

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

# POLICY DEPARTMENT **C**

## CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

Justice, Freedom and Security

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Petitions

# The impact of the crisis on fundamental rights across Member States of the EU

## Country Report on Portugal

STUDY FOR THE LIBE COMMITTEE





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

# **The impact of the crisis on fundamental rights across Member States of the EU**

## **Country Report on Portugal**

### **STUDY**

#### **Abstract**

Upon request by the LIBE committee, this study looks into the impact of the economic crisis and the austerity measures which were introduced as a response thereto, to the enjoyment of a set of selected fundamental rights by individuals in Portugal. It also contains recommendations on how to make sure that the enjoyment of these rights is ensured in the future.

**DOCUMENT REQUESTED BY THE  
COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

**AUTHORS**

Mariana Rodrigues Canotilho, on behalf of Ius Gentium Conimbrigae

Under the supervision of Milieu Ltd. (Belgium), 112 Chaussée de Charleroi, B-1060, Brussels, tel: +32 2 514 3601; Fax +32 2 514 3603; Project Director: Emma Psaila, e-mail: emma.psaila@milieu.be, Project Manager: Aleksandra Ivankovic Tamamovic, e-mail: aleksandra.ivankovic@milieu.be; web address: <http://www.milieu.be/>

**RESPONSIBLE ADMINISTRATORS**

Roberta Panizza  
Sarah Sy  
Policy Department C: Citizens' Rights and Constitutional Affairs  
European Parliament  
B-1047 Brussels  
E-mail: [poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

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European Parliament, manuscript completed in February 2015. Given the continuously changing situation in the Member State under examination, the cut-off date for the data collection was set for 30 June 2014.

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## LIST OF ABBREVIATIONS

- CADE** Convention against Discrimination in Education
- CEDAW** Convention on the Elimination of All Forms of Discrimination against Women
- CRC** Convention on the Rights of the Child
- CRPD** Convention on the Rights of Persons with Disabilities
- ECHR** European Convention on Human Rights
- ESC** European Social Charter
- ICCPR** International Covenant on Civil and Political Rights
- ICESCR** International Covenant on Economic, Social and Cultural Rights
- IRS** Personal Tax (Imposto sobre o Rendimento Singular)
- IVA** Increased Value Tax (Imposto sobre o valor acrescentado)
- MoU** Memorandum of Understanding
- MP** Member of Parliament
- NHS** National Health Service
- RESC** Revised European Social Charter
- UDHR** Universal Declaration of Human Rights
- UNICEF** United Nations' Childrens' Fund
- WHO** World Health Organisation



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## EXECUTIVE SUMMARY

The impact of the crisis on Portugal was very severe. Unemployment has more than doubled since 2008, emigration has reached record numbers (more than 300,000 people have left the country in the last three years), and the GDP shrank back to 2000 levels. After a series of downgrades by rating agencies and serious economic difficulties, Portugal has negotiated a bailout programme with the European Commission, the European Central Bank and the International Monetary Fund (the so-called Troika), which imposed strict conditions. These conditions were transformed into austerity policies and concrete austerity measures, which affected a large number of fundamental rights enshrined in the Portuguese Constitution, in the ECHR, the ESC and many other catalogues of rights.

The economic crisis has had a very significant impact on children (the poverty rate among children, especially of those living with a single parent or in large families, is much higher than among the average population). Children's rights, especially the **right to education**, have been seriously affected by austerity measures. The State's expenditure on education has been visibly reduced. Children with special needs or disabilities have been particularly affected and the number of school dropouts has increased. Schools' resources have been reduced and schools' curricula have been reformed and more hours are now dedicated to Portuguese and Mathematics, with the suppression or reduction of artistic and sports subjects. The working conditions of teachers are also more difficult than a decade ago.

Other than education, austerity measures have affected the **right to healthcare**, and this is one of the citizens' main complaints. The closure of hospitals and other National Health Service - NHS units, the rise in healthcare fees and the reduction of free transportation of non-urgent patients have made it more difficult to access healthcare, especially for the elderly and the more isolated populations. Inequalities in the access to healthcare is therefore one of the main concerns.

However, the **right to work** has probably been the most affected fundamental right in the context of the economic crisis. It has been affected both by the crisis in itself (that led to a significant rise of unemployment) and by austerity measures. These measures included pay-cuts, reduction of severance payments and an increase in working hours without additional pay.

The **right to pensions** was also affected by austerity measures. Always threatened by the risks in the sustainability of the social system, they suffered pay-cuts from 2011 up to 2014; the age for retirement has increased (from 65 years until 2013 to 66 years in 2014 and 2015), and the rules for the calculation of the amount of pension have also changed and are now more severe, depending not only on the age and working history of the worker, but also on a sustainability factor related to the average life expectancy at 65 years of age in the year 2000.

The **right of access to justice** has also been affected by the crisis and austerity measures, although citizens' dissatisfaction with justice administration was reported long before the 2008-2014 period. The rise in justice fees and the implementation of the new judiciary map seem to be the most problematic issues.

Austerity measures have also affected other fundamental rights, such as some aspects of the rights at work, the **right to holidays** and the **right to collective bargaining**, as well as the **right to social security**. The number of paid days of leave has been reduced, the

rules for receiving unemployment benefits, the Social Insertion Income and family allowances have been changed and are much more strict. Finally, many collective conventions have been suspended and their effects have been significantly limited over time.

As a result of this, **protests and demonstrations** against austerity measures, organised both by Unions and social movements, have been very frequent in the 2008-2010 period. In fact, Portugal has seen some of the biggest demonstrations of the democratic regime during this economic crisis. The main concerns of the participants are usually the degradation of their living conditions, and what they perceive to be attacks on the Social State, in particular to the rights of workers, and the rights to health, education and social security. The relationship with police authorities has almost always been good, but there have been one or two episodes of contested police violence.

Austerity measures have been **monitored** at national level mainly through constitutional review. Opposition MPs, as well as other public officials (in some cases, even the President of the Republic and the Ombudsman) have challenged some of those measures before the Constitutional Court, who declared part of them unconstitutional. At international level, issues relating to austerity measures have been appreciated by the European Court of Human Rights and by the European Committee of Social Rights.

## **Recommendations:**

### General recommendations

Regarding proposals for improving the respect of fundamental rights in times of crisis, we must remember that austerity measures have to be regarded from a fundamental rights' perspective much more often. They need to be periodically re-evaluated by independent institutions, such as the Ombudsman's office. The priority given to deficit reduction has to be balanced with the need to maintain the minimum standards of social services, with health and education deserving special attention. Specific recommendations about the right to pensions, the right to work, the right to social security and the right to collective bargaining, made by national and international institutions and organisations, should be taken into account. A broader access to judicial review, namely at European Union level, would also be useful to ensure compliance with fundamental rights.

### Further monitoring mechanisms at EU level

We should not forget that this is not merely a national problem, but a European one. This is an issue that has been seriously discussed in Portugal: the lack of true national sovereignty to define economic and social policies, the country's dependence on the European Institutions and their role in the definition of public goals during the period of economic crisis. With this in mind, it would be interesting to be able to confront many of the austerity measures proposed by European Institutions in the MoU with the European Charter of Fundamental Rights and other fundamental norms of the Treaties. For this to happen, there has to be an easier access to the Court of Justice, both by citizens and their European representatives. If a group of MEPs at the European Parliament (and not the Institution itself) could ask for the annulment of an austerity measure previously approved by another European Institution, such as the measures included in the MoU under proposal of the European Commission and the European Central Bank, it would bring fundamental rights to the centre of the discourse about the crisis. For the Portuguese abstract review of constitutionality, for example, 1/10 of the MPs could, on their own (not depending on a

Parliament vote or decision) request a review of legislation that they think might violate the Constitution. This mechanism was used with the constitutional review of legislative austerity measures, which were asked by minority MPs, allowing the annulment of national norms that amounted to serious violations of fundamental rights. It has been quite useful at national level and would be interesting to consider at EU level.

### Specific recommendations

#### **Right to education**

Austerity policies and budget cuts have had a very significant impact on the quality of public schools. It would therefore be useful to adopt some measures to try to solve the more urgent problems. First of all, it is necessary to increase public investment in education. It would also be useful to reduce the maximum number of students per class, something that both teachers' and parents' associations consider to be one of the main obstacles to quality teaching. Lastly, it is urgent to reinvest in special education and to increase the support given to students with special needs, a field where austerity measures have had especially serious effects.

#### **Right to healthcare**

The effects of the austerity measures on the National Health Service are one of the most discussed in the media and by the public. It should therefore deserve special attention and be a primary field of adoption of policies that improve fundamental rights' protection. The main suggestions presented by the Portuguese Observatory of Health Systems and by the Gulbenkian Foundation are: to invest in Primary Care Units; to increase the resources dedicated to mental health and to the prevention of infectious diseases and diabetes (two areas where Portugal has a particularly severe problem); to adopt measures in order to improve the health and well-being of children, who have been especially affected by the crisis; and, finally, to promote equality in the access to healthcare (assessing and reviewing the norms regulating health fees and exemptions, transportation and the distribution of NHS units).

#### **Right to work**

The ILO makes several interesting recommendations regarding the right to work in Portugal, which was probably the most affected fundamental right during the period of economic crisis and adoption of austerity measures. First of all, active policies to promote employment are needed, especially policies that take into account the needs of small and medium-size companies, and give particular attention to very vulnerable groups (like young people). It would also be useful to promote stable working contracts, rather than temporary jobs, which have been one of the most significant tendencies of the Portuguese labour market in recent years. The ILO also suggests specific policies to address the issues of false independent labour and non-declared work, and an assessment of the results of labour law reforms (new flexibility measures, easier termination of contracts and reduction of severance payments), which do not seem to have been followed by more or better employment. Finally, the ILO calls for the reinforcement of social protection mechanisms, considered essential to support a healthy labour market.

#### *Adoption of economic policies oriented towards growth and employment*

In its latest Opinion about the Budget Strategy Plan for 2014-2018, the Portuguese Economic and Social Council argues for the renegotiation and redefinition of the calendar of consolidation of public finances, to allow for new economic policies, oriented towards growth and employment. The Council has also repeatedly stated that the priority given to

deficit reduction has to be balanced with the need to maintain the minimum standards of well-being and social cohesion. Social services and mechanisms of social transfer (such as unemployment benefits, minimum income, family allowances) in particular, occupy a very special position since they are both a source of spending and an instrument for the prevention and combatting of poverty. The Council also considers that the closure of several public services – health units, schools, courts, tax administration and social security offices – has caused social and spatial inequalities that need to be evaluated and taken into account.

### **Right to pension**

The Portuguese Social Security system, in particular the pensions' system, has been widely discussed in public, both by academics and specialists and by general public opinion. There are very different and even completely opposed views about its sustainability and the need for further reforms or, on the contrary, the need to reinstate some of the legal rules that were in place before the crisis. For this reason, it is difficult to make non-biased specific recommendations. One thing can, however, be said: the austerity and deficit reduction measures may not continue to treat pensioners worse than their fellow citizens, as has been made clear by constitutional jurisprudence. The Economic and Social Council has mentioned that the pay-cuts in pensions that have been adopted during the crisis are problematic in what regards equality criteria, and it has called for a serious public debate about the pensions' system, that takes into account the need to insure sustainability and to respect the rights of current pensioners, not forgetting that these two issues cannot be treated separately from the question of unemployment, which is the biggest overall threat to the financial balance of social security.

### **Right of access to justice**

The problems regarding the right of access to justice were noticed long before the financial crisis. A lack of resources seems to be the reason most frequently attributed to the deficiencies that have been shown in this study. Therefore, it would be important to reinforce both human and material resources assigned to the judicial system. An assessment of the impact of justice fees in the access to the system would also be important.

### **Right to social security**

According to both the Unicef and the Portuguese Observatory of Crisis and Alternatives, the changes in the rules of attribution of several social benefits (especially the minimum income, family allowances and the unemployment insurance system) have had very serious consequences for the number of people living in poverty or material deprivation; the situation of children is particularly worrying. Therefore, they both recommend a review of those rules and an increase in the State's economic support to the families, through these or other mechanisms. The adoption of national policies to fight against child poverty, in order to avoid its intergenerational transmission, would be particularly useful. A review of the current legal regime of the minimum income would be of great importance, as this social benefit has proved to have a noticeable impact in the combat against poverty and the number of beneficiaries has clearly decreased since 2010. The same can be said about unemployment benefits: an assessment of the social consequences of the rules implemented after 2010 should be considered, as well as a revision of those rules, in particular the time limits.

### **Right to collective bargaining**

The ILO calls for a redefinition of the collective bargaining system, because the clear decrease in the number of collective labour agreements may have serious economic and social consequences, especially as it tends to lead to salary reductions and overall worse labour conditions. Therefore, it would be important to study and implement a new system, not as centred in the salaries as the one that existed before the legal reforms adopted during the crisis. A better articulation between different levels of collective agreements is also advised, in order to increase the number of workers covered and to take into account the economic conditions and the particular circumstances of small companies, which are in the majority in Portugal.

# 1. IMPACT OF THE ECONOMIC CRISIS AND OVERVIEW OF THE MAIN MEASURES ADOPTED TO COPE WITH IT

## KEY FINDINGS

The impact of the crisis on Portugal was very severe. Unemployment has more than doubled since 2008, emigration has reached record numbers, and the GDP shrank back to 2000 levels. The country has negotiated a bailout programme with the European Commission, the European Central Bank and the International Monetary Fund (the so-called Troika), which implied strict conditions.

### 1.1. The impact of the crisis in Portugal

In total, the decrease of the Portuguese Gross Domestic Product (GDP) between 2008 and 2013 was around 7%<sup>1</sup>. In 2013, Portugal's economy shrank by 1.4%, bringing the country's GDP back to 2000 levels<sup>2</sup>. During the same period, internal investment fell by nearly 40%<sup>3</sup>. Inflation reached its highest value in 2011 at 3.6%, and it has been falling since then, staying at 0.4% in 2013.

Between 2008 and 2013 more than 500,000 jobs were eliminated, which led to a huge rise of unemployment (from 8.5% in 2008 to 16.4% in 2013). Unemployment is particularly high among young people (under 25), whose unemployment rate increased from 20.5% in 2008 to 38.1% in 2013<sup>4</sup>.

Emigration – which is related to unemployment numbers, because those who leave the country are no longer included in the statistics – reached impressive numbers as well. More than 100,000 people left the country in 2011, over 120,000 in 2012, and 128,000 in 2013<sup>5</sup>. Taking into account that Portugal has a population of approximately 10 million people, around 3.5% of its citizens have left the country during the last three years. Similar numbers can only be found back in the 1960s, during the dictatorship and the colonial war.

<sup>1</sup> - 7.4% = sum of annual growth rates between 2008 and 2013; Eurostat, 'Real GDP growth rate – volume', 07/02/2015.

<sup>2</sup> Eurostat, 'Real GDP growth rate – volume', 07/02/2015 and PORDATA, 'GDP and GDP per capita at constant prices (base=2006) in Portugal' (*PIB e PIB per capita a preços constantes (base=2006) em Portugal*), available at [www.pordata.pt](http://www.pordata.pt).

<sup>3</sup> PORDATA, 'Investment: Gross fixed capital formation at constant prices (base=2006)-Portugal' (*Investimento: Formação Bruta de Capital Fixo a preços constantes (base=2006) – Portugal*), available at [www.pordata.pt](http://www.pordata.pt).

<sup>4</sup> Eurostat, 'Unemployment rate by sex and age groups - annual average, % (une\_rt\_a)', 16 September 2014; see also Portuguese Central Bank (*Banco de Portugal*), 'The Portuguese Economy- Report by the Administrative Council of the Portuguese Central Bank, Lisbon' (*A Economia Portuguesa – Relatório do Conselho de Administração do Banco de Portugal, Lisboa*), 2014, available at [http://www.bportugal.pt/pt-PT/EstudosEconomicos/Publicacoes/RelatorioAnual/Publicacoes/RA\\_pt.pdf](http://www.bportugal.pt/pt-PT/EstudosEconomicos/Publicacoes/RelatorioAnual/Publicacoes/RA_pt.pdf), at pp. 38-41.

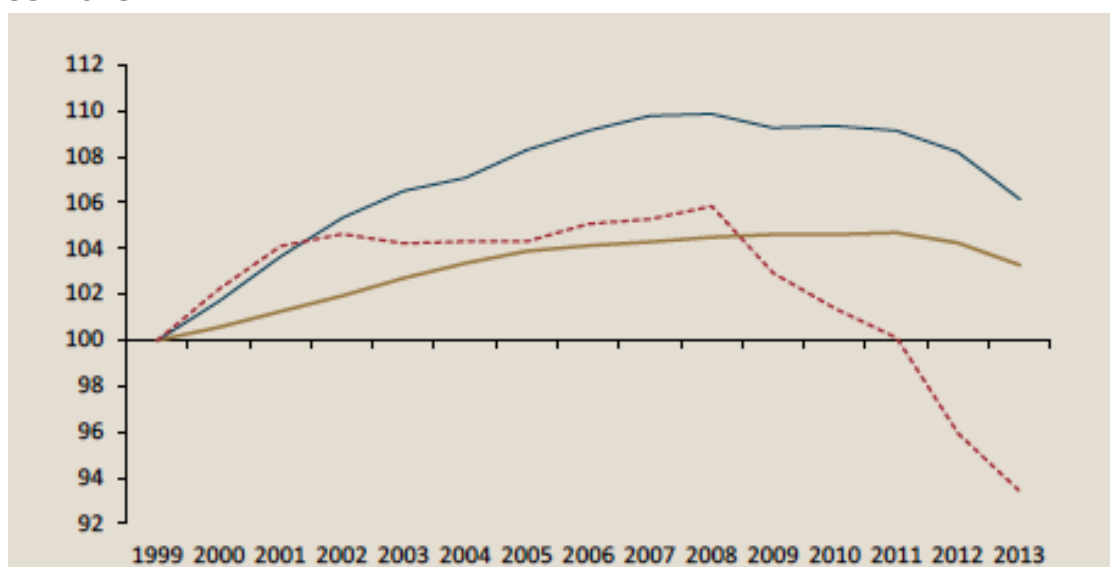
<sup>5</sup> PORDATA, 'Emigrants: total and by type-Portugal' (*Emigrantes: total e por tipo – Portugal*), available at [www.pordata.pt](http://www.pordata.pt).

**Table 1: Portugal's economy at a glance, 2008-13**

	2008	2009	2010	2011	2012	2013
GDP <sup>6</sup>	0.2%	-3.0%	+1.9%	-1.8%	-3.3%	-1.4%
Unemployment <sup>7</sup>	8.5%	10.6%	12.0%	12.9%	15.8%	16.4%
Inflation <sup>8</sup>	2.7%	-0.9%	1.4%	3.6%	2.8%	0.4%

**Source:** Eurostat

The numbers of unemployed are one of the country's main concerns. Long term unemployment is clearly rising. Figures on unemployment would be even higher if one took into account those who "left" the category of the active population<sup>9</sup>, due to emigration and the "discouraged" (those who, though not employed, stop looking for a job and are therefore left out of the official statistics)<sup>10</sup>. Figure 1 shows that while the total population slightly increased between 2008 and 2011, the active population decreased over that time span. Furthermore, the number of jobs decreased significantly.

**Figure 1: Total population and active population, compared to number of jobs, 1999-2013**

— Total population (bottom line) — Active population (top line) - - - - Total number of jobs

The Y-axis represents the relative variation of population (total and active) and number of jobs compared to 1999, with 100 being the reference value of each of the three items in 1999.

**Source:** Banco de Portugal, INE

<sup>6</sup> Table compiled by Milieu based on Eurostat, 'Real GDP growth rate – volume, 07/02/2015, available at: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec00115&plugin=1>

<sup>7</sup> Eurostat, 'Unemployment rate by sex and age groups - annual average, % (une\_rt\_a)', 16 September 2014.

<sup>8</sup> Eurostat, 'HICP - inflation rate - Annual average rate of change (%) (tec00118)'.

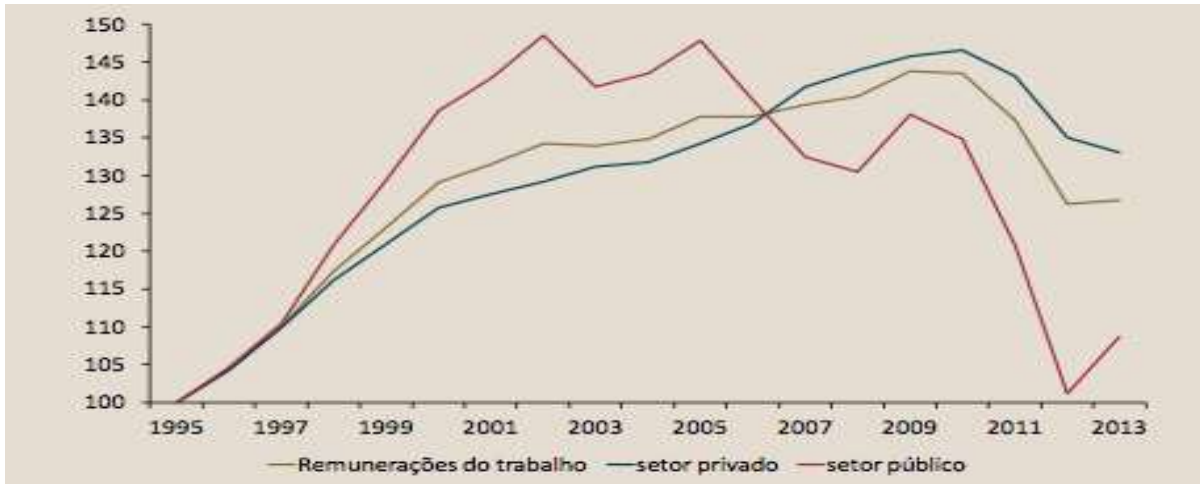
<sup>9</sup> "Active population" includes employed and those who are unemployed, but looking for a job.

<sup>10</sup> Portuguese Central Bank (*Banco de Portugal*), 'The Portuguese Economy-Report by the Administrative Council of the Portuguese Central Bank, Lisbon' (*A Economia Portuguesa'– Relatório do Conselho de Administração do Banco de Portugal, Lisboa*) 2014, available at [http://www.bportugal.pt/PT/EstudosEconomicos/Publicacoes/RelatorioAnual/Publicacoes/RA\\_pt.pdf](http://www.bportugal.pt/PT/EstudosEconomicos/Publicacoes/RelatorioAnual/Publicacoes/RA_pt.pdf), at pp.94-99.



Salaries also decreased (around 10% between 2010 and 2013), in particular those of public sector employees; this trend, together with unemployment and tax raises, caused a significant fall in families' incomes (fig.2)<sup>11</sup>.

**Figure 2: Salaries (variation in real terms, normalised to their value in 1995)**



— Total Salaries (07-13: middle line) — Private Sector (07-13: top line) — Public Sector (07-13: bottom line)  
 The Y-axis represents the relative variation of salaries (total, private sector and public sector) compared to 1995, with 100 being the reference value of each of the three items in 1995.

**Source:** Banco de Portugal, INE

The poverty rate has also increased, although the fall of the median income caused a decrease in the poverty threshold. The poverty rate in Portugal is still one of the highest in the European Union, mainly due to the high number of working poor (around 10%) and the high unemployment rate (the poverty rate among the unemployed is around 40%, doubling the total of the general population. The number of citizens that do not receive any kind of unemployment benefits or other State aid has risen by more than 250,000 between 2011 and 2012<sup>12</sup>.

At the end of 2013, Portugal was still in recession, as it has been, continuously, since 2011. The forecast of *Banco de Portugal* (the national central bank) predict a moderate growth of GDP of 0.9% in 2014 and of 1.5% in 2015<sup>13</sup>. In general, the feeling is not overly optimistic, but the country does seem to be exiting the crisis very slowly. The Central Bank expects private consumption to increase by 1.9% and also a growth of 3.9% of exported goods. However, public debt will remain at almost 130% of the GDP (a record high) and many challenges still lie ahead.

In what concerns the political scenario, the crisis has also had a significant impact. The Socialist Government in office from 2009 to 2011 faced strong opposition both in the Parliament and on the streets, and ended up having to resign due to the rejection of its fourth austerity programme. After this, in May 2011, the outgoing Prime Minister, Mr. José Sócrates negotiated a bailout programme with the European Commission, the European Central Bank and the International Monetary Fund. The bailout took the form of an

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Bank of Portugal (*Banco de Portugal*), 'Summary of economic projections' (*Resumo das projecções económicas*), available at <http://www.bportugal.pt/pt-PT/Paginas/inicio.aspx>.

agreement on a Financial and Economic Adjustment Programme<sup>14</sup> with the *Troika* (composed of the European Central Bank, the European Commission and the International Monetary Fund) whereby the Portuguese Republic undertook several commitments (described below) in exchange for a financial loan of EUR 78 billion. Therefore, the economic crisis and the austerity measures dominated the 2011 legislated elections, won by the centre right. The new Government, led by Prime Minister Pedro Passos Coelho, is supported by a coalition of the Social Democratic Party and the Popular Party. Before the elections, the social democrats promised not to approve any additional austerity measures, but that electoral promise was not fulfilled.

