened by eviction.



## ***Right to shelter***

The Committee previously (Conclusions 2011) asked clarifications on whether:

- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- shelter/emergency accommodation is provided regardless of residence status;
- the law prohibits eviction from shelters or emergency accommodation.

The report explains that homeless people can be accommodated in Temporary Accommodation Centres, whose aim is to provide accommodation to adults in need for a limited period of time until they are referred to the most adequate social service. The Insertion Communities are facilities with or without accommodation, whose action is aimed at the social integration of groups that are in a situation of social exclusion, including the homeless. The report stresses that the number of cooperation agreements and users of these centres has seen no significant evolution during the reference period (932 beneficiaries of Temporary Accommodation Centres and 2 627 beneficiaries of Integration Communities in 2017).

The Committee notes that the report does not contain any information concerning the security/health requirements of shelters/emergency accommodation. It reiterates its request and asks whether emergency accommodation can also be provided in hotels/pensions and whether these establishments meet the security requirements and health and hygiene standards.

In reply to the other questions raised by the Committee, the report notes that emergency accommodation is provided irrespective of the person's legal situation in Portugal. It further indicates that the law does not prohibit eviction from shelters or emergency accommodation centres.

The Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited. The Committee therefore considers that the situation in Portugal is not in conformity with Article 31§2 on the ground that the law does not prohibit eviction from shelters or emergency accommodation without the provision of alternative accommodation.

### *Conclusion*

The Committee concludes that the situation in Portugal is not in conformity with Article 31§2 of the Charter on the grounds that:

- it has not been established that there is adequate legal protection for persons threatened by eviction;
- the law does not prohibit eviction from shelters or emergency accommodation without the provision of alternative accommodation.

**Article 31 - Right to housing**  
*Paragraph 3 - Affordable housing*

The Committee takes note of the information contained in the report submitted by Portugal.

***Social housing***

In its previous conclusion (Conclusions 2011), the Committee asked that the next report contain figures about the shortage of housing, the impact of the different programmes in place on the most vulnerable groups and the remedies with respect to excessive waiting periods for the allocation of social housing.

In its reply to the Committee's requests, the report indicates that according to the National Housing Needs Survey carried out in 2017, there were 25 762 families living in inadequate housing such as "shacks and precarious constructions" and "degraded consolidated urban houses". With regard to the impact of the different programmes on vulnerable groups, the report mentions the special rehousing programme in the context of which several rehousing operations targeting Roma communities took place during the reference period (PER, see the conclusion under Article 31§1, "criteria for adequate housing"). With regard to excessive waiting periods for social housing, the report notes that given the inability to respond in a timely manner to all situations that reach the Institute of Housing and Urban Rehabilitation (IHUR), the IHUR informs citizens of other public measures for the provision of affordable housing (municipalities and other entities with houses under a supported tenancy system), offering alternative solutions to address the needs of families or at least support them during the waiting time for the allocation of a house.

The Committee also notes from the report that according to a survey carried out in 2015, there were approximately 120 000 social houses in stock, which represents about 2% of the national housing stock, with an average monthly rent of €56 per house. Furthermore, according to the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (report of 28 February 2017, following her mission to Portugal in 2016, §§54-60), the figure of social housing units seems rather low in the light of the national poverty rate. According to the same source, the average waiting period for the allocation of social housing was two years, although it could reach seven years in the municipalities of Lisbon and Porto for some categories of units.

The Committee positively notes that the Government has recently launched a "New generation of housing policies" strategy (May 2018, outside the reference period). This strategy establishes as a medium-term target increasing the share of public-supported housing within the overall housing stock from 2% to 5%, which represents an increase of 170 000 housing units.

The Committee therefore asks that the next report provide information on the implementation of this strategy. It also asks the Government to indicate data on the overall number of applications for social housing and on the average waiting time for the attribution of such housing. It wishes the next report to provide information on whether judicial or other remedies are available in case of excessive waiting periods for the allocation of social housing.

Meanwhile, the Committee considers that it has not been established that the provision of social housing is sufficient.

***Housing benefits***

In its previous conclusion (Conclusions 2011), the Committee asked for more information on the number of beneficiaries of housing support and on whether remedies were available for those who were refused housing support.

The report refers to the different types of financial support granted by the State to protect low-income and vulnerable categories of the population. Notably, it provides information on the Porta 65 Youth Program (support for rental accommodation for young people, with an average allowance of around €150, with a total of 104 176 beneficiaries), and the 2012 New Urban Lease Regime (NRAU). Under the latter regime, a housing rent allowance was established for the most vulnerable households (tenants who are 65 years old or older and persons with a degree of disability in excess of 60%) with rental contracts prior to 1990, in order to counteract the updating of frozen housing rents. At the end of 2017, there were 151 households with a rent allowance of this type. Finally, the PROHABITA Programme has provided financial support to households for rehousing in the event of natural disasters or emergency situations.

The Committee takes note of all these modalities of financial support. However, it observes that it is still not clear whether the existing forms of housing support constitute an individual right and whether judicial or other remedies exist for those who are refused housing support. It reiterates its questions and asks the next report to make reference to any relevant case-law on the subject. Pending receipt of this information, it reserves its position.

Finally, the Committee notes from the report that all persons, regardless of race, ethnicity, gender or nationality, are eligible for housing support. The only eligibility requirements concern the household income.

#### *Conclusion*

The Committee concludes that the situation in Portugal is not in conformity with Article 31§3 of the Charter on the ground that it has not been established that the provision of social housing is sufficient.