## 1.2. Overview of relevant measures

Until 2009, there were few austerity measures adopted in Portugal. Although unemployment started rising at the end of 2008, and public deficit reached some of its highest levels, the socialist Government, then led by Prime Minister José Socrates, announced a special support for the unemployed less than four months away from losing their benefits, and the reduction of tax deductions of the richest citizens, in order to reduce the tax burden of the middle classes<sup>15</sup>. The Socialist Party won the 2009 parliamentary elections, but it lost the absolute majority it had held since 2005. It was only in the State Budget Law for 2010 (Law no. 3-B/2010, of 28th April) that the first austerity measures were implemented.

### 2010

In March, the Government approved the first *Stability and Growth Pact 2010-2013* (PEC I)<sup>16</sup>, which established several measures intended to limit public deficit. Most of them were included in the State Budget Law for 2010:

- Strong restraint regards to public employees' wages (e.g., prohibition of raises or promotions); implementation of a 2 to 1 rule in hiring new employees for the Public Administration, in order to reduce expenses on wages to 10% of the GDP.
- Reduction of expenses with social benefits of the non-contributory social security scheme (freezing of the nominal value and application of a set of demands meant to evaluate the true necessity of the benefits in general non-contributory benefits; introducing a ceiling for Social Insertion Income (minimum guaranteed income) of €400 million in 2011 and €370 million in 2012 in 2013) (see section 8).
- New management and control of healthcare expenses.
- Freezing of public investment projects, such as the high-speed train intended to connect Portugal and Spain.

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<sup>14</sup> The Adjustment Programme comprises three documents: the Memorandum of Economic and Financial Policies, available at [http://www.portugal.gov.pt/media/371354/mefp\\_20110517.pdf](http://www.portugal.gov.pt/media/371354/mefp_20110517.pdf); the Technical Memorandum of Understanding, available at [http://www.portugal.gov.pt/media/371360/tmou\\_20110517.pdf](http://www.portugal.gov.pt/media/371360/tmou_20110517.pdf); and the Memorandum of Understanding on Specific Economic Policy Conditionality, available at [http://www.portugal.gov.pt/media/371369/mou\\_20110517.pdf](http://www.portugal.gov.pt/media/371369/mou_20110517.pdf).

<sup>15</sup> 'Chronology of the Crisis' (*Cronologia das Crises*), Observatory on Crisis and Alternatives (*Observatório sobre crises e alternativas*) website, available at

[http://www.ces.uc.pt/observatorios/crisalt/index.php?id=6522&id\\_lingua=1&pag=6555](http://www.ces.uc.pt/observatorios/crisalt/index.php?id=6522&id_lingua=1&pag=6555).

<sup>16</sup> The text of the Stability and Growth Pact 2010-2013 is available at [http://www.ces.uc.pt/observatorios/crisalt/documentos/cronologia/201036\\_PEC1.pdf](http://www.ces.uc.pt/observatorios/crisalt/documentos/cronologia/201036_PEC1.pdf).

- Reduction or extinction (according to the IRS tax brackets) of the deduction of health and education expenses in personal income tax.

After the downgrading of Portugal's rating by several agencies, in May 2010 a new *Stability and Growth Pact* (PEC II) was announced. Its main measures were:

- Reduction of 5% in the salaries of public officials and public managers (not of all public employees).
- Increase in 1% of all IVA (indirect tax on consumption) rates, imposition of a surtax of 1% or 1.5% of IRS (depending on the tax brackets).
- Creation of tolls on several motorways.
- Limit of 75% of the last net pay to unemployment benefits (see section 8).
- End of the extraordinary unemployment benefits (mentioned above, at the beginning of section 1.2) that had been created in 2008, as a response to the economic crisis.
- Reduction of the Social Insertion Income<sup>17</sup> (minimum guaranteed income) and more restrictive eligibility criteria, making it very difficult to be entitled to it (this aspect is further explained under) (See section 8).

## 2011

In September 2010, in order to try to save the public debt and deficit reduction objectives, the third *Stability and Growth Pact* (PEC III) was proposed by the Government, establishing the following:

- Pay-cuts for all public employees whose salary before taxes is higher than € 1,500 per month, a measure which was repeated in the following years and challenged before the courts (see section 4).
- Prohibition of promotions and career progression in public administration.
- Freezing the value of pensions in 2011 (see section 5)
- Increase in 2% of the IVA normal rate (*Imposto sobre o valor acrescentado* - Increased Value Tax) (to 23%).

These measures were included and approved in the State Budget Law for 2011 (Law no. 55-A/2010, of 3<sup>1st</sup> December). In March 2011, under European pressure, and with interest rates for Portuguese Public Debt bonds at around 8%, the Government announced yet a fourth *Stability and Growth Pact* (PEC IV), and new austerity plans, but these were rejected by the whole opposition (both from the left and the centre-right). After this, and as it has been said above, in May 2011, the outgoing socialist Government negotiated a bailout programme with the European Commission, the European Central Bank and the International Monetary Fund. The most important measures established in the *Memorandum of Understanding on Specific Economic Policy Conditionality* (MoU) were the following:

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<sup>17</sup> Decree-Law no. 70/2010, 16 June (*Decreto-Lei n.º 70/2010, de 16 de junho*), Official Gazette (*Diário da República*), no. 115.

- Improve the working of the central administration by eliminating redundancies, increasing efficiency, reducing and eliminating services (see section 4).
- Reduce costs in the area of education, with the aim of saving €195 million by rationalising the school network by creating school clusters; lowering staff needs; centralising procurement; and reducing and rationalising transfers to private schools in association agreements (see section 2).
- Ensure that the aggregate public sector wage bill as a share of GDP decreases in 2012 and 2013, by limiting staff admissions and freezing wages (see section 4).
- Control costs in the health sector, achieving savings worth €550 million (see section 3).
- Reduce pensions above €1,500 according to the progressive rates applied to the wages of the public sector as of January 2011, with the aim of yielding savings of at least €445 million. This was done through a Special Solidarity Contribution, which was first applied in 2011, and maintained, with changes, until 2014. (see section 5)
- Reform unemployment insurance, yielding medium-term savings of around €150 million (see section 8).
- Implement a reform in the severance payments. Severance payments of open-ended contracts will be aligned with those of fixed-term contracts (see section 4).
- Promote the use of flexible working time arrangements, and draft legislation on the revision of the minimum additional pay for overtime established in the Labour Code (see section 4).

Still in 2011, after his first European Summit, the New Prime Minister Pedro Passos Coelho announced yet another emergency austerity package, with some measures that were not in the MoU. After that, new austerity measures were established throughout the year of 2011:

- Adoption of a new income surtax that equalled half of the Christmas' pay (which is equivalent to one month additional pay) (explained below).
- The privatisation of public companies
- The adoption of a special programme to negotiate the termination of contracts with public employees.
- Increase of the IVA rate on electricity and natural gas from 5% to 23%.

## **2012**

As stated in the State Budget Law for 2012 (Law no. 64-B/2011, 30<sup>th</sup> December), most of the measures mentioned above were maintained and some new ones were added:

- The suspension of Holiday and Christmas pay (also known as the 13<sup>th</sup> and 14<sup>th</sup> month, each equivalent to one additional monthly pay, and part of the salary, according to both public and private law) to public employees and pensioners who receive more than €1,500 before tax (see section 4).
- Increase of the fees paid to access the National Health Service (see section 3).
- New rules of mobility and flexibility for public sector workers.

In April 2012, the Government announced new rules to collect unemployment benefits:

- Maximum of 540 days.
- Maximum pay of €1,048, no matter what the worker's salary before dismissal was.
- 10% cut in the benefits after six months of collecting it.

## **2013 and 2014**

The State Budget Law for 2013 (Law no. 66-B/2012, 30<sup>th</sup> December) brought a large increase in taxes, namely the IRS (*Imposto sobre o Rendimento Singular* – Personal Tax):

- Changes in tax rates and tax brackets, with an increase of the average effective rate from 9.8% to 13.2% (see section 4).

At the same time, during the years 2013 and 2014, many of the previous austerity measures were maintained and strengthened, permitting a reduction of personnel costs of around € 630 million:

- Pay cuts for public employees and pensioners (State Budget Law for 2013, Law no. 66-B/2012, 31 December, State Budget Law for 2014, Law no. 83-C/2013, 31st December and Law no. 75/2014, 12th September).
- Reduction of 2% in the number of public sector workers.
- Dismissal of workers with fixed-term contracts.
- Reduction of compensation for overtime.
- Increase in working hours of public employees from 35 to 40 hours a week, without additional compensation.
- Reduction of costs in science and education of € 160 million.
- Reduction of costs in social security, healthcare and public companies.
- Increase of the minimum age for retirement (the normal age of entitlement to an old-age pension in 2014 and in 2015 is now 66 years, as explained in chapter 5).
- Increase of the workers' contribution to the special public employees 'health insurance schemes', to 3.5%.
- New increase of the maximum rate IVA to 23.25%.
- Increase of the workers' contribution to social security to 11.2%.

The following sections of the national study will focus on the right to education, to healthcare, to work and to a pension. These rights were selected in light of the research carried out at EU and international level on the impact of the crisis on fundamental rights, which showed that these rights have been most significantly affected by the austerity measures imposed across Europe. However, to make sure the national studies reflect the situation in the country, section 8 will provide a final overview of the national context reporting on other rights that might have been importantly affected in that Member State. Finally, the report provides findings on the right to manifestation and assembly as well as on the right to access to justice which allows citizens to defend their positions against measures and actions linked to the crisis that negatively affect them.

## **2. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO EDUCATION (COMPULSORY EDUCATION)**

### **KEY FINDINGS**

The right to education is being seriously affected by austerity measures. The economic crisis has had a very significant impact on children, and the damages on education are one of the dimensions of this problem. The State's expenditure on education has been visibly reduced. Children with special needs or disabilities have been particularly affected and the number of dropouts has increased.

### **2.1. International and EU legal framework for the protection of the right to education**

The right to education is defined as a universal entitlement to education, and is recognised as a right that includes the right to free, compulsory primary education for all, as well as an obligation to provide for a system of secondary education which is not necessarily free, but is available and accessible to all, while the material conditions of teaching staff shall be continuously improved in accordance with the International Covenant on Economic, Social and Cultural Rights (the 'ICESCR')<sup>18</sup>. In addition, the right to education encompasses the obligation to combat discrimination at all levels of the educational system and to set minimum standards and to improve quality of education. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities<sup>19</sup>. Education needs to be provided under the principles of: availability, accessibility, acceptability and adaptability<sup>20</sup>.

The right to education has been reaffirmed in the 1960 UNESCO Convention against Discrimination in Education, Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (the 'CEDAW'), Articles 28 and 29 of the Convention on the Rights of the Child (the 'CRC') and Article 24 of the Convention on the Rights of Persons with Disabilities (the 'CRPD'). Furthermore, it is also guaranteed by Article 2 of Protocol No. 1 to the European Convention on Human Rights (the 'ECHR').

The EU Charter guarantees the right to education and access to vocational and continuing training, with the possibility to receive free compulsory education<sup>21</sup>.

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<sup>18</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), General Assembly Resolution 2200A (XXI) of 16 December 1966, 1976, article 13.

<sup>19</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13 – Right to education*, UN Doc. E/C.12/1999/10 (1999), §1.

<sup>20</sup> *Ibid*, §6.

<sup>21</sup> The EU Charter, Article 14.

## 2.2. The right to education in Portugal

The right to education is protected by the Portuguese Constitution (articles 73 to 77). Articles 74 and 75 of the Portuguese Constitution, the most important ones regarding compulsory education, state the following:

Article 74 (Education)

1. Everyone has the right to education, with the guarantee of the right to equal opportunities in access to and success in schooling.
2. In implementing the education policy, the state is responsible for:
  - a) Ensuring universal, compulsory and free basic education;
  - b) Creating a public, and developing the general, preschool education system;
  - c) Guaranteeing permanent education and eliminating illiteracy;
  - d) In accordance with his capabilities, guaranteeing every citizen access to the highest levels of education, scientific research and artistic creation;
  - e) Progressively making all levels of education free of charge;
  - f) Inserting schools into the communities they serve and establishing links between education and economic, social and cultural activities;
  - g) Promoting and supporting disabled citizens' access to education and supporting special education when necessary;
  - h) Protecting and developing Portuguese sign language, as an expression of culture and an instrument for access to education and equal opportunities;
  - i) Ensuring that emigrants' children are taught the Portuguese language and enjoy access to Portuguese culture;
  - j) Ensuring that immigrants' children receive adequate support in order to enable them to effectively enjoy the right to education.

Article 75 (Public, private and cooperative education)

1. The state shall create a network of public education establishments that cover the needs of the whole population.
2. The state shall recognise and inspect private and cooperative education, as laid down by law.'

Education is compulsory from six years of age to 18 and is composed of four cycles: primary education (four years), second cycle of basic education (two years), third cycle of basic education (three years) and secondary education (also three years). Parents must enrol their children at school until their 18<sup>th</sup> birthday, and children have a duty to attend (article 2, Law no. 85/2009, 27<sup>th</sup> August 2009). It is not possible to leave sooner (compulsory education was raised from 16 to 18 years of age in 2009), but there are different types of secondary degrees: scientific degrees, whose aim is to prepare students for university education; specialised artistic degrees (music and dance) that can lead both to university or to work; and professional degrees, which prepare students to begin their working lives (Decree-Law 139/2012, 5<sup>th</sup> July 2012).

## 2.3. Measures and impact on the right to education

The impact of the crisis on children has been extremely high. UNICEF has alerted<sup>2223</sup> to the rise of the poverty rate among children (accordingly, 28.6% of Portuguese children were at risk of poverty and social exclusion<sup>2425</sup> in 2011, and the number is said to be rising)<sup>26</sup>, and to the consequences of the loss of the Social Insertion Income for 46,000 poor families, due to changes in the rules of application and attribution. Both the economic crisis and the austerity measures are causing regressions that affect children's fundamental rights to health, education, housing and feeding.

The effects concerning education, especially regarding the public resources attributed to it, are very significant. The State's expenses with education made up about 4.8% of the GDP in 2010 and only 3.9% in 2012. Although the expenses increased again in 2013 to 4.2%, the decrease between 2009 and 2012 was very strong in a very short period of time when compared to the general trend from 1972 onwards (fig.3).

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<sup>22</sup> See UNICEF Office of Research, 'Child well-being in rich countries - A comparative overview', - Innocenti Report Card 11, United Nations Children's Fund (UNICEF), April 2013, available at [http://www.unicef.pt/docs/FINAL\\_RC11-ENG-LORES-fnl2.pdf](http://www.unicef.pt/docs/FINAL_RC11-ENG-LORES-fnl2.pdf).

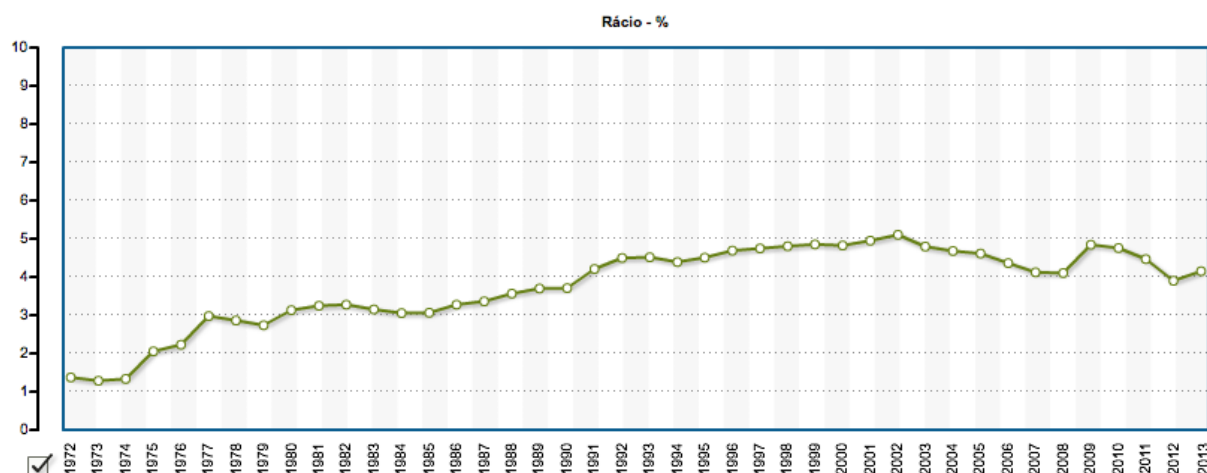
<sup>23</sup> See the media coverage of this matter: 'UNICEF: Portuguese Children suffer most from the crisis' (*Unicef: Crianças portuguesas são das que mais sofrem com a crise*), 15 October 2013, Press Release, available at <http://jornaldigital.com/noticias.php?noticia=38563>; 'The crisis is severely affecting education in Portugal' (*Crise está a afectar "severamente a Educação" em Portugal*), 15 October 2013, Press Release, available at [http://economico.sapo.pt/noticias/crise-esta-a-afectar-severamente-a-educacao-em-portugal\\_179432.html](http://economico.sapo.pt/noticias/crise-esta-a-afectar-severamente-a-educacao-em-portugal_179432.html); Ribeiro, D., 'Portugal violates the rights of the child, UNICEF claims' (*Portugal viola Direitos da Criança, acusa a UNICEF*), 14 October 2013, Press Release, available at <http://expresso.sapo.pt/portugal-viola-direitos-da-crianca-acusa-a-unicef=f835575>.

<sup>24</sup> The AROPE indicator is defined as the share of the population in at least one of the following three conditions: 1) at risk of poverty, meaning below the poverty threshold, 2) in a situation of severe material deprivation, 3) living in a household with very low work intensity.

<sup>25</sup> Eurostat, 'Children at risk of poverty or social exclusion', Statistics in focus 4/2013, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Children\\_at\\_risk\\_of\\_poverty\\_or\\_social\\_exclusion](http://ec.europa.eu/eurostat/statistics-explained/index.php/Children_at_risk_of_poverty_or_social_exclusion)

<sup>26</sup> 'Ending child poverty in Europe - Report of the Committee on Social Affairs, Health and Sustainable Development, Parliamentary Assembly of the Council of Europe', Doc. 13458, 21 March 2014, available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20565&lang=en>: "In a statement published in July 2012, the Commissioner of Human Rights of the Council of Europe, Nils Muižnieks, warned about the extent to which child poverty was on the rise in Portugal. The combination of growing unemployment and cuts in salaries, increased taxes and reduced social and unemployment benefits had resulted in reduced incomes and growing poverty among many Portuguese families. According to him, this situation of shrinking family incomes leads to the risk of a resurgence of child labour, notably in the informal economic sector and agriculture".



**Figure 3: Public expenses on education (in % of GDP), 1972-2013**

Source: PORDATA<sup>27</sup>

The MoU signed with the Troika established the following regarding education: Portugal would have to “reduce costs in the area of education, with the aim of saving €195 million by rationalising the school network by creating school clusters; lowering staff needs; centralising procurement; and reducing and rationalising transfers to private schools in association agreements”<sup>28</sup>.

In order to achieve this purpose, the Government has adopted several measures with an impact on the right to education. According to the Observatory of Education and Training Policies<sup>29</sup>, the State’s spending on education is, today, the lowest in the European Union, and the measures implemented in the last three years explain this fact:

- Increase the number of students per class (from 24 to 26 in primary education; from 28 to 30 in all other cycles, according to Order no. 5106-A/2012, 12<sup>th</sup> April 2012).
- Return to the early selection of students through national exams implemented at all levels of education, in order to “forward” the vocational stream students with lower results in a logic of social selection and degradation of the status and importance of professional training (Normative order no. 24-A/2012, 6<sup>th</sup> December 2012); vocational stream and professional training are believed to be of lower quality and better educated parents usually do not allow their children to attend them, even if they show some learning difficulties.
- Increase of the working hours of teachers (Law no 68/2013, 29<sup>th</sup> August 2013, which establishes a 40 hour per week workload for all public employees).
- Dismissal of thousands of teachers, especially due to the disappearance of non-disciplinary curricular areas and the extra school support to students, leading to an

<sup>27</sup> PORDATA, ‘State expenditure on education, budget execution in % of GDP-Portugal’ (*Despesas do Estado em educação: execução orçamental em % do PIB – Portugal*), available at <http://www.pordata.pt/Portugal/Despesas+do+Estado+em+educacao+execucao+orcamental+em+percentagem+do+PIB-867>.

<sup>28</sup> MoU, available at [http://www.portugal.gov.pt/media/371369/mou\\_20110517.pdf](http://www.portugal.gov.pt/media/371369/mou_20110517.pdf).

<sup>29</sup> Observatory of Education and Training Policies (*Observatório de Políticas de Educação e de Formação*), ‘The State of education in the State-Portugal 2014’ (*O estado da educação num estado intervencionado – Portugal 2014*), 2014, available at <http://www.op-edu.eu/media/O%20ESTADO%20DA%20EDUCACAO%20NUM%20ESTADO%20INTERVENCIONADO.pdf>.

increase of 151% in the number of unemployed teachers (considering the 2011 figures)<sup>30</sup>.

- Creation of a new system of school management based on mega school groups with a private management style, with clear reinforcement of the power of directors and decrease in the democratic management mechanisms (Decree-Law no. 75/2008, 22<sup>nd</sup> April 2008 and Council of Ministers' Resolution no. 40/2010, 1<sup>st</sup> June 2010).
- Extinction of non-curricular subject areas, such as Supervised Study and Project Area (Decree-Law no. 18/2011, 2<sup>nd</sup> February 2011).
- Decrease in Curricular Units such as the Sports / Physical Education, Arts Education, Civic Education, Education for Health and Environmental Education, reinforcement of Portuguese (maternal language) and Mathematics (Decree-Law no. 139/2012, 5<sup>th</sup> July 2012).
- Very strong reduction in the present education system of integration mechanisms and aids to children and young people with special educational needs or disabilities<sup>31</sup>.

Overall, all of the austerity measures mentioned above have had a visible impact on the quality of the public education system, and on the amount of resources available to support both public and private education. The beginning of the school year of 2014/2015 has been marked by several difficulties, namely a lack of teachers and other staff in several schools<sup>32</sup>. Artistic schools and the public music conservatories have been especially affected<sup>33</sup>. This problem is recurrent, and at least partially due to the suspension of admissions in public administration, which prevents the hiring of permanent teachers and forces the use of year-by-year contracts that are usually delayed.

Another negative consequence in what regards the right to education is the increase of the dropout and retention rates in the first three cycles of compulsory education. These rates refer to the percentage of students who either leave school or cannot be allowed to progress to the following school year, in relation to the overall number of enrolled students; the numbers are considered a warning sign about the success of the education system and have been growing. This is believed to be related both to the economic crisis *per se* (due to

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<sup>30</sup>Information about this can be found at the Teachers' Union (*FENPROF*)'s website, available at <http://www.fenprof.pt/?aba=27&mid=115&cat=226&doc=6571>; Viana, C., 'Unemployment among teachers has risen 151% in just one year' (*Desemprego entre os professores subiu 151% só num ano*), 19 July 2012, Press Release, available at <http://www.publico.pt/educacao/noticia/desemprego-entre-os-professores-subiu-151-so-num-ano-1555532>.

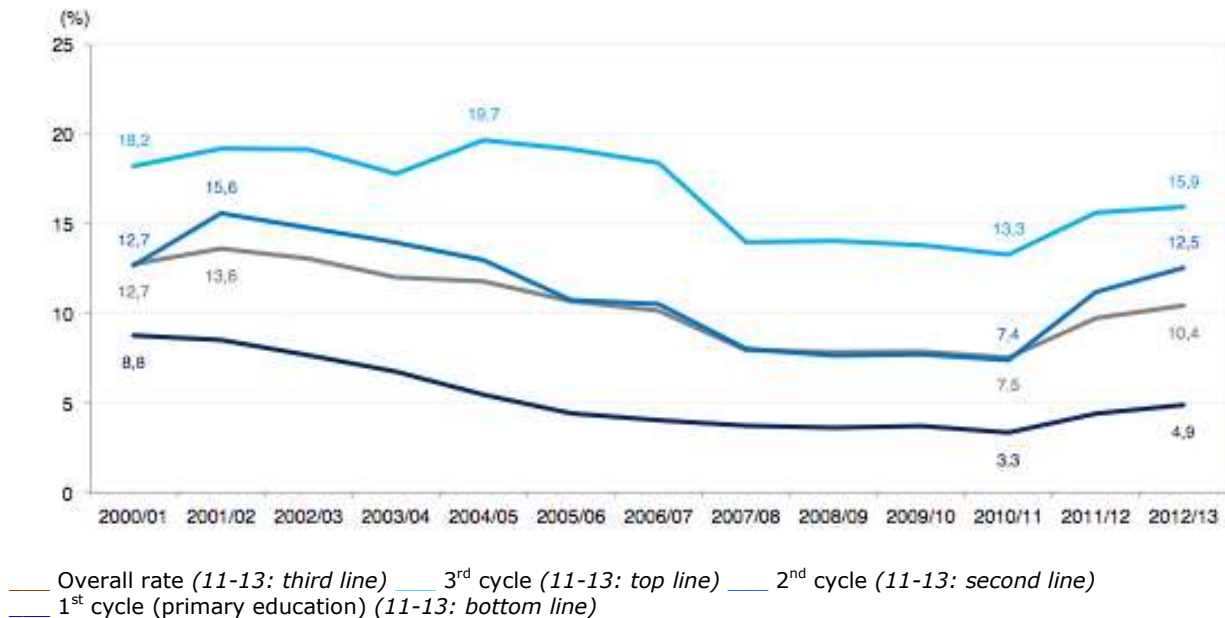
<sup>31</sup> Observatory of Education and Training Policies (*Observatório de Políticas de Educação e de Formação*), 'The State of education in the State-Portugal 2014' (*O estado da educação num estado intervencionado – Portugal 2014*), 2014, available at <http://www.op-edu.eu/media/O%20ESTADO%20DA%20EDUCACAO%20NUM%20ESTADO%20INTERVENCIONADO.pdf>.

<sup>32</sup> Lusa, 'Confap: Everything that we do not wish for our schools is happening' (*Confap: Está a acontecer tudo o que não se deseja para escolas*), 3 October 2014, Press Release, available at <http://www.ionline.pt/artigos/portugal/confap-esta-acontecer-tudo-nao-se-deseja-escolas>; Lopes, Miguel A. and Lusa 'Fenprof claims there are more than 35,000 students without classes' (*Fenprof diz que há mais de 35 mil alunos sem aulas*), 28 October 2014, Press Release, available at <http://observador.pt/2014/10/28/fenprof-diz-que-ha-mais-de-35-mil-alunos-sem-aulas/#>.

<sup>33</sup> Lopes, M.J. and Lusa, 'Teachers, parents and students of the Conservatory will protest in front of the Ministry' (*Professores, pais e alunos do Conservatório vão manifestar-se em frente ao Ministério*), 24 September 2014, Press Release, available at <http://www.publico.pt/sociedade/noticia/professores-pais-e-alunos-do-conservatorio-vao-manifestarse-em-frente-ao-ministerio-1670776>; 'Antonio Arroyo school has not started the academic school year due to a lack of teachers available' (*Escola António Arroio não iniciou ano lectivo por falta de professores*), 16 September 2014, Press Release, available at <http://www.ionline.pt/artigos/portugal/escola-antonio-arroio-nao-iniciou-ano-lectivo-falta-professores>.

the large number of children at risk of poverty or living in material deprivation, with unemployed parents and/or other problems related to the crisis), and to the lack of means of the education system to help these children, which is in part due to austerity measures. The increase in dropouts is confirmed by the National Commission for Protection of Children and Young People (CPCJ), who reports a significant increase in the number of complaints it receives (usually from schools) about this subject<sup>34</sup>.

**Figure 4: Dropout and retention rates, by cycle of compulsory education (%)**



Source: DGEEC<sup>35</sup>

Another negative impact of the austerity measures on education is related to children with special needs or learning disabilities. The number of these children enrolled in schools in recent years has increased (from 62,100 in the school year 2012/2013 to 65,000 in 2013/2014)<sup>36</sup>, but the resources dedicated to them have been reduced: in 2013/2014, the number of special education teachers working in public schools has diminished by 6.23%, and the number of other professionals (speech therapists, physical therapists, psychologists and others) available at public schools has diminished by 16.24% when comparing with 2012/2013 figures<sup>37</sup>. Furthermore, special subsidies given to the families of children with special needs have also decreased, both in the amount attributed and in the number of beneficiaries<sup>38</sup>.

<sup>34</sup> National Commission for Protection of Children and Young People at Risk (*Comissão Nacional de Protecção das Crianças e jovens em Risco*), 'Annual report assessing the activity of CPCJ in 2013' (*Relatório anual de avaliação da atividade das CPCJ no ano de 2013*), May 2014, available at [http://www.cnpcjr.pt/%5CRelatorio\\_Avaliacao\\_CPCJ\\_2013.pdf](http://www.cnpcjr.pt/%5CRelatorio_Avaliacao_CPCJ_2013.pdf).

<sup>35</sup> Directorate-General for Education Statistics and Science (*Direcção-Geral de Estatísticas da Educação e Ciência*), 'Education in Numbers - Portugal 2014' (*Educação em números - Portugal 2014*), 2014, available at [http://www.dgeec.mec.pt/np4/96/%7B\\$clientServletPath%7D/?newsId=145&fileName=DGEEC\\_DSEE\\_DEEBS\\_2014\\_EducaoEmNumeros.pdf](http://www.dgeec.mec.pt/np4/96/%7B$clientServletPath%7D/?newsId=145&fileName=DGEEC_DSEE_DEEBS_2014_EducaoEmNumeros.pdf).

<sup>36</sup> See the statistics provided by the Ministry of Education and Science (*Ministério da Educação e Ciência*), available at <http://www.dgeec.mec.pt/np4/224/>.

<sup>37</sup> Official figures provided by the Ministry of Education and Science (*Ministério da Educação e Ciência*), available at [http://www.dgeec.mec.pt/np4/224/%7B\\$clientServletPath%7D/?newsId=334&fileName=DGEEC\\_Nota\\_NEE\\_2014.pdf](http://www.dgeec.mec.pt/np4/224/%7B$clientServletPath%7D/?newsId=334&fileName=DGEEC_Nota_NEE_2014.pdf).

<sup>38</sup> CNE – National Education Council (*Conselho Nacional de Educação*), 'State of Education in 2013: Revised Report 2013' (*Estado da Educação 2013*), 2013, available at <http://www.cnedu.pt/content/noticias/CNE/Estado-da-Educacao-2013-online-VF.pdf>; Faria, N., 'Social security "saved" 18.6 million euro in support of children with

### 3. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO HEALTHCARE

#### KEY FINDINGS

Austerity measures have affected the right to healthcare, and this is one of the citizens' main complaints. The closure of hospitals and other NHS units, the rise in healthcare fees and the reduction of free transportation of non-urgent patients have made it more difficult to access healthcare, especially for the elderly and the more isolated populations. Inequalities in the access to healthcare are therefore one of the main concerns.

#### 3.1. International and EU legal framework for the protection of the right to healthcare

Article 12 of the ICESCR guarantees the highest attainable standard of health. This right is repeated in the Constitution of the World Health Organisation<sup>39</sup>. Right to health does not mean the right to be healthy, but contains different freedoms and entitlements, where the entitlements represent the right to a system of health protection, which provides equality of opportunity for people to enjoy the highest attainable standard of health. Nonetheless, a line must be drawn between the right to health and the right to healthcare. The right to health is broader and means that 'governments must generate conditions in which everyone can be as healthy as possible'<sup>40</sup>. This entails ensuring availability of health services, healthy and safe working conditions, adequate housing and nutritious food. The right to healthcare, on the other hand, is limited only to the first component – the right to have access to health services. The right to health, and implicitly the right to healthcare, needs to meet the requirements of: availability, accessibility, acceptability and quality<sup>41</sup>. This entitlement indeed represents the right to healthcare. The right to health (or healthcare) has been re-emphasised in Article 12 the CEDAW, Article 25 of the CRPD, Article 24 of the CRC and Article 11 of both the European Social Charter and the Revised European Social Charter.

Article 35 of the EU Charter guarantees the access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices.

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special educational needs' (*Segurança Social "poupou" 18,6 milhões de euros nos apoios às crianças com necessidades educativas especiais*), 20 September 2014, Press Release, available at <http://www.publico.pt/sociedade/noticia/seguranca-social-poupou-18-milhoes-de-euros-nos-subsidios-as-criancas-com-necessidades-educativas-especiais-1670336>.

<sup>39</sup> Constitution of the World Health Organisation, preamble.

<sup>40</sup> WHO, *Factsheet 323 on the right to health*, available at: <http://www.who.int/mediacentre/factsheets/fs323/en/> (last accessed 23 October 2014).

<sup>41</sup> United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 14 – The right to highest attainable standard of health', UN Doc. (E/C.12/2000/4).

### **3.2. The right to healthcare in Portugal**

The right to health and to healthcare is established and protected by the Portuguese Constitution. Article 64 of the Portuguese Constitution states the following:

1. Everyone has the right to the protection of health and the duty to defend and promote health.
2. The right to the protection of health shall be fulfilled:
  - a) By means of a universal and general national health service which, with particular regard to the economic and social conditions of the citizens who use it, shall tend to be free of charge;
  - b) By creating economic, social, cultural and environmental conditions that guarantee particularly the protection of childhood, youth and old age; by systematically improving living and working conditions, and promoting physical fitness and sport at school and among the people; and also by developing the people's health and hygiene education and healthy living practices.
3. In order to ensure the right to the protection of health, the state is charged, as a priority, with:
  - a) Guaranteeing access by every citizen, regardless of his economic situation, to preventive, curative and rehabilitative medical care;
  - b) Guaranteeing a rational and efficient nationwide coverage in terms of human resources and healthcare units;
  - c) Working towards the socialisation of the costs of medical care and medicines;
  - d) Disciplining and inspecting entrepreneurial and private forms of medicine and articulating them with the national health service, in such a way as to ensure adequate standards of efficiency and quality in both public and private healthcare institutions;
  - e) Disciplining and controlling the production, distribution, marketing, sale and use of chemical, biological and pharmaceutical products and other means of treatment and diagnosis;
  - f) Establishing policies for the prevention and treatment of drug abuse.
4. Management of the national health service shall be decentralised and participatory.

One of the main guarantees of the right to healthcare is the existence of a universal and general national health service, which tend to be free of charge<sup>42</sup>. Portugal has known an immense progress in what concerns this right, since its creation in 1979, in the aftermath of the approval of the democratic Constitution of 1976 up to the start of the crisis.

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<sup>42</sup> According to the Portuguese Constitution, the NHS shall be free of charge. In general, some users' fees are due, when using NHS services and facilities, but they are much lower than the true cost of those services. Some people are exempt from payment due to their medical condition or economic situation.

### 3.3. Measures and impact on the right to healthcare

The most negative outcomes of the economic crisis and the resulting austerity measures concerning the right to healthcare have been felt in the period 2011-2014, after the signature of the MoU with the *Troika*. The agreement was centred on immediate savings, and the Government has followed thoroughly the measures it foresaw<sup>43</sup>. These were the most important reforms, agreed in the MoU and since then implemented<sup>44</sup>:

- A substantial revision of existing exemption categories, including stricter means-testing in cooperation with the Minister of labour and social affairs<sup>45</sup>;
- Increase of moderating fees in certain services while ensuring that primary care moderating fees are lower than those for outpatient specialist care visits and lower than emergency visits<sup>46</sup>.
- Legislate automatic indexation to inflation of NHS moderating fees; cut substantially (by two thirds overall) tax allowances for healthcare, including private insurance.
- To achieve a self-sustainable model for health-benefits schemes for civil servants, the overall budgetary cost of the existing schemes – ADSE, ADM (Armed Forces) and SAD (Police Services) - will be reduced by 30% in 2012 and a further 20% in 2013, at all levels of general government. Further reductions at a similar pace will follow in the subsequent years towards having them self-financed by 2016.
- Set the maximum price of the first generic drug introduced to the market at 60% of the branded product with a similar active substance<sup>47</sup>.
- Revise the existing reference-pricing system based on international prices by changing the countries of reference to the three EU countries with the lowest price levels or countries with comparable GDP per capita levels.
- Make electronic prescriptions for medicines and diagnostics covered by public reimbursement fully compulsory for physicians in both the public and private sector<sup>48</sup>.
- Induce physicians at all levels of the system, both public and private, to prescribe generic medicines and the less costly available branded product.
- Change the calculation of profit margin of pharmacies into a regressive mark-up and a flat fee for wholesale companies and pharmacies on the basis of the experience in other Member States. The new system should ensure a reduction in public spending on pharmaceuticals and encourage the sales of less expensive pharmaceuticals. The

<sup>43</sup> Conclusion based on stakeholder consultation 4), Faculty Member of the Faculty of Law, University of Coimbra.

<sup>44</sup> MoU, available at [http://www.portugal.gov.pt/media/371369/mou\\_20110517.pdf](http://www.portugal.gov.pt/media/371369/mou_20110517.pdf).

<sup>45</sup> Decree-Law no. 113/2011, 29 November (*Decreto-Lei n.º 113/2011, de 29 de novembro*), Official Gazette (*Diário da República*), no. 229 and Decree-Law no. 117/2014, 5 August (*Decreto-Lei n.º 117/2014, de 5 de agosto*), Official Gazette (*Diário da República*), no. 149.

<sup>46</sup> *Ibid.*, and Ordinance no. 306-A/2011, 20 December (*Portaria n.º 306-A/2011 de 20 de Dezembro*), Official Gazette (*Diário da República*), no. 242.

<sup>47</sup> The weight of spending on drugs in total health expenditure in Portugal was 21.8%, second only to Greece in comparison with other OECD countries; although the percentage of public reimbursement of such expenses is quite low (little over 50%), the Government aimed at reducing the overall expenses even more. Reimbursement is calculated based on the price of the "generic of reference" and not the price of the drug that was actually prescribed.

<sup>48</sup> All medicines covered by public reimbursement had to be prescribed. The difference is that the prescription now has to be electronic. Electronic prescriptions are done on the basis of the "active substance" (the software does not allow doctors to do it any other way); this is supposed to allow citizens to choose the cheapest drug available.

aim is that lower profits will contribute at least €50 million to the reduction in public expense with drugs distribution.

- Reinforcement of primary care services so as to further reduce unnecessary visits to specialists and emergencies and to improve care coordination through the increase of the number of USF (*Unidades de Saúde Familiares* – Family Health Units) units contracting with regional authorities (ARSS – Regional Health Authorities) using a mix of salary and performance-related payments as currently the case. Make sure that the new system leads to a reduction in costs and more effective provision;
- Provide detailed description of measures aimed at achieving a reduction of €200 million in the operational costs of hospitals in 2012 (€100 million in 2012 in addition to savings of over €100 million already in 2011), including a reduction in the number of management staff, as a result of concentration and rationalisation in state hospitals and health centres.
- Continue with the reorganisation and rationalisation of the hospital network through specialisation and concentration of hospital and emergency services, joint management (building on the Decree-Law no. 30/2011, 2<sup>nd</sup> March) and joint operation of hospitals. These improvements will deliver additional cuts in operating costs by at least five per cent in 2013.
- Move some hospital outpatient services to primary care units (USF).
- Introduce rules to increase mobility of healthcare staff (including doctors) within and across health regions. Adopt for all staff (including doctors) flexible time arrangements, with a view of reducing by at least 10% spending on overtime compensation in 2012 and another 10% in 2013. Implement a stricter control of working hours and activities of staff in hospitals.

Health policies adopted and implemented during the period of economic crisis, and especially after 2011 have lacked global planning and measures to ensure a long-term sustainability, not only from an economic point of view, but also from a social and human rights' perspective<sup>49</sup>. No studies on the effectiveness and efficiency of the health system were done. There are still significant inequalities in the access to healthcare, with inhabitants of the interior and more isolated regions having increased difficulties in getting treatment for certain conditions<sup>50</sup>. The 2012 Report of the Portuguese Observatory of Health Systems states that "The Memorandum of Understanding with the Troika (MoU) affects health and health system of multiple Portuguese ways: through the effects of impoverishment, unemployment and indebtedness on the health of persons; through the pressure to decrease public spending on the functioning of health services; through the impact of the reduction of available households funds (less income, greater cost of living) and co-pays services in public health. In this context, there is a fundamental question: in the preparation and adoption of measures contained in the MoU: Has its impact on the health and well-being of the Portuguese been taken into account (Health Impact Assessment)? The answer is obviously not. However, it is reasonable to think that decisions about the adoption of certain measures (...) should also have been analysed from the point of view of its predictable effects on the health and welfare of the Portuguese. In fact, one of the most important goals of those who have worried, in recent decades and at European

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<sup>49</sup> Conclusion based on stakeholder consultation 4) (member of the Faculty of Law, University of Coimbra).

<sup>50</sup> Portugal has a significant gap between the number of physicians practising in urban and rural areas (5.1 per 1000 in urban regions against 2.2 per 1000 in rural ones), according to the report *Health at a Glance: Europe 2014*, OECD Publishing 2014, in [http://dx.doi.org/10.1787/health\\_glance\\_eur-2014-en](http://dx.doi.org/10.1787/health_glance_eur-2014-en).

level, with the viability and success of health policies has been to overcome the frequent and unacceptable tendency to make decisions of a financial nature without caring to know what their effects on the health of populations will be, and to only belatedly recognise the negative effects of this omission"<sup>51</sup>.

However, not all the reforms adopted had a negative impact on the right to healthcare. Some measures actually contributed to an effective cost reduction, namely with medicine expenses. The NHS partially reimburses prescribed medicines at the rate of 90%, 69%, 37% and 15%, depending on the kind of medicine. For people with a very low income the reimbursement can be up to 15% higher. Therefore, reforms<sup>52</sup> aiming at reducing the price of medicines have a significant impact on both public and private expenses:

- Set the maximum price of the first generic medicine introduced in the market at 60% of the branded product with a similar active substance.
- Revise the existing reference-pricing system based on international prices by changing the countries of reference to the three EU countries with the lowest price levels or countries with comparable GDP per capita levels.
- Change the calculation of profit margins of pharmacies.

Nevertheless, even these policies, which allowed for a swift reduction in the price of medicines, have also had negative side effects. Both pharmacies and distributors were seriously affected (the business volume increased by 1.5% in 2013, but it decreased by 4% in value, €70.6 million less)<sup>53</sup>. This caused the bankruptcy of many pharmacies and the parallel export of Portuguese medicines to Northern Europe. Both have led to a shortage of some medicines and great difficulties in obtaining others, thus creating a new obstacle to effective healthcare. Twenty-two percent of pharmacies report a shortage of insulin, a lifesaving medicine<sup>54</sup>.

Other austerity measures have also had a great impact on the right to healthcare and the effective functioning of the National Health Service, as well as its universal coverage.

One issue causing significant concern is the huge increase in health fees due when using the NHS facilities. The legal frame of these fees was established as a response to the MoU by the Decree-Law no. 113/2011, 29 November, the Decree-Law no. 128/2012, 21 June, by the State Budget Law for 2013, by Law no. 51/2013, 24 July and by the Decree-Law no. 117/2014, 5 August. Only children up to 12 years old, the unemployed in receipt of benefits below €650 and other reduced categories are exempt from payment. Fees are due for primary care, urgent care, day hospital and any exam or therapeutic procedure, and can

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<sup>51</sup> *Ibid.*; Portuguese Observatory of Health Systems (*Observatório Português dos Sistemas de Saúde*), 'Spring Report 2012 - Health & Crisis - A nation in distress' (*Relatório de Primavera 2012 - Crise & Saúde - Um país em sofrimento*), 2012, available at <http://www.observaport.org/sites/observaport.org/files/RelatorioPrimavera2012.pdf>.

<sup>52</sup> Decree-Law no. 112/2011, 29 November (*Decreto-Lei n.º 112/2011, de 29 de novembro*), Official Gazette (*Diário da República*) no. 229 and Decree-Law no. 34/2013, 27 February (*Decreto-Lei n.º 34/2013, de 27 de fevereiro*), Official Gazette (*Diário da República*) no. 41; Ministry for Health (*Ministério da Saúde*), 'Crisis as an opportunity to introduce efficiency improving reforms - The case of Portugal', presentation prepared for a WHO meeting, Oslo, April 2013, available at [http://www.portaldasauade.pt/NR/rdonlyres/C6706A8D-70F3-4A5B-8392-AA7C5DC4ADC2/0/MS\\_OSLO2013.pdf](http://www.portaldasauade.pt/NR/rdonlyres/C6706A8D-70F3-4A5B-8392-AA7C5DC4ADC2/0/MS_OSLO2013.pdf).

<sup>53</sup> Portuguese Observatory of Health Systems (*Observatório Português dos Sistemas de Saúde*), 'Spring Report 2014 - Health, Denial Syndrome' (*Relatório de Primavera 2014 - Saúde, Síndrome de Negação*), 2014, available at <http://www.observaport.org/sites/observaport.org/files/RelatorioPrimavera2014.pdf>, at p. 78.

<sup>54</sup> *Ibid.*, at pp. 80-81.



reach €20 per urgent treatment, and up to €50 per additional exam or therapy (the Portuguese minimum net wage is less than €500 and the medium net wage is less than €1,000).

The closure of hospitals, maternity wards and primary care units has also been highly contested<sup>55</sup>. The dismantlement of the Lisbon Alfredo da Costa Maternity Hospital, recognised as a leading healthcare unit, providing excellent services, was contested in Court, and provisionally suspended in 2013<sup>56</sup>. Still to come is the impact of Ordinance<sup>57</sup> no. 82/2014, 10 April, supposed to enter into full force until December 2015. Its impact will be huge, especially for the elderly and the more isolated populations, away from big centres. This ordinance reorganises the network of NHS hospitals, and establishes that level two hospitals (or higher) will be reduced in number to 13 throughout the country. These hospitals are the only ones to have, for example, ophthalmology, cardiology, neonatal care units, gynaecology and maternity wards or urology. As a result of the new arrangements, citizens living inland, near the Spanish border, for example, will have to travel more than 150 km, up to two hours by car, sometimes on toll paying motorways with no equivalent alternative. Knowing that these are isolated and ageing populations, the situation is even more likely to prevent effective access to the NHS and the guarantee of the right to healthcare. The National Federation of Doctors has considered this as an attack and a step towards the destruction of the NHS<sup>58</sup>.

Related to what has been said above is the issue of the transportation of non-urgent patients (people who need regular therapies or consultation), by ambulance, which is also regulated by the Decree-Law no. 113/2011, 29 November, the Decree-Law no. 128/2012, 21 June and Ordinance no 142-B/2012, 15 May. The non-urgent transportation is now at least partially paid by the patients, unless they have proved their economic inability to do so. This has also been a highly contested measure<sup>59</sup> and is said to prevent some citizens' access to healthcare.

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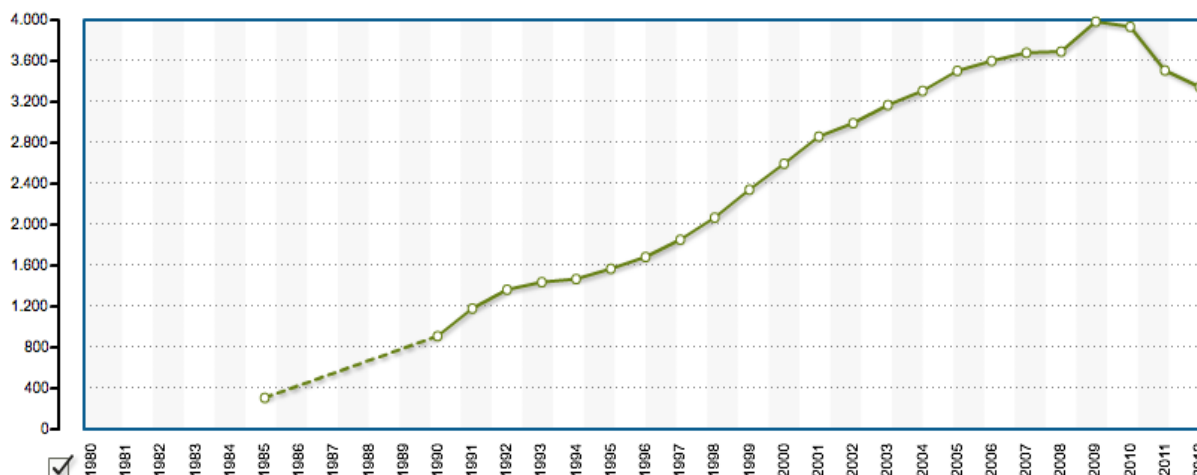
<sup>55</sup> Conclusion based on stakeholder consultation 4) (member of the Faculty of Law, University of Coimbra).

<sup>56</sup> The story was covered in all of the main media, for example, Freitas, A.C., 'Court locked Alfredo da Costa Maternity' (*Tribunal trava fecho da Maternidade Alfredo da Costa*), 18 July 2013, Press Release, available at <http://www.publico.pt/sociedade/noticia/tribunal-trava-fecho-da-maternidade-alfredo-da-costa-1600634>; the Court's decision is available at <http://static.publico.pt/DOCS/sociedade/acordaoMAC.pdf>.

<sup>57</sup> An ordinance is an executive order issued by the Government.

<sup>58</sup> See the press release of the National Federation of Doctors (*Federação Nacional dos Médicos - FNAM*) on this question, available at [http://www.fnam.pt/files/2014/04/COMUNICADO\\_DESTRU\\_SNS.pdf](http://www.fnam.pt/files/2014/04/COMUNICADO_DESTRU_SNS.pdf).

<sup>59</sup> See the news in the main media, for example Lusa, 'Hundreds dispute cuts to transport for non-emergency patients in Montemor-o-Novo' (*Centenas contestam cortes no transporte de doentes não urgentes em Montemor-o-Novo*), 12 February 2011, Press Release, available at <http://www.publico.pt/local/noticia/centenas-contestam-cortes-no-transporte-de-doentes-nao-urgentes-em-montemorono-1479977>.

**Figure 5: Total NHS expenses, 1980-2012, in millions of Euros**

Source: PORDATA<sup>60</sup>

As shown in fig.5, public NHS expenditures decreased significantly between 2009 and 2012 – the first decrease since 1990. Overall, the cuts in public expenses with the NHS have put tremendous pressure on healthcare professionals, threatening both the quality and the quantity of the care provided. A lack of motivation and indignation of doctors and nurses is easily noted, and reinforced by the protests and strikes they have organised during recent years<sup>61</sup>. There have also been many protests of NHS users, especially against the closure of hospitals, urgency and primary care units. The right to healthcare is probably one of the fundamental rights most highly considered by citizens, who see nearby NHS facilities as something worth maintaining and defending<sup>62</sup>.

According to the Portuguese Observatory of Health Systems<sup>63</sup>, these are some of the main indicators that show growing problems in healthcare and NHS coverage:

- Decrease in the number of users of medical consults;
- Decrease in the number of children with up to date vaccines, according to the National vaccination plan, at age 13;
- Reduction in the number of surgeries, day-care attendance and urgencies in several hospitals;

<sup>60</sup> PORDATA, 'SNS: total and with staff spending-Continent-Portugal' (*SNS: despesa total e com pessoal ao serviço - Continente - Portugal*), available at <http://www.pordata.pt/Portugal/SNS+despesa+total+e+com+pessoal+ao+servico++Continente-330>.

<sup>61</sup> The media have also covered these protests, for example: Saude, 'Doctors on strike on 11 and 12 July' (*Médicos em greve nos dias 11 e 12 de julho*), 6 June 2012, Press Release, available at [http://www.dn.pt/inicio/portugal/interior.aspx?content\\_id=2594962](http://www.dn.pt/inicio/portugal/interior.aspx?content_id=2594962); Reis, M.F., 'How come the doctors are in the NHS?' (*Quanto ganham os medicos no SNS?*), 22 August 2014, Press Release, available at <http://www.ionline.pt/artigos/portugal/quanto-ganham-os-medicos-no-sns-0>; Lusa, 'Nurses on strike "visit" Paulo Macedo' (*Enfermeiros em greve "visitam" Paulo Macedo*), 25 September 2014, Press Release, available at [http://www.dn.pt/inicio/portugal/interior.aspx?content\\_id=4144125](http://www.dn.pt/inicio/portugal/interior.aspx?content_id=4144125).

<sup>62</sup> Consultation with stakeholder 2), journalist.

<sup>63</sup> Portuguese Observatory of Health Systems (*Observatório Português dos Sistemas de Saúde*), 'Spring Report 2012 - Health & Crisis - A nation in distress' (*Relatório de Primavera 2012 - Crise & Saúde - Um país em sofrimento*), 2012, available at <http://www.observaport.org/sites/observaport.org/files/RelatorioPrimavera2012.pdf>; Portuguese Observatory of Health Systems (*Observatório Português dos Sistemas de Saúde*), 'Spring Report 2014 - Health, Denial Syndrome' (*Relatório de Primavera 2014 - Saúde, Síndrome de Negação*), 2014, available at <http://www.observaport.org/sites/observaport.org/files/RelatorioPrimavera2014.pdf>.

- Reduction of transportation of non-urgent patients;

The Observatory is very critical of many of the austerity measures and policies concerning healthcare adopted during the last years. It criticises, among other things:

- The centralisation of management of the NHS facilities;
- The lack of care for mental health problems (the delay between the first symptoms and effective care can reach up to five years);
- The lack of attention to changes in food consumption patterns due to the crisis;
- The denial of evidence of the impact of the economic crisis in the citizens' health.

Another very recent work on healthcare<sup>64</sup>, by the Gulbenkian Foundation, also advocates the need to address the inequalities in the access to effective and quality healthcare, and increase proximity units and domiciliary services.

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<sup>64</sup> Gulbenkian Platform for a Sustainable Health System, 'The Future for Health - Everyone has a role to play', 2014, available at [http://www.gulbenkian.pt/mediaRep/gulbenkian/files/institucional/FTP\\_files/pdfs/FuturodaSaude2014/RelatorioFuturodaSaudePT2014/index.html](http://www.gulbenkian.pt/mediaRep/gulbenkian/files/institucional/FTP_files/pdfs/FuturodaSaude2014/RelatorioFuturodaSaudePT2014/index.html).

## 4. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO WORK

### KEY FINDINGS

The right to work has probably been the most affected fundamental right in the context of the economic crisis. It has been affected by the crisis itself (that led to a significant rise of unemployment) and by austerity measures. These measures included pay-cuts, reduction of severance payments and increase in working hours without additional pay.

### 4.1. International and EU legal framework for the protection of the right to work

There is no blanket guarantee in the international law of the right to work, if understood as the right to have and maintain gainful employment. Article 6 of the ICESCR recognises the right to work in the sense of opportunity of everyone to gain their living by freely chosen or accepted work. In that regard, States Parties are expected to take appropriate steps to safeguard this right, including by providing vocational and technical training and economic policies aimed at steady economic development and full employment. This right, according to the ICESCR, implies that the Parties must guarantee equal access to employment and protect workers from being unfairly deprived of their employment, including by preventing discrimination. This right depends on a number of interdependent and essential elements, the implementation of which will depend on the conditions present in each State Party, which may be identified as: availability, accessibility, acceptability and quality, while the states have the general obligation to respect, protect and fulfil this right<sup>65</sup>. Moreover, the International Labour Organization (the 'ILO') has the right to work as the core of its activities, and numerous conventions have been adopted within its framework to protect and improve the enjoyment of the right to work.

Similarly, the EU Charter guarantees to everyone the right to engage in work and to pursue a freely chosen or accepted occupation<sup>66</sup>, which corresponds to the guarantee from the ICESCR. The EU Charter, furthermore, provides for a guarantee for everyone to a free placement service<sup>67</sup>, protection from unjustified dismissal<sup>68</sup> and the right to fair and just working conditions<sup>69</sup>.

### 4.2. The right to work in Portugal

The right to work is protected by the Portuguese Constitution, in Article 58, which reads as follows: 'Article 58 (Right to work)

1. Everyone has the right to work.
2. In order to ensure the right to work, the state is charged with promoting:

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<sup>65</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 18 – Right to work*, UN Doc. E/C.12/GC/18 (2006).

<sup>66</sup> The EU Charter, Article 15(1).

<sup>67</sup> The EU Charter, Article 29.

<sup>68</sup> The EU Charter, Article 30.

<sup>69</sup> The EU Charter, Article 31.

- a) The implementation of full-employment policies;
- b) Equal opportunities in the choice of profession or type of work, and the conditions needed to avoid the gender-based preclusion or limitation of access to any position, work or professional category;
- c) The cultural and technical training and occupational development of workers'.

Article 59 of the Constitution establishes several workers' rights, which are considered directly connected with the right to work. It states the following: 'Article 59 (Workers' rights)

1. Regardless of age, sex, race, citizenship, place of origin, religion and political and ideological convictions, every worker has the right:
  - a) To the remuneration of his work in accordance with its volume, nature and quality, with respect for the principle of equal pay for equal work and in such a way as to guarantee a proper living;
  - b) That work be organised under conditions of social dignity and in such a way as to provide personal fulfilment and to make it possible to reconcile work and family life;
  - c) To work in conditions that are hygienic, safe and healthy;
  - d) To rest and leisure time, a maximum limit on the working day, a weekly rest period and periodic paid holidays;
  - e) To material assistance when he involuntarily finds himself in a situation of unemployment;
  - f) To assistance and fair reparation when he is the victim of a work-related accident or occupational illness.
2. The state is charged with ensuring the working, remuneratory and rest-related conditions to which workers are entitled, particularly by:
  - a) Establishing and updating a national minimum wage which, among other factors, shall have regard to workers' needs, increases in the cost of living, the level of development of the forces of production, the demands of economic and financial stability, and the accumulation of capital for development purposes;
  - b) Setting national limits on working hours;
  - c) Especially protecting the work done by women during pregnancy and following childbirth, as well as the work done by minors, the disabled and those whose occupations are particularly strenuous or are undertaken in unhealthy, toxic or dangerous conditions;
  - d) In cooperation with social organisations, ensuring the systematic development of a network of rest and holiday centres;
  - e) Protecting emigrant workers' working conditions and guaranteeing their social benefits;
  - f) Protecting student workers' working conditions.
3. Salaries shall enjoy special guarantees, as laid down by law'.

This chapter focuses on impacts of the austerity measures on the right to work, not on the so-called rights at work (rights related to work itself). The latter are mentioned only if an impact of the austerity measures could be found, together with other fundamental rights affected by the crisis. This is why the impact on the right to holidays can be found in chapter 8 of this study.

### 4.3. Measures and impact on the right to work

The right to work has probably been the most affected fundamental right in the context of the economic crisis. On the one hand, it has been directly affected by the economic crisis in itself: the unemployment rate has more than doubled and economic emigration due to unemployment, low wages and precarious labour has reached record numbers, as has been seen in Section 1. On the other hand, the rights of workers have been one of the main targets of austerity measures and have been highly affected since 2011. As has been recently noted by the ILO<sup>70</sup>, the Portuguese labour market has not improved since the signature of the bailout programme, in spite of all the austerity measures that were agreed and affect the right to work and the rights of workers. In fact, since 2011, there has been an increase in a tendency (already felt before) to introduce labour law reforms<sup>71</sup>, especially in what concerns both individual and collective workers' rights.

It is almost impossible to cover all of the consequences in this kind of study, so we will cover three of the main problematic areas (pay-cuts and wage setting; dismissal rules; working time and extra work).

#### 4.3.1. Pay-cuts and wage setting

Under the MoU<sup>72</sup>, the Government assumed the obligation to "promote wage developments consistent with the objectives of fostering job creation and improving firms' competitiveness with a view to correct macroeconomic imbalances". To that purpose, it promised to:

- Commit that, over the programme period, any increase in the minimum wage will take place only if justified by economic and labour market developments and agreed in the framework of the programme review; therefore, the minimum wage remained the same from 2011-2014, €485 per month<sup>73</sup>, gross, although there was a previous agreement between social partners to increase it to €500 by 2011<sup>74</sup>. It has only recently been raised to €505 (starting in October 2014)<sup>75</sup>.
- Define clear criteria to be followed for the extension of collective agreements and commit to them. The representativeness of the negotiating organisations and the implications of the extension for the competitive position of non-affiliated firms will have to be among these criteria. The representativeness of negotiating organisations will be assessed on the basis of both quantitative and qualitative

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<sup>70</sup> ILO (Provisória, V.), 'Facing the employment crisis in Portugal Report' (*Enfrentar a crise do emprego em Portugal*), November 2013, available at [http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/versaofinal\\_oit\\_relataenfrentarcriseemprego\\_201311\\_01\\_pt.pdf](http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/versaofinal_oit_relataenfrentarcriseemprego_201311_01_pt.pdf).

<sup>71</sup> Observatory on Crisis and Alternatives (*Observatório sobre Crise e Alternativas*), 'The Anatomy of the Crisis: identifying problems to construct the alternative' (*A Anatomia da Crise: identificar os problemas para construir as alternativas*) 1<sup>st</sup> preliminary report of the Observatory on Crisis and Alternatives, December 2013, available at [http://www.ces.uc.pt/observatorios/crisalt/index.php?id=6522&id\\_lingua=1&pag=6561](http://www.ces.uc.pt/observatorios/crisalt/index.php?id=6522&id_lingua=1&pag=6561).

<sup>72</sup> See MoU, available at [http://www.portugal.gov.pt/media/371369/mou\\_20110517.pdf](http://www.portugal.gov.pt/media/371369/mou_20110517.pdf).

<sup>73</sup> The evolution of the value of the minimum wage can be checked at <http://www.pordata.pt/Portugal/Salario+minimo+nacional-74>.

<sup>74</sup> Agreement signed in December 2006 by the Government and all the social partners (workers' unions and employers associations), about the minimum wage, available at <http://www.ces.pt/download/203/FixEvolRMMG2006.pdf>.

<sup>75</sup> Decree-Law no. 144/2014 of 30 September (*Decreto-Lei n.º 144/2014 de 30 de setembro*), Official Gazette (*Diário da República*) no. 188.

indicators. The extension of collective agreements has been limited in this period, as will be seen in Section 8.

At the same time, as foreseen in the third Stability and Growth Pact (PEC III) pay-cuts had already been applied to all State's employees with a wage above €1,500 before taxes and other legal contributions; the cuts varied between 3,5% and 10%, progressively augmenting depending on the amount received, and with an average cut of 5%. This measure was challenged before the Constitutional Court by opposition MPs (see Chapter 9).

In 2012, the Government maintained the 2011 pay-cuts and added a new measure under the Budget Law for 2012 (Law no. 64-B/2011, 30<sup>th</sup> December): the partial or total suspension of the Christmas and Holiday pay (part of the yearly wage under public and private law), for all public sector employees with salaries between 600 and €1,100, or over €1,100 per month, respectively. Again, this new pay-cut was challenged before the Constitutional Court by opposition MPs (see Chapter 9).

In 2013, under the Budget Law for 2013 (Law no. 66-B/2012, 30<sup>th</sup> December), the Parliament approved one of the biggest tax rises the country has ever seen, especially in what concerns the personal annual income tax; at the same time, it maintained the 2011 pay-cuts and it imposed the suspension of the holiday pay (but not of the Christmas pay). This time, several public officials requested the constitutional review of the measures, namely the Head of State, the Ombudsman and opposition MPs. The Court upheld the 2011 pay-cuts again, but declared the suspension of the holiday pay unconstitutional, for violation of the principle of equality (Decision 187/2013). Therefore, the Government was forced to pay the full amount to public employees.

In 2014, the Parliament approved a new set of pay-cuts to replace the 2011 ones that were still in place. This time, a salary reduction varying from 2.5% to 12% was to be applied to public sector workers with wages greater than €675. By intervention of opposition MPs, the Constitutional Court was called to review the constitutionality of this measure, which was declared unconstitutional<sup>76</sup>. Consequently, the Government approved new pay-cuts, equivalent to the 2011 ones<sup>77</sup>, to be applied from September 2014 up to the end of 2015 so public employees only received full salaries from June to August 2014.

#### 4.3.2. Dismissal

The rules for dismissal were significantly changed during the austerity period. The Portuguese Constitution strictly forbids a dismissal without due cause<sup>78</sup>, so it would be unconstitutional to fully liberalise it. The reforms<sup>79</sup> undertaken were the closest possible to such a solution. The dismissal on grounds of extinction of job has been made easier and the law has established a set of criteria that the employer has to follow to decide which job to extinguish, the first being the merits of the workers. The process to be followed in case of

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<sup>76</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 413/2014, 30 May 2014, available at <http://www.tribunalconstitucional.pt/tc/acordaos/>.

<sup>77</sup> Law no. 75/2014, 12<sup>th</sup> September (*Lei n.º 75/2014 de 12 de setembro*), Official Gazette (*Diário da República*) no. 176.

<sup>78</sup> Article 53 of the Portuguese Constitution: 'Article 53 (Job security) Workers are guaranteed job security, and dismissal without fair cause or for political or ideological reasons is prohibited.'

<sup>79</sup> See Law no. 23/2012, 25<sup>th</sup> June 2012 and Law no. 27/2014, 8 May 2014.

dismissal with due cause has been simplified, as well as the legal obligations of very small companies who need to dismiss workers.

These were the most important measures regarding dismissal, as written in the MoU<sup>80</sup> and since then implemented:

"The Government will carry out reforms in the employment protection system aimed at tackling labour market segmentation, fostering job creation, and easing adjustment in the labour market:

Severance payments.

**1.** The Government will submit legislation to Parliament to implement a reform in the severance payments for new hires in line with the March 2011 Tripartite Agreement<sup>81</sup>. Severance payments of open-ended contracts will be aligned with those of fixed-term contracts. The reform<sup>82</sup> will re-design the system for severance payment entitlements as follows:

- total severance payments for new open ended contracts will be reduced from 30 to 10 days per year of tenure (with 10 additional days to be paid by an employers' financed fund) with a cap of 12 months and elimination of the three months of pay irrespective of tenure;
- total severance payments for fixed-term contracts will be reduced from 36 to 10 days per year of tenure for contracts shorter than six months and from 24 to 10 days for longer contracts (with 10 additional days to be paid by an employers' financed fund);
- implementation of the fund agreed in the March Tripartite Agreement to partly finance the cost of dismissals for new hires.

**2.** The Government will present a proposal to align severance payment entitlements for current employees in line with the reform for new hires, (taking into account the revised link between entitlement and seniority and the cap to total entitlements) without reducing accrued-to-date entitlements. This plan will lead to draft legislation to be submitted to Parliament."

For contracts concluded after November 2011, severance payments were reduced from 30 to 20 days of pay, with a maximum of 12 salaries (Law no 53/2011, 14<sup>th</sup> October, which reformed the Labour Code); this will be progressively extended to existing contracts. The trend seems to be to phase out the classic concept of compensation, especially since the second revision of MoU, in December 2011<sup>83</sup>. Furthermore, dismissal of private workers for inadequacy and extinction of the job has been made easier. On the one hand, individual

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<sup>80</sup> See MoU, available at [http://www.portugal.gov.pt/media/371369/mou\\_20110517.pdf](http://www.portugal.gov.pt/media/371369/mou_20110517.pdf).

<sup>81</sup> Tripartite Agreement for Competitiveness and Employment, signed in March 2011 by the Government, several Employers' Associations and one Workers' Union (UGT); the main Workers' Union (CGTP) did not sign the agreement, which is available at <http://www.ces.pt/download/719/AcordoTripCompetEmprego.pdf>.

<sup>82</sup> See Law no 53/2011, 14<sup>th</sup> October 2011 and Law no. 23/2012, 25<sup>th</sup> June 2012.

<sup>83</sup> Observatory on Crisis and Alternatives (*Observatório sobre Crise e Alternativas*), 'The Anatomy of the Crisis: identifying problems to construct the alternative' (*A Anatomia da Crise: identificar os problemas para construir as alternativas*) 1<sup>st</sup> preliminary report of the Observatory on Crisis and Alternatives, December 2013, available at [http://www.ces.uc.pt/observatorios/crisalt/index.php?id=6522&id\\_lingua=1&paq=6561](http://www.ces.uc.pt/observatorios/crisalt/index.php?id=6522&id_lingua=1&paq=6561), at p.112.



dismissals by unsuitability of the employee even without the introduction of new technologies or other changes in the workplace have become possible, when the worker does not meet certain objectives agreed with the employer, which opens the door to some subjectivity in the evaluation of the concepts of productivity and quality. On the other hand, the criteria according to which the employer was forced to dismiss the younger worker have been eliminated and replaced by much broader and subjective ones (see Laws no. 69/2013, 30 August, 76/2013, 7 November, 27/2014, 8 May and 55/2014, 25 August).

Some of the first changes towards liberalisation of the labour market, namely some of the changes in dismissal rules, were considered unconstitutional by the Constitutional Court (Decision no. 602/2013) for violation of article 53 of the Constitution<sup>84</sup>. The Court found that the law was not precise enough about the criteria that can justify dismissal on grounds of job extinction or inability to adapt to the job's demands, leaving the decision almost entirely to the employer, in a way that, in practice, was very close to a free dismissal regime<sup>85</sup>. However, the Parliament has since then approved new rules<sup>86</sup> that were not subject to such control: a set of motives for dismissal on grounds of job extinction or inability was established, as well as a precise order for the use of those criteria, and several legal expressions that the Constitutional Court had found insufficient (such as "impossibility of maintenance of the working relationship") were more clearly defined.

#### 4.3.3. Working Time and Extra Work

Again, these were the most important reforms, agreed in the MoU<sup>87</sup> and since then implemented<sup>88</sup>:

**1.** "The Government will prepare an assessment regarding the use made of increased flexibility elements by the social partners associated with the 2009 Labour Code revision<sup>89</sup> and prepare an action plan to promote the use of flexible working time arrangements, including modalities for permitting the adoption of "bank of hours" working arrangement by mutual agreement of employers and employees negotiated at plant level.

**2.** Draft legislation will be submitted to Parliament on the following aspects:

- implementation of the commitments regarding working time arrangements and short-time working schemes in cases of industrial crisis, by easing the requirements employers have to fulfil to introduce and renew these measures;
- revision of the minimum additional pay for overtime established in the Labour Code:  
(i) reduction to maximum 50% (from current 50% for the first overtime hour

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<sup>84</sup> Article 53 of the Portuguese Constitution states as follows: 'Article 53 (Job security) Workers are guaranteed job security, and dismissal without fair cause or for political or ideological reasons is prohibited.'

<sup>85</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 602/2013, 20 September 2013.

<sup>86</sup> See Law no. 27/2014, 8<sup>th</sup> May (*Lei n.º 27/2014 de 8 de maio*), Official Gazette (*Diário da República*) no. 88 and Law no. 55/2014, 25<sup>th</sup> August (*Lei n.º 55/2014 de 25 de agosto*), Official Gazette (*Diário da República*) no. 162.

<sup>87</sup> See MoU, available at [http://www.portugal.gov.pt/media/371369/mou\\_20110517.pdf](http://www.portugal.gov.pt/media/371369/mou_20110517.pdf).

<sup>88</sup> See Law no. 23/2012, 25<sup>th</sup> June 2012 and Law no. 68/2013, 29<sup>th</sup> August 2013.

<sup>89</sup> The Portuguese Labour Code was extensively reformed in 2009, by Law no. 7/2009, 12<sup>th</sup> February (*Lei n.º 7/2009 de 12 de fevereiro*), Official Gazette (*Diário da República*) no. 30, (available at <https://dre.pt/application/file/602193>); several flexibility measures regarding working time and dismissal were introduced.

worked, 75% for additional hours, 100% for overtime during holydays); (ii) elimination of the compensatory time off equal to 25% of overtime hours worked. These norms can be revised, upwards or downwards, by collective agreement."

As a consequence, with the entry into force of Law no. 23/2012, the bonuses for overtime were halved: the work performed on a working day decreased from 50% in the first hour and 75% in the subsequent hours to, respectively, 25% and 37.5%, and the work performed on a day of rest or holiday days decreased from 100 to 50%. The compensation for extra work was even more reduced for public employees, whose working time was increased from 35 to 40 hours a week without additional compensation. These measures were reviewed by the Constitutional Court, but they were not deemed unconstitutional (Decisions 602/2013, 187/2013 and 794/2013).

## 5. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO PENSION

### KEY FINDINGS

Pensions were also targeted by austerity measures. Pensioners suffered pay-cuts from 2011 up to 2014; the age for retirement has increased, and the rules for the calculation of the amount of pension have also changed and are now more severe, depending not only on the age and working history of the worker, but also on a sustainability factor related to the average life expectancy at 65 years of age in the year 2000.

### 5.1. International and EU legal framework for the protection of the right to pension

There is no internationally guaranteed right to pension. However, pensions, including the contributory pensions, as well as the so-called social pensions (in so far as provided by applicable legislation), have been observed through the lenses of the right to property. Namely, having developed the doctrine of pensions as acquired rights, the European Court of Human Rights has observed pensions through the lenses of the right to property as guaranteed by Article 1 of Protocol No. 1 to the ECHR<sup>90</sup>.

With this understanding, Article 17 of the EU Charter guarantees the right for everyone 'to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss.'

### 5.2. The right to pension in Portugal

The right to a pension is not directly stated in the Portuguese Constitution, but is considered to be a necessary consequence of the right to social security, enshrined in article 63: 'Article 63 (Social security and solidarity)

1. Everyone has the right to social security.
2. The state is responsible for organising, coordinating and subsidising a unified and decentralised social security system, with the participation of the trade unions, other organisations that represent workers and associations that represent the other beneficiaries.
3. The social security system shall protect citizens in illness and old age and when they are disabled, widowed or orphaned, as well as when they are unemployed or in any other situation that entails a lack of or reduction in means of subsistence or the ability to work.
4. All periods of work shall, as laid down by law, contribute to the calculation of old age and disability pensions, regardless of the sector of activity in which they were performed'.

The Portuguese pensions' system combines pension benefits calculated on the basis of remuneration and contributions to the system with a network security subject to means-

<sup>90</sup> See e.g. *Gaygusuz v. Austria*, case no. 17371/90, judgment of 16 September 1996, §41. For a full list of references to the regime of 'acquired rights' see *Grudić v. Serbia*, case no. 31925/08, judgment of 17 April 2012, §72.

testing. The system was unified for all new entrants to the labour market since 2006, but remains fragmented (for example, public employees that started working before 2006 contribute to a separate system – the CGA, *Caixa Geral de Aposentações* – that is closed to new contributors and is therefore, and increasingly unable to have balanced budgets).

### 5.3. Measures and impact on the right to pension

In Portugal, public expenditure on old-age pensions has increased consistently over the last decade, from 7% of GDP in 2000 to 10% in 2010, but a large part of this increase occurred well before the financial crisis of 2008<sup>91</sup>. However, if we analyse data from other countries, we will see that there has been an increase in spending of this kind similar to that observed in Portugal, suggesting that the increasing expenditure on pensions expresses a global dynamic and not a peculiarity of the Portuguese economy. Furthermore, it is estimated that in 2011, 19.2% of Portuguese pensioners (aged 65 years or more) were at risk of poverty, well above the 14.7% EU-27 average<sup>92</sup>.

#### 5.3.1. Pay-cuts

Pensioners are a category highly affected by the sacrifices imposed by austerity measures. They have suffered pay-cuts very similar to the ones imposed upon the public sector workers, although not always through the same legislative measures. To impose a pay-cut, similar to the one applied from 2011 to 2014 to public workers, on retired citizens, the Parliament approved a Special Solidarity Contribution, which was first applied in 2011 (article 162, State Budget Law for 2011, Law no. 55-A/2010, 31 December). Back then it imposed a 10% contribution on pensions above €5,000 gross per month which was deducted from the pensions before payment. In 2012, these rules were aggravated, and the contribution increased to 25% for the amounts above approximately €5,030 and 50% for the amounts above €7,545 (article 20, State Budget Law for 2012, Law no. 64-B/2011, 30 December). In 2013, however, it was thoroughly revised and a much greater number of pensioners were affected. Pensions between €1,350 and €1,800 were subject to a contribution of 3.5%, those between €1,800 and €3,750 had to pay a contribution of 16%, and for pensions above 3,750 a 10% contribution was applied to the whole amount, with a 15% plus for the amounts between €5,030 and €7,545 and a 40% plus for amounts superior to this (article 78, State Budget Law for 2013, Law no. 66-B/2012, 31 December). The measure was adopted again in 2014, with rules quite similar to the ones imposed in 2013 (Law no. 83-C/2013, de 31st December – State Budget Law for 2014 and Law no. 13/2014, 14th March). The money paid by the pensioners was destined to the different branches of the social security system responsible for paying their retirement allowances.

Another common cut was the suspension of the extra holiday and Christmas pay in 2012<sup>93</sup> and the suspension of the payment of 90% of the holiday pay in 2013<sup>94</sup>. As was the case

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<sup>91</sup> ILO, 'Facing the employment crisis in Portugal Report' (*Enfrentar a crise do emprego em Portugal*), November 2013, available at [http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/versaofinal\\_oit\\_relataenfrentarcriseemprego\\_201311\\_01\\_pt.pdf](http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/versaofinal_oit_relataenfrentarcriseemprego_201311_01_pt.pdf), page 30.

<sup>92</sup> *Ibid.*

<sup>93</sup> State Budget Law for 2012, Law no. 64-B/2011 of 30 December (*Lei n.º 64-B/2011 de 30 de dezembro*), Official Gazette (*Diário da República*) no. 250.

<sup>94</sup> *Ibid.*

for public employees, these measures were declared unconstitutional by the Constitutional Court (Decisions no. 353/2012 and 187/2013), but were effectively applied in 2012 due to the limitation of effects of the Court's sentence (see section 9).

### 5.3.2. Other relevant measures

As for the amounts of pensions, they were frozen in 2011, including minimum pensions. From 2012 to 2014, only the minimum social security pension (of € 246.36) was raised.

The age for retirement has increased (from 65 years until 2013 to 66 years in 2014 and 2015)<sup>95</sup>, and the rules for the calculation of the amount of pension have also changed and are now more severe, depending not only on the age and working history of the worker, but also on a sustainability factor related to the average life expectancy at 65 years of age in the year 2000. The Government also changed this sustainability factor, established in the Decree-Law no. 187/2007 that connects the amount of pensions to life expectancy, determining an additional cut in the new pensions.

According to Ordinance no. 378-G/2013, which came into force in January 2014, the normal age of entitlement to an old-age pension in 2014 and in 2015 is now 66 years. Therefore, employees who retire early (before reaching the age of normal access to the pension) will suffer a penalty of a 6% reduction of their pension. Nevertheless, early retirements have been suspended during the bailout programme (Decree-Law no. 85-A/2012, 5 April 2012), with the Government declaring that active ageing and the extension of participation in the labour market are considered essential to the sustainability of the social security system and to ease the impact that growing life expectancy has on its budget.

Comparing to European data, the elderly population in Portugal is already one of the most disadvantaged groups in economic terms, and 1.5 million retired citizens have pensions and annuities below €500<sup>96</sup>. In this context, it is worrying to know that Portugal is one of the countries where the substitution rate (the amount of the pension compared to the amount of the salary earned before retirement, in percentage) will decrease the most between 2008 and 2048, largely due to the application of the sustainability factors established by law<sup>97</sup>.

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<sup>95</sup> Decree-Law no. 167-E/2013 of 31<sup>st</sup> December (*Decreto-Lei n.º 167-E/2013, de 31 de dezembro*), Official Gazette (*Diário da República*), no. 253.

<sup>96</sup> Economic and Social Council Portugal (*Conselho Económico e Social*) 'Opinion about the consequences of the economic, social and organisational initiative arising from aging' (*Parecer De Iniciativa Sobre As Consequencias Económicas, Sociais E Organizacionais Decorrentes Do Envelhecimento Da População*), 2013, available at [http://www.ces.pt/download/1359/FINAL\\_completa%20com%20ESTUDO.pdf](http://www.ces.pt/download/1359/FINAL_completa%20com%20ESTUDO.pdf) , page 7.

<sup>97</sup> *Ibid.*

## **6. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT OF ACCESS TO JUSTICE**

### **KEY FINDINGS**

The right of access to justice has been affected by the crisis and austerity measures, although citizens' dissatisfaction with justice administration was reported long before the 2008-2014 period. The rise in justice fees and the implementation of the new judiciary map seem to be the most problematic issues.

### **6.1. International and EU legal framework for the protection of the right of access to justice**

While access to justice has not been explicitly guaranteed by international human rights law as such, it has however figured highly in the general requirements of the respect of rights of individuals. Hence, the UDHR, ICCPR, or ECHR, while guaranteeing procedural rights by means of the right to a fair hearing (or trial), do not make a reference to access to justice. The absence of a guarantee of the right of access to justice, has not prevented the ECtHR to effectively provide protection of this right by expanding the guarantee from Article 6 of the right to a fair trial to also mean the guarantee of the right to access to a court. Furthermore, Article 13 of the ECHR guarantees the right to legal remedy, which is also an important element of access to justice.

More recently, however, the Convention on the Rights of Persons with Disabilities<sup>98</sup> guarantees the right of people with disabilities on access to justice on an equal basis with others.

Access to justice is guaranteed by Article 47 of the EU Charter, which guarantees the right of everyone to an effective remedy before a tribunal established by the law, by means of a fair and public hearing within a reasonable time, with access to legal aid, if necessary. However, even though it is seen to typically mean 'having a case heard in a court, it can more broadly be achieved or supported through mechanisms such as national human rights institutions, equality bodies and ombudsman institutions, as well as European Ombudsman at the EU level<sup>99</sup>.

### **6.2. Access to justice in Portugal and measures during the crisis**

The right of access to Justice is protected by the Portuguese Constitution in Article 20, which reads as follows: 'Article 20 (Access to law and effective judicial protection)

1. Everyone is guaranteed access to the law and the courts in order to defend those of his rights and interests that are protected by law, and justice may not be denied to anyone due to lack of sufficient financial means.
2. Subject to the terms of the law, everyone has the right to legal information and advice, to legal counsel and to be accompanied by a lawyer before any authority.

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<sup>98</sup> CRPD, Article 13.

<sup>99</sup> FRA, *Themes: Access to justice*, available at: <http://fra.europa.eu/en/theme/access-justice>

3. The law shall define and ensure adequate protection of the secrecy of legal proceedings.
4. Everyone has the right to secure a decision in any suit in which he is intervening, within a reasonable time limit and by means of fair process.
5. For the purpose of defending the personal rights, freedoms and guarantees and in such a way as to secure effective and timely judicial protection against threats thereto or breaches thereof, the law shall ensure citizens judicial proceedings that are characterised by their swiftness and by the attachment of priority to them.'

Article 20 falls under the category of rights, liberties and guarantees (*direitos, liberdades e garantias*) and it is therefore directly applicable by the Courts.

The Administration of Justice has had problems since before the crisis, with many complaints from citizens, especially regarding the exaggerated length of judicial procedures. Portugal has repeatedly been condemned by the ECtHR due to this problem, for example in the following cases from 2014: Mendes V. Portugal (30<sup>th</sup> October 2014), Sociedade de Construções Martins & Vieira and others v. Portugal (30<sup>th</sup> October 2014), Pina e Moura v. Portugal, 2<sup>nd</sup> October 2014, Figueiredo Gonçalves v. Portugal (18<sup>th</sup> February 2014), Ferreira Alves v. Portugal (18<sup>th</sup> February 2014), Monteiro Aires v. Portugal (4<sup>th</sup> February 2014), Pereira Santos v. Portugal (4<sup>th</sup> February 2014), Cardoso Oliveira v. Portugal (4<sup>th</sup> February 2014), Trigo Saraiva v. Portugal (28<sup>th</sup> January 2014), Vieira Gomes Bezerra v. Portugal, (28<sup>th</sup> January 2014), Ratinho v. Portugal (28<sup>th</sup> January 2014) and Alves v. Portugal (28<sup>th</sup> January 2014).

During the timeframe concerned in this study, there have been two major measures that have seriously affected the right of access to justice. First of all, the significant increase in the Courts' fees; second, a reform of the whole judiciary map, still in course, that has reduced the number of Courts and concentrated services, among other aspects to be taken into consideration. The judiciary reform was not an austerity measure in itself, as it had been proposed before the economic crisis and was deemed necessary by many. However, both its concrete design and the way in which it was implemented have been considered to have been influenced by the need to save money (the Government believes that the new judicial map will allow savings of up to 1.1 million Euros)<sup>100</sup>. In particular, the reform has been criticised by the Judges' Union Association (*Associação Sindical dos Juizes Portugueses*), who claimed that it implied a sudden reduction of the number of judges, public attorneys and clerks, and that it had been badly prepared, with the Government rushing into making changes that should have been better prepared<sup>101</sup>. The Public Attorneys' Union (*Sindicato dos Magistrados do Ministério Público*) warned against<sup>102</sup> the lack of human resources, decent buildings and the fails in the electronic justice system (mainly the online platform CITIUS); according to this organisation, all this seriously compromises the implementation of the reform and the right of access to justice.

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<sup>100</sup> See the Government's report about the State Budget for 2015, page 150, available at <http://www.dgo.pt/politicaorcamental/Paginas/OEpagina.aspx?Ano=2015&TipoOE=Proposta%20de%20Or%C3%A7amento%20do%20Estado&TipoDocumentos=Lei%20/%20Mapas%20Lei%20/%20Relat%C3%B3rio>.

<sup>101</sup> See press release by the National Union Association of the Portuguese Judges (*Associação Sindical dos Juizes Portugueses*), available at <http://www.asjp.pt/2011/03/02/comunicado-reforma-do-mapa-judiciario-em-lisboa-da-propaganda-politica-a-dura-realidade/>.

<sup>102</sup> See the National Union Association of the Portuguese Judges (*Associação Sindical dos Juizes Portugueses*)'s declarations to the press at [http://www.dn.pt/inicio/portugal/interior.aspx?content\\_id=4271897](http://www.dn.pt/inicio/portugal/interior.aspx?content_id=4271897)

### 6.2.1. Judicial fees

In what concerns judicial fees, the new rules (stated in the Decree-Law no 34/2008, 26 February 2008, as altered by Law no 7/2012, 13 February 2012 and Law no 72/2014, 2 September 2014, and Ordinance no 419-A/2009, 17 April 2009) established that they have to be paid only once, at the beginning of the process, ending the initial and subsequent fees that previously existed. The whole concept of judicial fee is now more complex and varied<sup>103</sup>. In general (although not in all cases), the access to justice became more expensive (and, therefore, more difficult). The increase in the amount of justice fees applies to civil, administrative and criminal proceedings. For example, in criminal cases, to file an *habeas corpus* now costs between 102 and 510 Euros (it cost between 96 and 480 before 2008<sup>104</sup>); to file an appeal to a 2<sup>nd</sup> degree court (*Tribunal da Relação*) can cost between 306 and 612 Euros (it had a varying value starting at 192 Euros before 2008) and an appeal to the Supreme Court costs between 510 and 1,020 Euros (it had a varying value starting at 384 Euros before 2008). In civil justice, to file a petition for an action worth below 2,000 Euros costs 102 Euros, increasing to 204 if the case is worth up to 8,000 Euros. Furthermore, the new rules to calculate justice fees added uncertainty to the system. Some even say that, under some circumstances, the judicial fees may be unconstitutional for violation of the right of access to justice, as they constitute an excessive and disproportionate burden<sup>105</sup>.

### 6.2.2. Judiciary map

The reform of the whole judiciary map is regulated by the Law no. 62/2013, 26 August 2013 and by the Decree-Law no. 49/2014, 27 March 2014. According to the Government<sup>106</sup>, its main purposes are the enlargement of the territorial basis of each Court, to allow the implementation of a better autonomous management. The previous judicial districts (*comarcas*), more than 200, were concentrated in only 23. Twenty Courts were simply closed, and an additional 27 were converted into proximity sections, where citizens will be able to handle paperwork and make inquiries to the judicial administration or be heard as witnesses using videoconferences; however, trials will not normally be performed in these sections<sup>107</sup>. This reform was highly contested, first of all by lawyers, who claim it will become unbearable for poor citizens in smaller inland cities to have access to justice. The Bar organised protests, including a demonstration at the Parliament<sup>108</sup>, and has asked for the new judiciary map to be reversed or annulled. At the beginning of September 2014, the Bar even pressed criminal charges against the Justice Minister, for violation of the right

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<sup>103</sup> See Fernandez, E., 'New cost of access to justice' (*Novo Custo de Acesso à Justiça*), 2009, Journal of Public Law and Regulation (*Revista de Direito Público e Regulação*), no. 3, September 2009, CEDIPRE, Faculty of Law, University of Coimbra, available at [http://www.fd.uc.pt/cedipre/pdfs/revista\\_dpr/revista\\_3.pdf](http://www.fd.uc.pt/cedipre/pdfs/revista_dpr/revista_3.pdf).

<sup>104</sup> See Decree-Law no. 224-A/96 of 26 November (*Decreto-Lei n.º 224-A/96 de 26 de novembro*), Official Gazette (*Diário da República*), no. 274, now revoked, which contained the former Code of Justice Fees.

<sup>105</sup> *Ibid.*

<sup>106</sup> Portuguese Government (*Governo de Portugal*) 'Judicial reform - new legal map' (*Reforma judiciária-novo mapa judiciário*), available at <http://www.portugal.gov.pt/pt/os-temas/reforma-judiciaria/novo-mapa-judiciario.aspx>.

<sup>107</sup> Decree-Law no. 49/2014 of 27 March (*Decreto-Lei n.º 49/2014 de 27 de março*), Official Gazette (*Diário da República*), no. 61.

<sup>108</sup> Jornal de Notícias, 'Bastonária lawyers demand repeal of the new judicial map' (*Bastonária dos advogados exige revogação do novo mapa judiciário*), 15 July 2014, available at [http://www.jn.pt/PaginaInicial/Sociedade/Interior.aspx?content\\_id=4027995](http://www.jn.pt/PaginaInicial/Sociedade/Interior.aspx?content_id=4027995).



of access to justice and aggression against the rule-of-law<sup>109</sup>. Lawyers claim the Government has completely ignored criteria of proximity between citizens and the judicial administration.

The implementation of the new judiciary map – which has been done since September 2014<sup>110</sup> - has had many serious problems, as many Courts need new buildings to accommodate the centralisation of services; some of these buildings are not ready, and Court services function in mobile offices near the construction sites. Even more serious has been the total collapse of the online platform used to handle most civil (though not criminal) processes in first instance Courts (CITIUS). Judges have already classified the problem as “extremely serious” and that it is causing chaos in the Courts and effectively preventing the guarantee of the citizens’ right of access to justice<sup>111</sup>.

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<sup>109</sup> See the news about these criminal charges in the official website of the Bar: [http://www.oa.pt/Conteudos/Artigos/detalhe\\_artigo.aspx?idc=31623&idsc=31626&ida=134290](http://www.oa.pt/Conteudos/Artigos/detalhe_artigo.aspx?idc=31623&idsc=31626&ida=134290).

<sup>110</sup> See news in the media about the implementation of this reform: Económico, ‘Judicial chart shall enter into force on 1 September’ (*Mapa judiciário entra em vigor no dia 1 de Setembro*), 27 March 2014, available at [http://economico.sapo.pt/noticias/mapa-judiciario-entra-em-vigor-no-dia-1-de-setembro\\_189942.html](http://economico.sapo.pt/noticias/mapa-judiciario-entra-em-vigor-no-dia-1-de-setembro_189942.html); Observador, ‘Former chief of staff resigned after predicting failure of Citius’ (*Ex-chefe de gabinete demitiu-se depois de prever falhanço do Citius*), 13 September 2014, available at <http://observador.pt/2014/09/13/ex-chefe-de-gabinete-demitiu-se-depois-de-prever-falhanco-citius/>.

<sup>111</sup> ‘Judges say in court that the situation is “very serious” (*Juizes dizem que situação nos tribunais é “gravíssima”*)’, 1 October 2014, Press Release, available at <http://www.asjp.pt/2014/10/01/juizes-dizem-que-situacao-nos-tribunais-e-gravissima/>.

## **7. RIGHT TO FREEDOM OF EXPRESSION AND ASSEMBLY: PROTESTS AGAINST AUSTERITY MEASURES**

### **KEY FINDINGS**

Protests and demonstrations against austerity measures, organised both by Unions and social movements, were very frequent in the 2008-2010 period. In fact, Portugal has seen some of the biggest demonstrations of the democratic regime during this economic crisis. The relationship with police authorities has almost always been good, but there are one or two episodes of contested police violence, which was considered justified by the Government.

### **7.1. International and EU legal framework for the protection of the freedom of expression and assembly**

Freedoms of expression and assembly are guaranteed by Articles 20 and 23 of the UDHR, Articles 21 and 22 of the ICCPR, Article 8 of the IESCR, Articles 10 and 11 of the ECHR and Articles 5 of both ESC and RESC. Article 11 of the EU Charter guarantees the right of freedom of expression and information, while Article 12 provides for the protection of freedom of assembly and association.

Indeed, freedom of expression and freedom of assembly are two separate rights. The former guarantees the 'right to hold opinions and to receive and impart information and ideas without interference by public authority<sup>112</sup>', whereas the latter provides for the protection of the 'right to freedom of peaceful assembly<sup>113</sup>'. However, in the context of this particular study, they are being observed at the same time, and in relation with the same events – the protests in the Member States which were provoked by the austerity measures, and which at the same time served to express their opinions, however quite often by means of collective public assembly, through protests and other forms of manifestations, hence calling for the protection from either or both of these guarantees.

Like all other rights dealt with in the present study, these two rights are not absolute. In other words, they are guaranteed, but only under certain conditions. In that regard, one important element has to be present – the assembly needs to be peaceful. As soon as the assembly loses this attribute, the State has not only the right, but also the duty to intervene, in order to protect the rights and freedoms of others. At the same time, the opinion needs to be expressed without interference by a public authority, unless such an interference is 'necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'<sup>114</sup>.

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<sup>112</sup> ECHR, Article 10 and EU Charter, Article 11.

<sup>113</sup> ECHR, Article 11 and EU Charter, Article 12.

<sup>114</sup> ECHR, Article 10.

## 7.2. Right to freedom of assembly in Portugal

Freedom of assembly and demonstration is a fundamental right guaranteed by the Portuguese Constitution (article 45<sup>115</sup>). The constitutional provision is particularly broad, as it clearly states that citizens have the right to meet in public places, or in places open to the public, without the need for any authorisation. The only clear limit to the exercise of this right is that all reunions must be peaceful, and the participants cannot bear arms. The same constitutional norm also accords all citizens the right to demonstrate.

## 7.3. Protests against austerity measures

There have been a significant number of protests, since 2008, against austerity measures and the whole economic and social situation the country has been facing. In fact, during the timeframe analysed in this work, Portugal has seen some of the biggest demonstrations since the post-revolutionary period of 1974-1976. Overall, the relationship between social movements/demonstrators and the authorities were considered peaceful, but there have been a few episodes of violence by the police, considered justified by the Government, but highly contested by the participants<sup>116</sup>.

This is a list of the main demonstrations, their organisers, with a mention of certain facts concerning some of them:

8 March 2008 – This was a big demonstration of public school teachers, organised by their unions (one of the biggest demonstrations faced by the socialist Government). Around 100,000, out of the approximately 150,000 professionals, took part in the demonstration. The most important demands were the preservation of quality public schools, and the opposition to new career rules that established a compulsory exam for all teachers with less than five years' experience<sup>117</sup>.

20 November 2010 – Thousands of people demonstrated against the NATO summit held in Lisbon and the organisation itself, considered a symbol of the crisis and the capitalist world; the police prevented some demonstrators from joining the march, on the grounds that they were anarchists; several EU citizens were stopped at the Portuguese border, accused of having anti-NATO propaganda, and sent away, which led to demands of justification at the European Parliament<sup>118</sup>.

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<sup>115</sup> Article 45 of the Portuguese Constitution states the following: 'Article 45 (Right to meet and to demonstrate)

1. Citizens have the right to meet peacefully and without arms, even in places that are open to the public, without the need for any authorisation.

2. All citizens are granted with the right to demonstrate.'

<sup>116</sup> Conclusion based on stakeholder consultations 2), Journalist at Public Television (RTP1), September 2014 and 3), members of the F\*\*K Troika Movement, September 2014.

<sup>117</sup> Consultation with stakeholder 2), Journalist at Public Television (RTP1), September 2014. See also Expresso, '100,000 teachers in the street' (*100 mil professores na rua*), 8 March 2008, available at <http://expresso.sapo.pt/100-mil-professores-na-rua=f262140>.

<sup>118</sup> Question to the European Commission E-010232/2010, under article 117.º of the Regime, by MPs Marisa Matias (GUE/NGL) , Miguel Portas (GUE/NGL) and Rui Tavares (GUE/NGL), 9 December 2010.

24 November 2010 - General Strike, the first organised by the two federations of Unions, CGTP and UGT, since 1988<sup>119</sup>, against austerity measures, namely pay-cuts, and the suppression of social benefits.

12 March 2011 – The “Geração à rasca” (The *Struggling Generation*) demonstrations. These were organised protests that took place in over 10 cities, on austerity, the economic crisis and labour rights. They were the biggest demonstrations since the democratic revolution in 1974 and organised without political parties or trade union support (in fact, they were the first protests to be called using social media)<sup>120</sup>.

15 October 2011 – Tens of thousands (100,000 in Lisbon alone, according to the organisation) participated in the global protests against austerity in several Portuguese cities; one of the main slogans was “stop hunger, misery and the IMF”<sup>121</sup>. The demonstrators occupied the Parliament’s staircase<sup>122</sup>.

24 November 2011 – Another general strike against austerity measures; for the first time, there was collaboration between unions and social movements, and demonstrations in several places<sup>123</sup>.

22 March 2012 – Yet another general strike against the reinforcement of austerity measures that took place in 2012; social movements, such as the 15<sup>th</sup> October Platform, organised some demonstrations, parallel to the strike. Some protesters and two France Press journalists were violently beaten by the police in Lisbon<sup>124</sup>.

11 July 2012 – Doctors’ strike against healthcare and career reforms that lasted two days. Thousands of doctors demonstrated in Lisbon in defence of the NHS<sup>125</sup>.

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<sup>119</sup> News about the strike: Rattner, J., BBC, ‘General strike against cuts paralyze key Portuguese services’ (*Greve geral contra cortes paralisa principais serviços de Portugal*), 24 November 2010, available at [http://www.bbc.co.uk/portuguese/noticias/2010/11/101124\\_portugal\\_greve\\_jr.shtml](http://www.bbc.co.uk/portuguese/noticias/2010/11/101124_portugal_greve_jr.shtml).

<sup>120</sup> Consultation with stakeholder 2), Journalist at Public Television. See also Expresso, ‘Manifestation “Generation to Rasca” comes to Rossio with over 200 thousand people’ (*Manifestação “Geração à Rasca” chega ao Rossio com mais de 200 mil pessoas*), 12 March 2011, available at <http://expresso.sapo.pt/manifestacao-geracao-a-rasca-chega-ao-rossio-com-mais-de-200-mil-pessoas-fotos-e-video=f637298> and Blitz, ‘Almost 300,000 people in the demonstration of 12 March: see photos and videos’ (*Quase 300 mil pessoas na manifestação de 12 de março: veja fotos e vídeos*), 13 March 2011, available at <http://blitz.sapo.pt/quase-300-mil-pessoas-na-manifestacao-de-12-de-marco-veja-fotos-e-videos=f71663>.

<sup>121</sup> In Portuguese “Fora daqui, a fome, a miséria e o FMI”, which has been one of the most used slogans in all demonstrations after the signing of the MoU.

<sup>122</sup> Consultation with stakeholder 2), Journalist at Public Television. See also Público, ‘The day of outraged by the minute: organization speaks for 100,000 demonstrators in Lisbon’ (*Dia dos indignados ao minuto: organização fala em 100 mil manifestantes em Lisboa*), 15 October 2011, available at <http://www.publico.pt/mundo/noticia/dia-dos-indignados-minuto-a-minuto-manifestacoes-em-portugal-arrancam-as-15h-1516656> and Expresso, ‘Manifestation pulled the Marquis of Pombal’ (*Manifestação arrancou do Marquês de Pombal*), 15 October 2011, available at <http://expresso.sapo.pt/manifestacao-arrancou-do-marques-de-pombal-video=f680892>.

<sup>123</sup> Consultation with stakeholder 2), Journalist at Public Television. See also Público, ‘General strike on 24 November coincides with the vote in OE specialty’ (*Greve geral a 24 de Novembro coincide com votação na especialidade do OE*), 19 October 2011, available at <http://www.publico.pt/economia/noticia/cgtp-confirma-greve-geral-para-o-dia-24-de-novembro--1517238> and TV124, ‘General Strike 2011’ (*Greve Geral 2011*), 24 November 2011, available at <http://www.tvi24.iol.pt/fotos/54195cf63004ba00e798ad7a/488>.

<sup>124</sup> Consultation with stakeholder 2), Journalist at Public Television. See also Jornal de Notícias, ‘Arménio Carlos speaks of a “great general strike”’ (*Arménio Carlos fala numa “grande greve geral”*), 22 March 2012, [http://www.jn.pt/PaginaInicial/Economia/Interior.aspx?content\\_id=2378334&page=-1](http://www.jn.pt/PaginaInicial/Economia/Interior.aspx?content_id=2378334&page=-1) and Jornal de Notícias, ‘Union says journalists identification can turn them into targets to be killed’ (*Sindicato diz que identificação de jornalistas pode transformá-los em alvos a abater*), 23 March 2013, available at [http://www.jn.pt/PaginaInicial/Sociedade/Media/Interior.aspx?content\\_id=2380025](http://www.jn.pt/PaginaInicial/Sociedade/Media/Interior.aspx?content_id=2380025).

<sup>125</sup> See the news cover, for example, in: Público, ‘Doctors say they have had the largest demonstration ever’ (*Médicos dizem ter feito a maior manifestação de sempre*), 11 July 2012, available at <http://www.publico.pt/sociedade/noticia/sindicatos-esperam-quatro-mil-medicos-na-manifestacao-1554444>.

15 September 2012 – This was the first demonstration organised by the “Que se lixe a Troika!” – F\*\*k Troika! Movement. It was called without the support of the traditional opposition forces, such as unions, and took place in several cities. The demonstrations were huge, some of the biggest of the democratic regime, with 500,000 people in Lisbon and another 100,000 in Oporto, according to the organisers. The Movement opposes austerity measures, and is mainly concerned with the right to work, the right to healthcare and the maintenance of the NHS, and the rights to education and social security. One of the most contested measures was the reduction of employers’ and the rise of the employees’ contributions to social security system announced by the Government and dropped after these demonstrations<sup>126</sup>.

21 September 2012 – Second demonstration of the “Que se lixe a Troika!” – F\*\*k Troika! Movement, which gathered a couple of thousand people near the official residence of the Head of State, where a State’s Council about the economic crisis and austerity measures was being held<sup>127</sup>.

29 September 2012 – Big demonstration against austerity measures organised by the CGTP (one of the two Unions’ federations)<sup>128</sup>.

13 October 2012 – Protest concert against the Troika and austerity measures organised by the “Que se lixe a Troika!” – F\*\*k Troika! Movement, with thousands of participants<sup>129</sup>.

14 November 2012 – General Strike against austerity measures and demonstration next to the Parliament. At the end of the protests there was a violent police charge, caused by a few violent demonstrators, but that affected all protesters still in the area. The police conduct (namely the decision of not arresting only the disturbing elements) was highly contested. Amnesty International condemned the throwing of rocks at the Police and at the Parliament building by some demonstrators, but also stated that the authorities’ intervention had clearly been out of proportion. The Police used beatings not only to disperse the demonstration, but also to chase citizens who were legally exercising constitutional rights and even some by-passers and neighbours heading home, evidently beyond the demonstration area<sup>130</sup>.

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<sup>126</sup> Consultation with stakeholder consultation 3), member of the Que se lixe a Troika! – F\*\*K Troika!. See also Blitz, ‘Almost 300,000 people in the demonstration of 12 March: see photos and videos’ (*Quase 300 mil pessoas na manifestação de 12 de março: veja fotos e vídeos*), 13 March 2011, available at <http://blitz.sapo.pt/quase-300-mil-pessoas-na-manifestacao-de-12-de-marco-veja-fotos-e-videos=f71663>.

<sup>127</sup> Consultation with stakeholder 3), member of the F\*\*K Troika! Movement. See also the news coverage at SIC Notícias, ‘Demonstration in Bethlehem while running the meeting of the State Council’ (*Manifestação em Belém enquanto decorre a reunião do Conselho de Estado*), 21 September 2012, available at <http://sicnoticias.sapo.pt/pais/2012-09-21-manifestacao-em-belem-enquanto-decorre-a-reuniao-do-conselho-de-estado>.

<sup>128</sup> Consultation with stakeholder 2), Journalist at Public Television. See also SIC Notícias, ‘Thousands in a peaceful demonstration with general strike threat’ (*Milhares numa manifestação pacífica com ameaça de greve geral*), 29 September 2012, available at <http://sicnoticias.sapo.pt/economia/2012-09-29-milhares-numa-manifestacao-pacifica-com-ameaca-de-greve-geral>.

<sup>129</sup> Consultation with stakeholder 3), member of the F\*\*K Troika! Movement. See also Expresso, ‘A country without culture ceases to have value’ (*“Um país sem cultura deixa de ter valores”*) 13 October 2012, available at <http://expresso.sapo.pt/um-pais-sem-cultura-deixa-de-ter-valores=f759968>.

<sup>130</sup> Amnesty International, ‘Amnesty International Portugal sends letter to MAI on the events of November 14’ (*Amnistia Internacional Portugal envia carta ao MAI sobre acontecimentos do dia 14 de novembro*), 20 November 2012, available at [http://www.amnistia-internacional.pt/index.php?option=com\\_content&view=article&id=1242:amnistia-envia-carta-ao-mai&catid=31:noticias&Itemid=81](http://www.amnistia-internacional.pt/index.php?option=com_content&view=article&id=1242:amnistia-envia-carta-ao-mai&catid=31:noticias&Itemid=81).

29 November 2012 – Demonstration of Dockers; hundreds gathered by the Parliament against the new legal regime of port's work, which allegedly promotes precarious careers<sup>131</sup>.

16 February 2013 – Big demonstrations against austerity measures organised by the Unions<sup>132</sup>.

2 March 2013 – Second huge demonstration called for by the “Que se lixe a Troika!” – F\*\*k Troika! Movement; after the main protests, some demonstrators occupied the Parliament's staircase and remained there all night. There were several popular assemblies after the marches, where people told their stories and explained how they had been affected and their fundamental rights harmed by the austerity measures<sup>133</sup>.

15 October 2013 – Demonstrations against austerity measures organised by the CGTP (*Confederação Geral de Trabalhadores* – General Workers' Confederation, one of the two Portuguese Workers' Unions' Confederations) in Lisbon and Oporto. The Government forbade the protesters from crossing the 25<sup>th</sup> April Bridge (one of the main Lisbon Bridges) on foot, for alleged safety reasons. That decision was highly contested (the Union called it illegitimate and non-democratic), but the course of the march ended up being changed to accommodate the authorities' demands.<sup>134</sup>

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<sup>131</sup> Consultation with stakeholder 2), Journalist at Public Television. See also TVi24, 'Manifestation of stevedores' (*Manifestação dos estivadores*), 29 November 2012, available at <http://www.tvi24.iol.pt/fotos/54195feb3004ba00e798d888/239>.

<sup>132</sup> Consultation with stakeholder 2), Journalist at Public Television. See also the news coverage at TVi24, 'It is time for the Prime Minister to go' (*«Está na hora de o primeiro-ministro se ir embora»*), 16 February 2013, available at <http://www.tvi24.iol.pt/politica/cgtp/esta-na-hora-de-o-primeiro-ministro-se-ir-embora>.

<sup>133</sup> Consultation with stakeholder 3), member of the F\*\*K Troika Movement. See also Público, 'The minute: manifestations of March 2nd' (*Ao minuto: manifestações 2 de Março*), 2 March 2013, <http://www.publico.pt/politica/noticia/ao-minuto-manifestacoes-2-de-marco-1586372#/0>.

<sup>134</sup> The Workers' Confederation (*Confederação Geral dos Trabalhadores Portugueses – CGTP*), 'With feet on wheels march in protest on the April 25 bridge' (*Com os pés sobre rodas marcharemos em protesto na ponte 25 de Abril*), 15 October 2013, available at <http://www.cgtp.pt/informacao/comunicacao-social/21-inf-prop-sindical/6776-com-os-pes-sobre-rodas-marcharemos-em-protesto-pela-ponte-25-de-abril>.

## 8. OVERVIEW OF THE IMPACT OF AUSTERITY MEASURES ON OTHER FUNDAMENTAL RIGHTS IN PORTUGAL

### KEY FINDINGS

Austerity measures have also affected other fundamental rights, such as the right to holidays, the right to social security and the right to collective bargaining. The number of paid days of leave has been reduced, the rules for receiving unemployment benefits, the Social Insertion Income and family allowances have been changed and are much more strict. Finally, many collective conventions have been suspended and their effects have been significantly limited over time.

This section covers negative impacts the austerity measures had in Portugal on rights other than those analysed in detail in the previous sections to provide information about the broader national context. These other rights looked at are the right to holidays, as the reduction of the number of days of paid holidays was challenged before the Constitutional Court; and the right to social security and the right to collective bargaining, as they were most blatantly affected during the crisis and because several measures concerning these rights have been challenged before the courts.

### 8.1. Right to holidays

As explained before, the right to holidays is enshrined in the Portuguese Constitution, in article 59, which establishes several workers' rights: 'Article 59 (Workers' rights) 1. Regardless of age, sex, race, citizenship, place of origin, religion and political and ideological convictions, every worker has the right: (...) d) To rest and leisure time, a maximum limit on the working day, a weekly rest period and periodic paid holidays' This right is also protected under European law: the Charter of Fundamental Rights of the European Union foresees an annual period of paid leave in article 31 (on fair and just working conditions) and the Working Time Directive (2003/88/EC) requires EU countries to guarantee at least four weeks of paid holidays per year (article 7). Finally, the right is also protected by other international legal instruments, such as the European Social Charter, whose article 2, about the right to just conditions at work, includes the States' duty to provide public holidays with pay and an annual holiday with pay.

The reforms of the Labour Code have reduced the number of public holidays (minus four days, two civil and two religious celebrations were eliminated and transformed into normal working days) (Law no. 23/2012, 25 June 2012). Furthermore, the number of days of leave was set at 22 working days, and the possibility of having up to three extra days if the worker had not missed work has disappeared. These measures were challenged before the Constitutional Court; the petitioners argued that they violated the constitutional principle of the protection of trust, and the constitutional rights to paid holidays and to a fair balance between professional and personal life, because, in practise, they imposed seven additional days of work per year, without additional pay. The Constitutional Court, however, did not consider them unconstitutional. Concerning the elimination of public holidays, the Court ruled that workers do not have an individual right to the existence of public holidays, which are a mechanism to pursue public interest, paying tribute to relevant social, political or religious events. Therefore, their elimination, justified by the legislator as a way to improve productivity, was considered in accordance with the Constitution. As for the end of the possibility of having three extra days of paid leave whenever the worker had not missed

work during the previous year, the Court explained that this was only a mechanism to fight absence from work, and that its elimination, also justified by the need to enhance productivity by raising the number of working days, was entirely within the freedom of decision of the legislator, and was not an unconstitutional violation of the right to holidays. (Decision no. 602/2013).

## 8.2. Right to social security

The right to social security is enshrined in the Portuguese Constitution, in article 63, which includes the right to the State's protection on grounds of illness, old age, unemployment and lack or reduction of means of subsistence and states the following: 'Article 63 (Social security and solidarity)

1. Everyone has the right to social security.
2. The state is charged with organising, coordinating and subsidising a unified and decentralised social security system, with the participation of the trade unions, other organisations that represent workers and associations that represent the other beneficiaries.
3. The social security system shall protect citizens in illness and old age and when they are disabled, widowed or orphaned, as well as when they are unemployed or in any other situation that entails a lack of or reduction in means of subsistence or the ability to work.
4. All periods of work shall, as laid down by law, contribute to the calculation of old age and disability pensions, regardless of the sector of activity in which they were performed.
5. With a view to the pursuit of the social solidarity objectives that are particularly enshrined in this Article and in Articles 67(2)(b), 69, 70(1)(e), 71 and 72, the state shall, as laid down by law, support and inspect the activities and modus operandi of private charitable institutions and other not-for-profit institutions that are recognised to be in the public interest.'

It is also foreseen in the European Charter of Fundamental Rights, in article 34, and in the European Social Charter (article 12).

In Portugal, one of the main austerity measures consisted of the freezing of almost all social and pension benefits, the reduction of Social Insertion Income, family benefits and welfare assistance. Since 2010, the country has witnessed a clear retreat in policies aimed at combating poverty and social precariousness. This reduction is justified by the effort to contain public deficit<sup>135</sup>.

### 8.2.1. Social Insertion Income

In particular, the changes in the Social Insertion Income in 2010 and 2012<sup>136</sup> profoundly altered the eligibility requirements of the programme, the amounts earned by the beneficiaries and the effectiveness of the measure to combat situations of extreme poverty. As for eligibility requirements, after 2012, only Portuguese and European citizens who have been lawfully residing in Portugal for over one year may receive the Social Insertion

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<sup>135</sup> See UNICEF, Portuguese Committee, 'Children and the Crisis in Portugal - Children's Voices, Public Policy and Social Indicators' (*As Crianças e a Crise em Portugal - Vozes de Crianças, Políticas Públicas e Indicadores Sociais*), 2013, available at <http://www.unicef.pt/as-criancas-e-a-crise-em-portugal/files/Relatorio-Unicef.pdf>.

<sup>136</sup> Decree-Law no. 70/2010 of 16 June (*Decreto-Lei n.º 70/2010, de 16 de junho*), Official Gazette (*Diário da República*), no. 115 and Decree-Law no. 133/2012 of 27 June (*Decreto-Lei n.º 133/2012 de 27 de junho*), Official Gazette (*Diário da República*), no. 123.



Income. For non-EU citizens, more than 3 years of lawful residence are demanded (article 6, Law 13/2003, as amended by Decree-Law 133/2012). Beneficiaries of the Social Insertion Income are obliged to sign an "Insertion Contract" where several obligations are foreseen, to enrol in Employment Services, to actively look for a job if they do not have one, and to perform socially useful work. The renovation of the Social Insertion Income after its initial year is no longer automatic and it depends on a new petition.

The amount of the money allowance attributed depends on the size of the family. Since the 2012 legal reform, it is now calculated on the basis of the Social Support Index – IAS, an Index whose value is annually fixed by the Government, and that has been set at 419.22 €, without changes since 2009. Before that, it was calculated with reference to the social pensions' value. According to the new rules, for the first adult, the maximum reference value of the Social Insertion Income is 189.52 €, 45.208% of the Social Support Index. Any additional adult receives 50% of the reference value (maximum 94.76 €) and children get 30% of that same value (maximum 56.86 €). If the family has some kind of income, it only gets the amount of money corresponding to the difference between that income and the maximum reference values of the Social Insertion Income.

A very simple example illustrates the scope of these changes<sup>137</sup>. In early 2010, a couple with two young children was eligible for Social Insertion Income if they had a monthly income of up to €569. In August 2012, the same couple would only be eligible if it had an income under €398. There are two immediate consequences of these changes: the loss of the benefit by a significant percentage of previous beneficiaries; and a reduction in the amounts receivable for those families who remain in the programme.

### 8.2.2. Family allowances

Family allowances (*abono de família*) have also been reduced<sup>138</sup> and half a million children have lost the right to receive it, under the new eligibility criteria, during the last five years<sup>139</sup><sup>140</sup>. There are 3 degrees of family allowances, according to the family's size and income. For the first degree (families with annual incomes up to 2,934.54 € per capita), children up to 1 year receive 140,76 € per month, and older children get 35.19 € (this value can be increased for children up to 36 months, depending on the number of children in the family). The values before 2010 were, respectively, 174.72 € per month and 43.68 € per month. Second-degree families (with an annual income per capita of up to 5,869.08 €) receive 116.74€ per month for babies up to one year and 29.19 € for older children. The values before 2010 were, respectively 144.91 € per month and 36.23 € per month. Third degree families (with a maximum annual income per capita of 8,803.63 €) get 92.29 € per month during the first year of their children and 26.54 € after that<sup>141</sup>. These values have

<sup>137</sup> Rodrigues, C.F., 'Evolution of the number of recipients of RSI' (*Evolução do Número de Beneficiários do RSI*), available at [http://www.fundacao-betania.org/ges/arquivos/Evol\\_Benef\\_RSI\\_Farinha\\_Rodrigues2013.pdf](http://www.fundacao-betania.org/ges/arquivos/Evol_Benef_RSI_Farinha_Rodrigues2013.pdf).

<sup>138</sup> Decree-Law no. 116/2010 of 22 October (*Decreto-Lei n.º 116/2010 de 22 de outubro*), Official Gazette (*Diário da República*), no. 206.

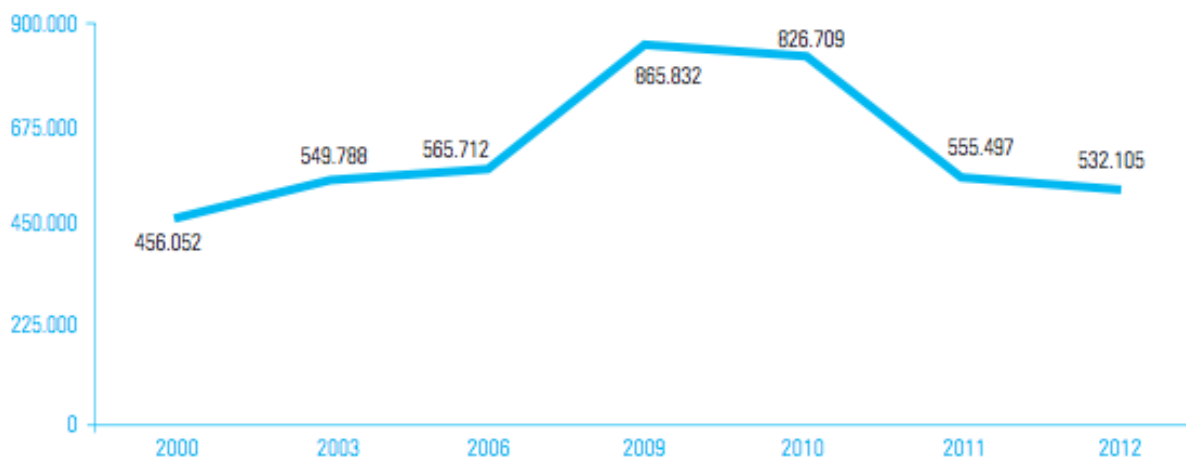
<sup>139</sup> See UNICEF, Portuguese Committee, 'Children and the Crisis in Portugal - Children's Voices, Public Policy and Social Indicators' (*As Crianças e a Crise em Portugal - Vozes de Crianças, Políticas Públicas e Indicadores Sociais*), 2013, available at <http://www.unicef.pt/as-criancas-e-a-crise-em-portugal/files/Relatorio-Unicef.pdf>.

<sup>140</sup> Público, 'Half a million children lose child benefit for three years' (*Meio milhão de crianças perdem abono de família em três anos*), 21 November 2013, available at <http://www.publico.pt/sociedade/noticia/em-tres-anos-meio-milhao-de-criancas-perdem-abono-de-familia-1613303>.

<sup>141</sup> See the information at the social security official website: <http://www4.seg-social.pt/abono-de-familia-para-criancas-e-ovens>, and news in the media informing of the changes in 2010: [http://www.jn.pt/PaginaInicial/Nacional/Interior.aspx?content\\_id=1697286](http://www.jn.pt/PaginaInicial/Nacional/Interior.aspx?content_id=1697286).

not changed since 2010. Before 2010 there was a fourth degree, which had the right to family allowance, but it has been eliminated.

**Figure 6: Evolution of expenses with family allowances in Portugal, at constant prices – base year 2000 (in thousands of Euros)**



Source: PORDATA and UNICEF

### 8.2.3. Unemployment insurance

According to the MoU, the unemployment insurance system was also reformed<sup>142</sup>. The maximum duration of unemployment insurance benefits was reduced, and it now varies between 150 and 540 days, depending on the age and working history of the beneficiary; nevertheless, even the higher end is much lower than the previous maximum of 900 days<sup>143</sup>; a maximum benefit of 2.5 times the social support index, around €1,047 was introduced, no matter how high the previous income and the related contributions to social security were; a declining profile of benefits was established after six months of unemployment (a reduction of at least 10% in the benefit amount). On the other hand, the reform reduced the necessary contributory period to access unemployment insurance from 15 to 12 months and extended eligibility to unemployment insurance to clearly-defined categories of self-employed workers providing their services to a single firm on a regular basis. Nevertheless, with the application of these new rules, the number of unemployed without any kind of social support has been rising<sup>144</sup>. From the almost 860,000 people that were unemployed in Portugal according to the States' National Institute for Statistics, only 398,742 benefited from any kind of unemployment benefit<sup>145</sup>. The comparison between the next two tables (unemployment numbers and number of people getting unemployment benefits) shows this:

<sup>142</sup> Decree-Law no. 220/2006 of 3 November (*Decreto-Lei n.º 220/2006, de 3 de novembro*), Official Gazette (*Diário da República*), no. 212 and Decree-Law no. 64/2012 of 15 March (*Decreto-Lei n.º 64/2012, de 15 de março*), Official Gazette (*Diário da República*), no. 54.

<sup>143</sup> See the rules explained at the Social Security website: <http://www4.seg-social.pt/subsidio-de-desemprego>.

<sup>144</sup> Público, 'The amount of unemployed people without any allowance is to rise from January' (*Peso de desempregados sem qualquer tipo de subsídio está a subir desde Janeiro*), 8 August 2014, available at <http://www.publico.pt/economia/noticia/peso-de-desempregados-sem-qualquer-tipo-de-subsidio-esta-a-subir-desde-janeiro-1665756>.

<sup>145</sup> UNICEF, Portuguese Committee, 'Children and the Crisis in Portugal - Children's Voices, Public Policy and Social Indicators' (*As Crianças e a Crise em Portugal - Vozes de Crianças, Políticas Públicas e Indicadores Sociais*), 2013, available at <http://www.unicef.pt/as-criancas-e-a-crise-em-portugal/files/Relatorio-Unicef.pdf>

**Table 2: Unemployment numbers (in thousands)**

Year	Unemployment numbers		
	Total	Looking for first job	Looking for another job
+ 1974	67.5	33.5	34.0
+ 1980	331.5	174.5	157.0
+ 1990	231.1	60.5	170.6
2000	206.0	27.2	178.7
2001	214.2	34.7	179.5
2002	270.5	41.0	229.4
2003	340.4	45.8	294.6
2004	359.1	48.3	310.8
2005	414.1	57.1	357.0
2006	420.6	57.2	363.4
2007	440.6	59.8	380.8
2008	418.0	56.2	361.8
2009	517.4	53.9	463.5
2010	591.2	61.6	529.7
2011	688.2	72.2	616.0
2012	835.7	89.3	746.4
2013	855.2	91.2	764.1

**Source:** INE (National Institute of Statistics), PORDATA.

**Table 3: People receiving unemployment benefits**

Year	People receiving unemployment benefits		
	Total	Social unemployment subsidy	General unemployment benefits
+ 1974	66,438	66,438	"
+ 1980	58,683	58,683	"
+ 1990	69,277	27,373	41,904
2000	162,592	63,932	98,660
2001	177,100	66,992	110,108
2002	201,816	74,547	127,269
2003	268,728	78,601	190,127
2004	294,512	75,835	221,123
2005	301,828	72,799	231,035
2006	290,194	72,767	219,366
2007	249,527	77,442	174,767
2008	260,467	81,017	181,261
2009	360,109	118,565	244,134
2010	294,563	62,093	233,116
2011	316,085	56,019	261,093
2012	398,742	68,866	331,357
2013	375,057	67,836	309,081

Source: PORDATA

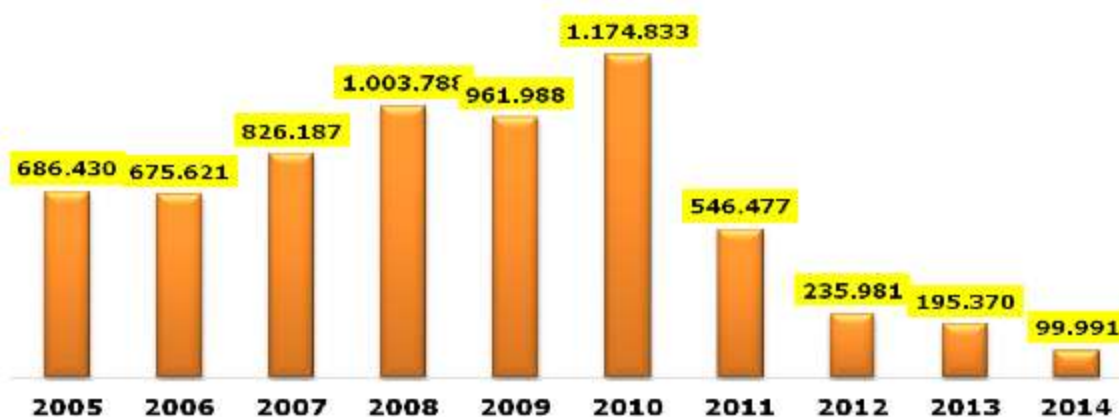
### **8.3. Right to collective bargaining**

The right to collective bargaining is enshrined in the Portuguese Constitution, in article 56, which establishes that trade unions have the competence to exercise the right to enter into collective agreements and reads as follows: 'Article 56 (Trade union rights and collective agreements):

1. Trade unions have the competence to defend and promote the defense of the rights and interests of the workers they represent.
2. Trade unions have the right:
  - a) To take part in drawing up labour legislation;
  - b) To take part in the management of social security institutions and other organisations that seek to fulfil workers' interests;
  - c) To pronounce themselves on economic and social plans and monitor their implementation;
  - d) To be represented on social concertation bodies, as laid down by law;
  - e) To take part in corporate restructuring processes, especially with regard to training actions or when working conditions are altered.
3. Trade unions have the competence to exercise the right to enter into collective agreements, which right shall be guaranteed as laid down by law.
4. The law shall lay down the rules governing the legitimacy to enter into collective labour agreements and the efficacy of the respective norms.'

Article 56 is included in the Constitution's chapter III, on "rights, freedoms and guarantees" of workers, so it enjoys a strong protection under national constitutional law. The right to collective bargaining is also protected by the European Charter of Fundamental Rights, whose article 28 establishes the workers' right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action, and by the European Social Charter (article 6).

The Parliament has approved amendments to the Labour Code that reduce the time of expiry of collective agreements from five to three years (Law no. 55/2014). The new law proposed by the Government also provides for the possibility of a temporary suspension of collective agreements by agreement between employers and unions in a crisis situation, for market reasons or disasters, among other situations. With the new rules, the number of workers who benefit from collective agreements has decreased:

**Figure 7: Number of workers benefitting from collective agreements**

**Source:** UGT (General Workers' Union – one of the two Trade Unions' Confederations in Portugal)<sup>146</sup>

It should also be noted that the effects of collective agreements have often been suspended by the legislation that implemented austerity measures, whenever their provisions were incompatible with those measures. An example can be seen in article 75, paragraph 7, of the State Budget Law for 2014 (Law no. 83C/2013, 31<sup>st</sup> December 2013), which establishes that the legal regime imposed by the norm has imperative nature and it shall prevail over any instrument of collective bargaining and any other norms; it cannot be modified or revoked by them in any way. This was challenged before the Constitutional Court and the petitioners claimed that the measure violated the right to collective bargaining, because it makes it impossible, even for the future. The Court, however, (Decision no. 413/2014, 30<sup>th</sup> May 2014) saw it as a justified restriction to the right of collective bargaining, in order to ensure public interests and the economic viability of the companies affected.

<sup>146</sup> See the report on collective bargaining elaborated by the Trade Unions' Confederation (União Geral de Trabalhadores – UGT), available at <http://www.ugt.pt/Relatorio%20do%201%20Semestre%20de%202014%20final.pdf>.

## 9. MONITORING COMPLIANCE OF THE NATIONAL MEASURES WITH FUNDAMENTAL RIGHTS

### KEY FINDINGS

Austerity measures have been monitored at national level mainly through constitutional review. Opposition MPs, as well as other public officials (in some cases, even the President of the Republic and the Ombudsman) have challenged some of those measures before the Constitutional Court, who declared part of them unconstitutional. At international level, issues related to austerity measures have been appreciated by the European Court of Human Rights and by the European Committee of Social Rights.

### 9.1. Monitoring compliance at national level

#### 9.1.1. Constitutional Court's rulings<sup>147</sup>

From the research conducted for the purposes of this study, it emerges that the main mechanisms for monitoring compliance of relevant measures with fundamental rights at national level have been judicial procedures, especially the constitutional review of legislative measures by the Constitutional Court. The Constitutional Court functions as a last appeals' Court, for concrete judicial review of norms, but it also has powers of abstract control of the constitutionality of any norm, by request of several public officials, including the Head of State, the Ombudsman, the Attorney General and Members of Parliament<sup>148</sup>. The abstract *a posteriori* review of constitutionality has been the most used, so far, to monitor the compatibility of austerity measures with fundamental rights.

#### *Overview of the main decisions*

The Constitutional Court has issued some important decisions about this subject, especially after 2011. First of all, the decisions on the State Budgets for 2011<sup>149</sup>, 2012<sup>150</sup>, 2013<sup>151</sup> and 2014<sup>152</sup>, which have dealt with, among others, questions regarding pay-cuts for public employees and pensioners and tax rises. There have also been a number of decisions regarding workers' rights, as mentioned above, including the review of the amendments introduced in the Labour Code<sup>153</sup>, constitutional control of the increase from 35 to 40 working hours without additional compensation for public employees<sup>154</sup>.

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<sup>147</sup> All Constitutional Court's decisions are available at its website, <http://www.tribunalconstitucional.pt/tc/acordaos/>

<sup>148</sup> See articles 221, 223/1 and 281 of the Portuguese Constitution.

<sup>149</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 396/11, 21 September 2011, see below.

<sup>150</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 353/2012, 5 July 2012, see also chapter 5.3.1 of this study and below.

<sup>151</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 187/2013, 5 April 2013, see also chapters 4.3.1, 4.3.3 and 5.3.1 of this study and below.

<sup>152</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 413/2014, 30 May 2014, see below.

<sup>153</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 602/2013, 20 September 2013, see also chapter 4.3.2 of this study.

<sup>154</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 794/2013, 27 November 2013, see also chapter 4.3.3 of this study.

Furthermore, two of the main decisions prevented the adoption of measures that concerned the right to work and the right to pension<sup>155</sup>; the 'requalification' system<sup>156</sup> of public employees and the reform of the public pensions' system<sup>157</sup>.

The decision about the 'requalification' system was the result of the constitutional review of draft legislation approved by the Parliament, upon Government's initiative, that set up a new system of reduction of the number of public workers, which effectively allowed for their dismissal, a possibility that did not exist until then. As the Portuguese Constitution expressly forbids dismissing a worker without due cause (Article 53), the reasons to justify the dismissal, this legislation was designed as having an objective ground, which both the law and constitutional jurisprudence had already admitted could be applied both to private and public workers. In fact, the Constitutional Court had said several times that the Constitution does not guarantee an absolute protection from dismissal to public workers. However, public workers have, according to the Court, legitimate expectations on the possible causes of dismissal and these did not include any objective elements. The workers' expectations on this issue were also reinforced by many of the austerity measures imposed upon them to reduce public expenses and public deficit, which were justified by the legislature with the greater job security enjoyed by them. Moreover, the Constitutional Court explained, the legislature did not explain the public interest reasons that could legitimate one more unfavourable change of the public workers' status, and the violation of the constitutional principle of the protection of confidence that the new measures would necessarily imply.

The decision about the public pensions' system regards a reform of the legal regime of former public workers' pensions that the Government brought to Parliament in 2013 (retired public workers have a separate social security system – CGA or Caixa Geral de Aposentações, to which they contributed during their careers and that is responsible for paying their pensions; this system was closed to new entrances a decade ago, and public workers who started their careers after 2006 no longer contribute to it, but to the general social security system). The Government considered that this system had had more favourable rules in the past, and held that the CGA system should have a legal regime more similar to the general social security system, so it proposed a legislation that established a unilateral and definitive 10% cut in the total amount of former public workers' pensions and imposed that a part of those pensions should be recalculated according to the formula used for the general social security system. The President challenged the measures and sent them to the Constitutional Court for prior review. In a unanimous decision, the Court ruled this legislation unconstitutional, on grounds of the violation of the principle of the protection of legitimate expectations. The Court considered that to allow a cut in pensions already being paid could only be justified if it was integrated in a general, structural reform that took into account several different factors, something the proposed legislation was not – it was just an isolated measure with the sole purpose of immediately reducing expenses.

Finally, the Court has reviewed measures that have been reformed, like the special solidarity contribution applied to pensioners in 2014<sup>158</sup>, and others that would apply in the

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<sup>155</sup> These are not mentioned in the chapters on the specific rights, as the draft legislation reviewed was declared unconstitutional, the measures were never implemented.

<sup>156</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 474/2013, 29 August 2013.

<sup>157</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 862/2013, 19 December 2013.

<sup>158</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 572/2014, 30 July 2014.



future, such as pay-cuts for the period 2015-2018<sup>159</sup> and a special sustainability contribution again imposed upon pensioners<sup>160</sup>.

### *Decisions on pay-cuts*

Particularly worth mentioning are the Court's decisions on pay-cuts for public employees and pensioners which started in 2011. In its first decision about the 2011 cuts, the Court decided that although the right to pay is a fundamental right enshrined in the Portuguese Constitution, 'within certain 'limits of sacrifice' (...), it is acceptable that this may be a legitimate and necessary way to reduce the State's expenses' (Decision number 396/2011).

In 2012, as was explained above, the Government maintained the 2011 pay-cuts and added a new measure: the partial or total suspension of Christmas and Holiday pay (part of the yearly wage under public and private law), for all public sector employees with salaries between 600 and €1,100, or over €1,100 per month, respectively. Again, this new pay-cut was challenged before the Constitutional Court by opposition MPs. This time, the Court declared the unconstitutionality of the additional pay-cuts (Decision 353/2012), stating that the difference of treatment between public and private workers by the legislature was not justified on grounds of urgency or effectiveness of the measures and therefore violated the principle of equality. However, the Court decided to suspend the effects of its ruling. This implied, in practice, that the suspension of Christmas and Holiday pays was effectively applied during 2012 (Decision 353/2012, 5 July 2012).

In 2013, the Government decided to maintain the 2011 pay-cuts and impose the suspension of holiday pay (but not of Christmas pay). This time, several public authorities requested the constitutional review of the measures, namely the Head of State, the Ombudsman and opposition MPs. The Court upheld the 2011 pay-cuts again, but declared the suspension of holiday pay unconstitutional, for violation of the principle of equality (Decision 187/2013). Therefore, the Government was forced to pay the full amount to public employees and pensioners.

Also in 2013, the constitutionality of the extraordinary solidarity contribution (see chapter 5.3.1) imposed upon pensioners was challenged before the Constitutional Court by the President of the Republic, the Ombudsman and opposition MPs. However, the Court argued (Decision 187/2013) that this Special Contribution was a temporary measure (because it was included in the State Budget Law which has mandatory limited effects, being valid for only one civil year), created in times of severe economic and financial crisis to ensure that the social security system is able to fulfil all the obligations taken on by the State, and could therefore be considered proportional and justified. However, the measure has been re-enacted in 2014.

In 2014, the Parliament approved a new set of pay-cuts to replace the 2011 ones that were still in place. This time, a salary reduction varying from 2.5% to 12% was to be applied to public sector workers with wages greater than €675<sup>161</sup>. By intervention of opposition MPs, the Constitutional Court was called to review the constitutionality of this measure. It was declared unconstitutional (Decision 413/2014), and the Court even stated that the levels of

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<sup>159</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 574/2014, 14 August 2014.

<sup>160</sup> Portuguese Constitutional Court (*Tribunal Constitucional*), Decision 575/2014, 14 August 2014.

<sup>161</sup> Article 33 of the State Budget Law for 2014, Law no. 83-C/2013 of 31st December (*Lei n.º 83-C/2013 de 31 de dezembro*), Official Gazette (*Diário da República*) no. 253.

income affected *'are so low in the first place that any reduction has a strong negative impact and produces a sacrifice much greater than its objective quantification'* Therefore, the Court once again declared the pay-cuts unconstitutional, due to the violation of the principle of equality, especially of equality as regards public burdens. However, the Court also applied a limitation of the sentence's effects, which were only applied from the moment of the ruling, meaning that the pay-cuts were applied in practice up to May.

### 9.1.2. Ombudsman's recommendations

The Ombudsman has also played an important role in the evaluation of the compliance of austerity measures with fundamental rights; although its decisions are not binding, they are usually taken into account. The majority of the citizens' complaints it receives are related to four main areas particularly affected by public austerity policies: social security, taxes, public employment and justice. In 2013, 57% of the complaints concerned one of these issues<sup>162</sup>. The social security problems reported concerned, above all, social benefits, in particular retirement pensions, disability pensions and unemployment benefits. Tax issues have to do, mainly, with fiscal executions/ foreclosures by the Tax administration<sup>163</sup>. Nevertheless, the Ombudsman has also issued recommendations regarding other areas affected by austerity measures, like the right to health<sup>164</sup> and the right to (higher) education<sup>165</sup>. Here is a selection of the recommendations of the Ombudsman that are most relevant for this study:

#### *Right to Health*

Recommendation no. 11/B/2012<sup>166</sup>, addressed to the Health Minister about the National Health Service, especially on the issue of health fees and exemption rules.

The Ombudsman asked the Government: 1) to study the creation of levels of partial exemption from health fees; 2) to eliminate the fees in emergency rooms and services for situations medically recognised as needing urgent care; 3) to establish quick mechanisms to recognise the changes in patients' income and to grant exemption from fees (other than unemployment, already foreseen); 4) to exclude from the patients' income certain amounts or subsidies granted to face concrete situations; 5) to exclude from the patients' global income the amount considered as guaranteeing subsistence, as defined in the personal income tax code; 5) to change the formula to calculate property income; 6) to take into due consideration the real composition of the patients' families when determining exemption from fees; 7) to really justify the denial of exemption, explaining all the calculus made by the administration.

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<sup>162</sup> Conclusion based on stakeholder consultation 5) (Member of the Ombudsman's Office).

<sup>163</sup> *Ibid.*

<sup>164</sup> See Recommendation to the Health Minister about the rules of access to the National Health Service (in particular, regarding the payment of fees) (11/B/2012), 13 September 2012, available at <http://www.provedor-jus.pt/?idc=67&idi=14991>.

<sup>165</sup> See Recommendation to the Secretary of State of Higher Education about scholarship rules (9/B/2013), 21 October 2013, available at <http://www.provedor-jus.pt/?idc=67&idi=15307>.

<sup>166</sup> Recommendation to the Health Minister about the rules of access to the National Health Service, available at <http://www.provedor-jus.pt/?idc=67&idi=14991>.

### *Right to Education*

Recommendation no. 9/B/2013,<sup>167</sup> addressed the State's Secretary for Higher Education about the rules of attribution of scholarships to college students.

The Ombudsman asked the Government to improve the rules of calculus of the relevant income to attribute scholarships, and to eliminate the rule that declares that students whose parents are in debt to the State or Social Security cannot receive those subsidies.

Recommendation no. 15/B/2012<sup>168</sup>, addressed the State's Secretary for Social Security and Solidarity about the subsidies for attendance of special education schools.

The Ombudsman asked the Government to urgently reform and clarify the legislation regarding subsidies to the attendance of special education schools, and to adopt urgent measures to solve with effectiveness and equity all the cases pending before the administration concerning this matter.

### *Right to Housing – rent subsidies*

Recommendation no. 4/A/2014<sup>169</sup> to the President of the Institute of Social Security about suspended rent subsidies

The Ombudsman asked the Administration to pay the rent subsidies due to some people, which had been suspended without legal basis.

### *Right to Social Security*

Recommendation no. 12/A/2012<sup>170</sup> addressed to the Secretary of State for Schools' Administration

The Ombudsman asked the Government to pay the due subsidy to three teachers who had had working accidents and suffered full temporary incapacity to work until their full medical recovery and not only until the end of their work contracts.

### 9.1.3. Economic and Social Council's reports

Finally, it is worth mentioning the action of the Economic and Social Council (CES)<sup>171</sup>. According to article 92 of the Portuguese Constitution, the Economic and Social Council is the organ with responsibility for consultation and negotiation among economic players in the economic and social policy domain; it takes part in the drafting of the economic and social development plans, and is composed by representatives of the Government, Unions, employers' associations and families' associations, representatives of the autonomous regions and of local authorities, and other citizens with relevant merits.

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<sup>167</sup> Recommendation to the Secretary of State of Higher Education about scholarship rules, quoted in footnote 4, above, available at <http://www.provedor-jus.pt/?idc=67&idi=15307>.

<sup>168</sup> See Recommendation no. 15/B/2012, 28 December 2012, available at <http://www.provedor-jus.pt/?idc=67&idi=15154>.

<sup>169</sup> Recommendation no. 4/A/2014, 18<sup>th</sup> July 2014, available at <http://www.provedor-jus.pt/?idc=67&idi=15411>.

<sup>170</sup> Recommendation no. 19/A/2012, 28<sup>th</sup> December 2012, available at <http://www.provedor-jus.pt/?idc=67&idi=15130>.

<sup>171</sup> Economic and Social Council (*Conselho Económico e Social*).

The Council has made public a significant number of opinions about economic policies and austerity measures; those opinions have been quite critical of both the Government's and *Troika* imposed austerity measures, which are said to have a very negative social impact, particularly in regards to the rights to social security, health and education<sup>172</sup>. These are a selection of the recommendations of the Council that express further concerns and make further suggestions about the issues mentioned in this study:

*Opinion about the National Plan for Social Inclusion*<sup>173</sup>

The Council considered that the National Plans for Social Inclusion, though useful, need to adopt a new approach to poverty, taking into consideration the specificities and vulnerabilities of certain groups (illegal immigrants, homeless people, elderly, etc.) and ensuring a global reaction to the problem, not divided by several administrative agencies.

*Opinion about the State Budget Law for 2013*<sup>174</sup>

The Council considered that the proposed Budget Law would intensify the economic recession, with serious effects regarding unemployment. It also stated that the huge tax raise would have potentially devastating effects for citizens and companies. The Council urged the Government to renegotiate the public debt with the *Troika*, to diminish in a significant way the amount of interest being paid.

*Opinion about the Budget Strategy Plan*<sup>175</sup>

The Council considered that to continue with austerity policies, such as the ones explained in the Budget Strategy Plan, could place Portugal in a stagnation or economic contraction route, causing higher unemployment and aggravating the already difficult situation of Portuguese families, especially the more vulnerable ones. The Council also added that the austerity policies could lead to the further degradation of the social situation, affecting social cohesion and putting in danger all the economic recovery efforts.

*Opinion about the State Budget for 2014*<sup>176</sup>

The Council considered that the State Budget for 2014 would have a negative economic impact. It signalled as especially worrying the pay-cuts in pensions and the reduction of public expenditure on health and education (in particular on special education).

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<sup>172</sup> See, for example, Economic and Social Council Portugal (*Conselho Económico e Social*) (Ferreira do Amaral, J. and Cyrillo Machado, J.), 'Opinion on the proposal of the State Budget for 2014' (*Parecer sobre a Proposta do Orçamento do Estado para 2014*), November 2013, available at <http://www.ces.pt/download/1543/Aprovado%20em%20Plenario%20Parecer%20sobre%20o%20OE%202014.pdf>.

<sup>173</sup> Economic and Social Council (*Conselho Económico e Social*), 'Opinion on National Plan of Action for Inclusion inserted in the National Strategy for Social Protection and Social Inclusion 2008-2010' (*Parecer sobre Plano Nacional de Acção para a Inclusão inserido na Estratégia Nacional para a Protecção Social e Inclusão Social 2008-2010*), December 2008, available at [http://www.ces.pt/download/102/Parecer\\_PNAI.pdf](http://www.ces.pt/download/102/Parecer_PNAI.pdf).

<sup>174</sup> Economic and Social Council (*Conselho Económico e Social*), 'Opinion on the proposal of the State Budget for 2013' (*Parecer sobre a proposta do Orçamento do Estado para 2013*), November 2012, available at <http://www.ces.pt/download/1239/Parecer%20sobre%20a%20Proposta%20de%20OE%202013.pdf>.

<sup>175</sup> Economic and Social Council (*Conselho Económico e Social*), 'Opinion on the Budget Strategy Plan 2012-2016' (*Parecer sobre o Documento de Estratégia Orçamental 2012-2016*), May 2012, available at [http://www.ces.pt/download/1132/Parecer\\_DEO\\_2012\\_2016\\_aprovado\\_Plenario\\_CES.pdf](http://www.ces.pt/download/1132/Parecer_DEO_2012_2016_aprovado_Plenario_CES.pdf).

<sup>176</sup> Economic and Social Council (*Conselho Económico e Social*), 'Opinion about the State Budget for 2014' (*Parecer sobre a proposta do Orçamento do Estado para 2014*), November 2013, available at <http://www.ces.pt/download/1543/Aprovado%20em%20Plenario%20Parecer%20sobre%20o%20OE%202014.pdf>.

## 9.2. Monitoring compliance at supranational level

### 9.2.1. European Court of Human Rights

In what concerns monitoring at supranational level, it is worth mentioning the decision of the European Court of Human Rights in the Case *Conceição Mateus and Santos Januário* against Portugal<sup>177</sup>. The case concerns the right to pensions, seen under the perspective of the right to property. Specifically, it analyses the compatibility of the suspension of Christmas and Holiday pay of pensioners that took place in 2012 with the ECHR. The Court found that the legislator remained within the limits of its margin of appreciation, as “previous measures involving “remuneratory reductions” contained in the State Budget Act for 2011 had proved to be insufficient”; therefore, it considered that it is not for the Court “to decide whether better alternative measures could have been envisaged in order to reduce the State budget deficit”. In the light of the exceptional economic and financial crisis faced by Portugal at the material time and given the limited extent and the temporary effect of the reduction of their holiday and Christmas subsidies (only valid for one year, because they were established in a State Budget Law), the Court considered that the applicants did not bear a disproportionate and excessive burden and found the applications inadmissible.

### 9.2.2. European Committee of Social Rights

Also at supranational level, the European Committee of Social Rights (ECSR) has adopted a few conclusions concerning Portugal’s compliance with the European Social Charter in the fields covered by this study. The most relevant decisions of non-compliance, issued since 2008 are the following:

#### *Right to Social and Medical Assistance*

Document 2013/def/PRT/13/1/EN, Portugal, 06/12/2013<sup>178</sup>; Article 13 - The right to social and medical assistance, Paragraph 1 - Adequate assistance for every person in need: the Committee concluded that the situation in Portugal regarding the amount and demands for application of the Social Insertion Income (RSI) is not in conformity with Article 13§1 of the Revised Charter on the ground that it has not been established whether the level of social assistance paid to a single person without resources is adequate.

#### *Right to a Fair Remuneration*

Document 2010/def/PRT/4/1/EN, Portugal, 14/12/2010<sup>179</sup>; Article 4 - Right to a fair remuneration, Paragraph 1 - Decent remuneration: The Committee noted that the net minimum wage amounted to €380 in 2008. As regards the national average wage, according to the national report it stood at € 1024 in 2007 and € 1063 in 2008 for all

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<sup>177</sup> European Court of Human Rights, Second Section, Application nos. 62235/12 and 57725/12 *António Augusto DA CONCEIÇÃO MATEUS v Portugal* and *Lino Jesus SANTOS JANUÁRIO v Portugal*, 8 October 2013, available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{%22fulltext%22:%5B%22Concei%C3%A7%C3%A3o%20Mateus%22%5D,%22itemid%22:%5B%22001-128106%22%5D%7D}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{%22fulltext%22:%5B%22Concei%C3%A7%C3%A3o%20Mateus%22%5D,%22itemid%22:%5B%22001-128106%22%5D%7D).

<sup>178</sup> Decision of the European Committee of Social Rights, Document ID 2013/def/PRT/13/1/EN, Portugal, 06/12/2013, available at <http://hudoc.esc.coe.int/eng?i=2013/def/PRT/13/1/EN>.

<sup>179</sup> Decision of the European Committee of Social Rights, Document ID 2010/def/PRT/4/1/EN, Portugal, 14/12/2010, available at <http://hudoc.esc.coe.int/eng?i=2010/def/PRT/4/1/EN>.

economic activities. The Committee noted in the previous reports that the net average wage represents around 80% of the gross average wage, which would correspond to € 850 in 2008. On this basis, it observes that the minimum wage amounts to only 45% of the average wage. The Committee noted that the situation in Portugal has deteriorated significantly since the last examination of the situation in 2002 when it held that the situation was in conformity. Therefore the Committee holds that the situation in Portugal is not in conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage is manifestly unfair.

Document 2014/def/PRT/4/1/EN, Portugal, 05/12/2014<sup>180</sup>: Article 4 - Right to a fair remuneration, Paragraph 1 - Decent remuneration: The guaranteed minimum monthly wage (RMMG) for the private sector provided for by Article 273, paragraph 1 of the Labour Code, has been set at €485.00 since 2011. This level was temporarily frozen under the Memorandum of Understanding on Specific Economic Policy Conditionality signed on 3 May 2011. A survey by the Ministry of Solidarity and Social Security's Office for Strategy and Planning (GEP/MTSS) shows that the previous upward trend in the proportion of employees paid the RMMG increased sharply over the reference period. The Committee determines the net RMMG to be €503.59, that is 45.93% of the net average income indicated by EUROSTAT. It considers that this level, which is lower than the minimum threshold, does not ensure a decent standard of living within the meaning of Article 4§1 of the Charter.

Document 2010/def/PRT/4/4/FR, Portugal, 14/12/2010<sup>181</sup>; Article 4 - Right to a fair remuneration, Paragraph 4 - Reasonable notice of termination of employment: the Committee concluded that the situation in Portugal is not in conformity with Article 4§4 on the ground that fifteen days' notice is insufficient for the dismissal of employees with over six months' service.

Document 2014/def/PRT/4/4/EN, Portugal, 05/12/2014<sup>182</sup>: Article 4 - Right to a fair remuneration, Paragraph 4 - Reasonable notice of termination of employment: The Committee concludes that the situation in Portugal is not in conformity with Article 4§4 of the Charter on the grounds that: the notice periods applicable to probationary periods in the private sector are insufficient below four months of service; the notice periods applicable to probationary periods for fixed-term, seasonal or show contracts in the private sector are insufficient; no provision is made for notice of the termination of duties during probationary periods for tenured civil servants; the conditions governing the termination of the duties of tenured civil servants are left to the discretion of the parties.

#### *Right to Just Conditions of Work*

Document 2014/def/PRT/2/2/EN, Portugal, 05/12/2014<sup>183</sup>: Article 2 - Right to just conditions of work, Paragraph 2 - Public holidays with pay: In light of the information available, the Committee considers that a compensation corresponding to the regular wage increased by 50% is not sufficiently high to constitute an adequate level of compensation

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<sup>180</sup> Decision of the European Committee of Social Rights, Document ID 2014/def/PRT/4/1/EN, Portugal, 05/12/2014, available at <http://hudoc.esc.coe.int/eng?i=2014/def/PRT/4/1/EN>.

<sup>181</sup> Decision of the European Committee of Social Rights, Document ID 2010/def/PRT/4/4/FR, Portugal, 14/12/2010, available at <http://hudoc.esc.coe.int/eng?i=2010/def/PRT/4/4/FR>.

<sup>182</sup> Decision of the European Committee of Social Rights, Document ID 2014/def/PRT/4/4/EN, Portugal, 05/12/2014, available at <http://hudoc.esc.coe.int/eng?i=2014/def/PRT/4/4/EN>.

<sup>183</sup> Decision of the European Committee of Social Rights, Document ID 2014/def/PRT/2/2/EN, Portugal, 05/12/2014, available at <http://hudoc.esc.coe.int/eng?i=2014/def/PRT/2/2/EN>.

for work performed on a public holiday. Accordingly, it concludes that the situation in Portugal is not in conformity with Article 2§2 of the Charter.

### *Right to Housing*

Document 2011/def/PRT/31/1/EN, Portugal, 09/12/2011<sup>184</sup>; Article 31 - Right to housing, Paragraph 1 - Adequate housing: the Committee concluded that the situation in Portugal 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 most Roma in Portugal are inadequate.

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<sup>184</sup> Decision of the European Committee of Social Rights, Document ID 2011/def/PRT/31/1/EN, Portugal, 09/12/2011, available at <http://hudoc.esc.coe.int/eng?i=2011/def/PRT/31/1/EN> .

## 10. CONCRETE PROPOSALS FOR IMPROVING THE RESPECT OF FUNDAMENTAL RIGHTS IN TIMES OF ECONOMIC CRISIS

### KEY FINDINGS

- In general, austerity measures have to be regarded from a fundamental rights' perspective much more often. They also need to be periodically re-evaluated by independent institutions, such as the Ombudsman's office. The priority given to deficit reduction has to be balanced with the need to maintain the minimum standards of social services, with health and education deserving special attention. The Portuguese Economic and Social Council considers that the closure of several public services has caused social and spacial inequalities that need to be evaluated and taken into account.

The following recommendations concerning the rights examined in this study can be made:

- Concerning the right to education, it is necessary to increase public investment in education. It would also be useful to reduce the maximum number of students per class and to reinvest in special education and to increase the support given to students with special needs, a field where austerity measures have had especially serious effects.
- Concerning the right to healthcare, the recommendations by the Portuguese Observatory of Health Systems and the Gulbenkian Foundation seem adequate: to invest in Primary Care Units; to increase the resources dedicated to mental health and to the prevention of infectious diseases and diabetes; to adopt measures in order to improve the health and well-being of children, who have been especially affected by the crisis; and, finally, to promote equality in the access to healthcare.
- The ILO has made several recommendations which could improve the right to work in Portugal, such as active policies to promote employment, especially policies that take into account the needs of small and medium-size companies, and give particular attention to very vulnerable groups (like young people); to promote stable working contracts, rather than temporary jobs; to address the issues of false independent labour and non-declared work; and an assessment of the results of labour law reforms.
- Concerning the right to pensions, the austerity and deficit reduction measures should not continue to treat pensioners worse than their fellow citizens, as has been made clear by constitutional jurisprudence. The Economic and Social Council has mentioned that the pay-cuts in pensions that have been adopted during the crisis are problematic in regard to equality criteria, and it has called for a serious public debate about the pensions system.
- Concerning access to justice, it would be important to reinforce both human and material resources assigned to the judicial system. An assessment of the impact of justice fees on the access to the system would also be important.
- Both the Unicef and the Portuguese Observatory of Crisis and Alternatives recommend a review of the changes in the rules of attribution of several social



benefits (especially the minimum income, family allowances and the unemployment insurance system) and an increase in the State's economic support to the families, through these or other mechanisms. The adoption of national policies to fight against child poverty, in order to avoid its intergenerational transmission, would be particularly useful.

- The ILO calls for a redefinition of the collective bargaining system, because the clear decrease in the number of collective labour agreements may have serious economic and social consequences, especially as it tends to lead to salary reductions and worse overall labour conditions. Therefore, it would be important to study and implement a new system, not as centred on salaries as the one that existed before the legal reforms adopted during the crisis.
- Finally, a broader access to judicial review, namely at European Union level, would also be useful to ensure compliance with fundamental rights.

As can be seen by all that was reported above, the impact of the economic crisis and austerity measures in Portugal has been very severe. The rise in inequalities concerning the access or effective guarantee of fundamental rights is easily seen. Although they usually understand the need to adopt policies and measures to fight the crisis, citizens' express disagreement and concern about many of the concrete options taken by public authorities, both at national and European level. They feel that their fundamental rights have not been respected and that there are few institutions able to protect them. In Portugal, during the protests, some demonstrators were seen wearing T-shirts stating "I love the Constitutional Court". This may seem like a *fait divers*, but it is important, because it expresses confidence in one of the organs of the democratic system. Whether or not one agrees with the judicial review of austerity measures and with the concrete appreciation that the Court has made of them, confidence in the representative democracy and in the whole democratic system is an essential element for the construction of the European Union.

Therefore, it is important to answer citizens' concerns, which are mainly about work/unemployment/precarious labour, and three of the main social rights (health, education and social security). These are some concrete measures that could perhaps improve the current situation:

#### *Human rights impact assessment*

It is necessary to evaluate all austerity measures from a fundamental rights' perspective, and this evaluation should be done by independent institutions, such as the Ombudsman's office.

#### *Adoption of economic policies oriented towards growth and employment*

In its latest Opinion about the Budget Strategy Plan for 2014-2018<sup>185</sup>, the Portuguese Economic and Social Council argues for the renegotiation and redefinition of the calendar of consolidation of public finances, to allow for new economic policies, oriented towards growth and employment. The Council has also repeatedly stated that the priority given to deficit reduction has to be balanced with the need to maintain the minimum standards of

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<sup>185</sup> Economic and Social Council (*Conselho Económico e Social*), 'Opinion on the Budget Strategy Plan 2014-2018' (*Parecer sobre o Documento de Estratégia Orçamental (DEO) 2014-2018*), 28 May 2014, available at [http://www.ces.pt/download/1655/Aprovado\\_plenario\\_Parecer\\_DEO.pdf](http://www.ces.pt/download/1655/Aprovado_plenario_Parecer_DEO.pdf).

well-being and social cohesion. Social services and mechanisms of social transfer (such as unemployment benefits, minimum income, family allowances) in particular, occupy a very special position since they are both a source of spending and an instrument for the prevention and combatting of poverty. The Council also considers that the closure of several public services – health units, schools, courts, tax administration and social security offices – has caused social and spatial inequalities that need to be evaluated and taken into account.

### *Special attention to the right to education*

Austerity policies and budget cuts have had a very significant impact on the quality of public schools. It would therefore be useful to adopt some measures to try to solve the more urgent problems. First of all, it is necessary to increase public investment in education. It would also be useful to reduce the maximum number of students per class, something that both teachers' and parents' associations consider to be one of the main obstacles to quality teaching<sup>186</sup>. Lastly, as has been previously mentioned in the study, it is urgent to reinvest in special education and to increase the support given to students with special needs, a field where austerity measures have had especially serious effects.

### *Special attention to the right to healthcare*

The effects of the austerity measures on the National Health Service are one of the most discussed in public. It should therefore deserve special attention and be a primary field of adoption of policies that improve fundamental rights' protection. The main suggestions presented by the Portuguese Observatory of Health Systems<sup>187</sup> and by the Gulbenkian Foundation<sup>188</sup> are: to invest in Primary Care Units; to increase the resources dedicated to mental health and to the prevention of infectious diseases and diabetes (two areas where Portugal has a particularly severe problem); to adopt measures in order to improve the health and well-being of children, who have been especially affected by the crisis; and, finally, to promote equality in the access to healthcare (assessing and reviewing the norms regulating health fees and exemptions, transportation and the distribution of NHS units).

### *Right to Work*

The ILO<sup>189</sup> makes several interesting recommendations regarding the right to work in Portugal, which was probably the most affected fundamental right during the period of economic crisis and adoption of austerity measures. First of all, active policies to promote employment are needed, especially policies that take into account the needs of small and medium-size companies, and give particular attention to very vulnerable groups (like young people). It would also be useful to promote stable working contracts, rather than temporary

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<sup>186</sup> Oliveira, Sara R., 'Nobody wants classes with 30 students' (*Ninguém quer turmas com 30 alunos*), Press Release, available at <http://www.educare.pt/noticias/noticia/ver/?id=14106&langid=1>.

<sup>187</sup> Portuguese Observatory of Health Systems (*Observatório Português dos Sistemas de Saúde*), 'Spring Report 2012 - Health & Crisis - A nation in distress' (*Relatório de Primavera 2012 - Crise & Saúde - Um país em sofrimento*), 2012, available at <http://www.observaport.org/sites/observaport.org/files/RelatorioPrimavera2012.pdf>.

<sup>188</sup> Gulbenkian Platform for a Sustainable Health System, 'The Future for Health - Everyone has a role to play', 2014, available at [http://www.gulbenkian.pt/mediaRep/gulbenkian/files/institucional/FTP\\_files/pdfs/FuturodaSaude2014/RelatorioFuturodaSaudePT2014/index.html](http://www.gulbenkian.pt/mediaRep/gulbenkian/files/institucional/FTP_files/pdfs/FuturodaSaude2014/RelatorioFuturodaSaudePT2014/index.html)

<sup>189</sup> ILO, 'Facing the employment crisis in Portugal report' (*Enfrentar a crise do emprego em Portugal*), November 2013, available at [http://www.ilo.org/public/portuque/region/eurpro/lisbon/pdf/versaofinal\\_oit\\_relat\\_enfrentarcriseemprego\\_20131101\\_pt.pdf](http://www.ilo.org/public/portuque/region/eurpro/lisbon/pdf/versaofinal_oit_relat_enfrentarcriseemprego_20131101_pt.pdf).

jobs, which have been one of the most significant tendencies of the Portuguese labour market in the last years. The ILO also suggests specific policies to address the issues of false independent labour and non-declared work, and an assessment of the results of labour law reforms (new flexibility measures, easier termination of contracts and reduction of severance payments), which do not seem to have been followed by more or better employment. Finally, the ILO calls for the reinforcement of social protection mechanisms, considered essential to support a healthy labour market.

### *Right to Pension*

The Portuguese Social Security system, in particular the pensions' system, has been widely discussed in public, both by academics and specialists and by the general public. There are very different and even completely opposed views about its sustainability and the need for further reforms or, on the contrary, the need to reinstate some of the legal rules that were in place before the crisis. For this reason, it is difficult to make non-biased specific recommendations. One thing can, however, be said: the austerity and deficit reduction measures should not continue to treat pensioners worse than their fellow citizens, as has been made clear by constitutional jurisprudence. The Economic and Social Council<sup>190</sup> has mentioned that the pay-cuts in pensions that have been adopted during the crisis are problematic in regard to equality criteria, and it has called for a serious public debate about the pensions system, that takes into account the need to ensure sustainability and to respect the rights of current pensioners, not forgetting that these two issues cannot be treated separately from the question of unemployment, which is the biggest overall threat to the financial balance of social security.

### *Right of Access to Justice*

The problems regarding the right of access to justice were noticed long before the financial crisis. A lack of resources seems to be the reason most frequently attributed to the deficiencies that have been shown in this study. Therefore, it would be important to reinforce both human and material resources assigned to the judicial system. An assessment of the impact of justice fees on the access to the system would also be important.

### *Right to Social Security*

According to both the Unicef<sup>191</sup> and the Portuguese Observatory of Crisis and Alternatives<sup>192</sup>, the changes in the rules of attribution of several social benefits (especially the minimum income, family allowances and the unemployment insurance system) have had very serious consequences for the number of people living in poverty or material deprivation; the situation of children is particularly worrying. Therefore, they both

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<sup>190</sup> Economic and Social Council Portugal (*Conselho Económico e Social*), (Ferreira do Amaral, J. and Cyrillo Machado, J., 'Opinion on the proposal of the State Budget for 2014' (*Parecer sobre a Proposta do Orçamento do Estado para 2014*), November 2013, available at [http://www.ces.pt/download/1543/Aprovado%20em%20Plenario\\_Parecer%20sobre%20o%20OE%202014.pdf](http://www.ces.pt/download/1543/Aprovado%20em%20Plenario_Parecer%20sobre%20o%20OE%202014.pdf).

<sup>191</sup> UNICEF, Portuguese Committee, 'Children and the Crisis in Portugal - Children's Voices, Public Policy and Social Indicators' (*As Crianças e a Crise em Portugal - Vozes de Crianças, Políticas Públicas e Indicadores Sociais*), 2013, available at <http://www.unicef.pt/as-criancas-e-a-crise-em-portugal/files/Relatorio-Unicef.pdf>.

<sup>192</sup> Observatory on Crisis and Alternatives (*Observatório Sobre Crise E Alternativas*), 'The Anatomy of the Crisis: identifying problems to construct the alternative' (*A Anatomia da Crise: identificar os problemas para construir as alternativas*), 1st preliminary report of the Observatory on Crisis and Alternatives, December 2013, available at [http://www.ces.uc.pt/observatorios/crisalt/index.php?id=6522&id\\_lingua=1&paq=6561](http://www.ces.uc.pt/observatorios/crisalt/index.php?id=6522&id_lingua=1&paq=6561).

recommend a review of those rules and an increase in the State's economic support to the families, through these or other mechanisms. The adoption of national policies to fight against child poverty, in order to avoid its intergenerational transmission, would be particularly useful. A review of the current legal regime of the minimum income would be of great importance, as this social benefit has proved to have a noticeable impact on the combat against poverty<sup>193</sup> and the number of beneficiaries has clearly decreased since 2010<sup>194</sup>. The same can be said about unemployment benefits: an assessment of the social consequences of the rules implemented after 2010 should be considered, as well as a revision of those rules, in particular the time limits.

### *Right to Collective Bargaining*

The ILO<sup>195</sup> calls for a redefinition of the collective bargaining system, because the clear decrease in the number of collective labour agreements may have serious economic and social consequences, especially as it tends to lead to salary reductions and worse overall labour conditions. Therefore, it would be important to study and implement a new system, not as centred on salaries as the one that existed before the legal reforms adopted during the crisis. A better articulation between different levels of collective agreements is also advised, in order to increase the number of workers covered and to take into account the economic conditions and the particular circumstances of small companies, which are in the majority in Portugal.

### *Further monitoring mechanisms at EU level*

Finally, we should not forget that this is not merely a national problem, but a European one. This is an issue that has been seriously discussed in Portugal: the lack of true national sovereignty to define economic and social policies, the country's dependence on the European Institutions and their role in the definition of public goals during the period of economic crisis<sup>196</sup>. With this in mind, it would be interesting to be able to confront many of the austerity measures proposed by European Institutions with the European Charter of Fundamental Rights and other fundamental norms of the Treaties. For this to happen, there has to be an easier access to the Court of Justice, both by citizens and their European representatives.

If a group of MEPs at the European Parliament (and not the Institution itself) could ask for the annulment of an austerity measure previously approved by another European

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<sup>193</sup> UNICEF, Portuguese Committee, 'Children and the Crisis in Portugal - Children's Voices, Public Policy and Social Indicators' (*As Crianças e a Crise em Portugal - Vozes de Crianças, Políticas Públicas e Indicadores Sociais*), 2013, available at <http://www.unicef.pt/as-criancas-e-a-crise-em-portugal/files/Relatorio-Unicef.pdf>.

<sup>194</sup> See the Portuguese Social Security official statistics at <http://www4.seg-social.pt/estatisticas>.

<sup>195</sup> ILO, 'Facing the employment crisis in Portugal Report' (*Enfrentar a crise do emprego em Portugal*), November 2013, available at [http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/versaofinal\\_oit\\_relat\\_enfrentarcriseemprego\\_20131101\\_pt.pdf](http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/versaofinal_oit_relat_enfrentarcriseemprego_20131101_pt.pdf).

<sup>196</sup> The question of "lost national sovereignty" to define economic and social policies has been publicly discussed for years, especially after 2011. It is an argument often referred to, both by politicians and opinion-makers. Please see some examples of the articles published in the main newspapers mentioning it: *Portugal e a Soberania Perdida*, by Henrique Monteiro in Expresso, available at <http://expresso.sapo.pt/portugal-e-a-soberania-perdida=f834512>; *Sem Rei nem Roque: a crise da soberania em Portugal*, by Patrícia Vieira e Michael Marder, in Público, available at <http://www.publico.pt/opiniao/jornal/sem-rei-nem-roque-a-crise-da-soberania-em-portugal-25808253>; *Resgate retiira soberania a Portugal*, in Diário de Notícias, available at [http://www.dn.pt/inicio/portugal/interior.aspx?content\\_id=1849262&page=-1](http://www.dn.pt/inicio/portugal/interior.aspx?content_id=1849262&page=-1); *Portugal manteve soberania apesar da Troika*, in Jornal de Negócios, available at [http://www.jornaldenegocios.pt/economia/detalhe/oliveira\\_martins\\_portugal\\_manteve\\_soberania\\_apesar\\_da\\_troika.html](http://www.jornaldenegocios.pt/economia/detalhe/oliveira_martins_portugal_manteve_soberania_apesar_da_troika.html); *Pacheco espera que alguém fale com clareza sobre o que vai acontecer com a "célebre" saída da troika*, in Ionline, available at <http://www.ionline.pt/artigos/portugal/pacheco-espera-alguem-fale-clareza-sobre-vai-acontecer-celebre-saida-da-troika>.

Institution, such as the measures included in the MoU under proposal of the European Commission and the European Central Bank, it would bring fundamental rights to the centre of the discourse about the crisis. For the Portuguese abstract review of constitutionality, for example, 1/10 of the MPs could, on their own (not depending on a Parliament vote or decision) request the review of legislation that they think might violate the Constitution. This mechanism was used with the constitutional review of legislative austerity measures, which were asked by minority MPs, allowing the annulment of national norms that amounted to serious violations of fundamental rights. It has been quite useful at national level and would be interesting to consider at EU level.

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- Decree-Law no 34/2008, 26 February – Approves the Regulation of Justice Fees.
- Decree-Law no. 75/2008, 22nd April - Approves the status of autonomy, administration and management of public schools for pre-school, primary and secondary education.
- Law no. 85/2009, 27th August - Establishes the compulsory education scheme for children and young people who are of school age and establishes the universality of preschool education for 5 year-old children.
- Law no. 3-B/2010, 28th April – State Budget Law for 2010.
- Law no. 55-A/2010, 31st December - State Budget Law for 2011.
- Decree-Law no. 18/2011, 2nd February - Allows the organization of teaching times for the 2nd and 3rd cycles of basic education in periods of 45 or 90 minutes and eliminates the project area from the list of subjects, proceeding to the fourth amendment to the Decree-Law no. 6/2001 of 18 January
- Decree-Law no. 30/2011, 2<sup>nd</sup> March - Merges several health facilities and creates the Hospital of S. João, EPE, the Hospital Center of the University of Coimbra, EPE, the Hospital of the Lower Vouga, EPE, the Hospital-Tondela Viseu, EPE, and the Hospital de Leiria -Pombal, EPE, and changes the Hospital Centre of Porto, EPE.

- Law no 53/2011, 14th October - Second amendment to the Labour Code, approved by Law no. 7/2009, 12 February, setting a new compensation system for various forms of termination of employment contract, applicable only to new contracts.
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- Law no. 64-B/2011, 30th December - State Budget Law for 2012
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- Law no. 66-B/2012, 30th December - State Budget Law for 2013.
- Law no. 51/2013, 24th July - First amendment to Law No. 66-B / 2012 of 31 December (State Budget for 2013), amendment to the Code of the Personal Income, Tax (IRS), amendment to the Code of Added Value Tax (IVA), amendment to the Code of Tax Benefits, second amendment to Decree-Law no. 172/94 of 25 June, and to the Law no. 28/2012, 31 July, and third amendment to Decree-Law no. 113/2011, of 29 November.
- Law no. 62/2013, 26<sup>th</sup> August – Judiciary Organisation Law.
- Law no. 68/2013, 29th August - Defines the terms of the normal working time in public office and proceeds to the fifth amendment to Law no. 59/2008 of 11 September, the fourth amendment to the Decree-Law no. 259/98, 18 August and the fifth amendment to Law 2/2004, of January 15.
- Law no 69/2013, 30<sup>th</sup> August - Fifth amendment to the Labour Code, approved by Law no. 7/2009, setting the value of compensation due because of the termination of an employment contract.
- Law no. 76/2013, 7<sup>th</sup> November - Establishes an extraordinary renewal scheme of employment contracts of limited duration, as well as the regime and the compensation calculation method applicable to contracts subject to that renovation.
- Ordinance no. 378-G/2013, 31<sup>st</sup> December - Sets the sustainability factor and the normal age for access to old-age pensions for the years 2014 and 2015.
- Law no. 83-C/2013, 31st December - State Budget Law for 2014.



- Decree-Law no. 49/2014, 27<sup>th</sup> March - Regulates Law no. 62/2013 of 26 August (the Judiciary Organisation Law), and establishes the rules applicable to the organization and functioning of the courts.
- Law no. 27/2014, 8<sup>th</sup> May - Sixth amendment to the Labour Code, approved by Law no. 7/2009.
- Decree-Law no. 117/2014, 5<sup>th</sup> August - Fourth amendment to Decree-Law no. 113/2011 of 29 November, which regulates access to benefits of the National Health Service by users.
- Law no. 55/2014, 25<sup>th</sup> August - Seventh amendment to the Labour Code, approved by Law no. 7/2009.
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### **List of main stakeholders consulted**

All stakeholders asked to speak in individual name, therefore only expressing their private opinions. Stakeholder 5), member of the Ombudsman's Office, did provide me with official numbers and figures, though. To my best knowledge, only Stakeholder 6, member of the Teachers' Union, is also a member of a political party (the Portuguese Communist Party).

- 1) State's Attorney, Interviewed 25th September 2014.
- 2) Journalist, Public Television (RTP1), who has been preparing and writing extensive pieces about the economic crisis and its consequences, Interviewed 15th September 2014.
- 3) Members of the Que se lixe a Troika! – F\*\*K Troika! Movement, Interviewed 25th September 2014.
- 4) Academic who specialises on the right to health, Faculty of Law, University of Coimbra, Interviewed 15th September 2014.
- 5) Ombudsman's Office, Interviewed 25th September 2014.
- 6) Member of the Teachers' Union FENPROF, Interviewed 20th September 2014.



## ANNEX - OVERVIEW OF RELATED STUDIES

<b>Name of the Study</b>	<b>PE number</b>	<b>ISBN number</b>
The impact of the crisis on fundamental rights across Member States of the EU - Comparative analysis	<b>PE 510.021</b>	<b>978-92-823-6598-4 print edition</b> <b>978-92-823-6599-1 online edition</b>
The impact of the crisis on fundamental rights across Member States of the EU Country Report on Belgium	<b>PE 510.015</b>	<b>978-92-823-6553-3 print edition</b> <b>978-92-823-6552-6 online edition</b>
The impact of the crisis on fundamental rights across Member States of the EU Country Report on Ireland	<b>PE 510.016</b>	<b>978-92-823-6547-2 print edition</b> <b>978-92-823-6546-5 online edition</b>
The impact of the crisis on fundamental rights across Member States of the EU Country Report on Greece	<b>PE 510.014</b>	<b>978-92-823-6539-7 print edition</b> <b>978-92-823-6538-0 online edition</b>
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The impact of the crisis on fundamental rights across Member States of the EU Country Report on Cyprus	<b>PE 510.017</b>	<b>978-92-823-6563-2 print edition</b> <b>978-92-823-6562-5 online edition</b>
The impact of the crisis on fundamental rights across Member States of the EU Country Report on Portugal	<b>PE 510.020</b>	<b>978-92-823-6571-7 print edition</b> <b>9978-92-823-6570-0 online edition</b>



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