

Strasbourg, 23 August 1999

RAP/Cha/POR/V(99)
Or. Eng.

EUROPEAN SOCIAL CHARTER

Fifth report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF PORTUGAL

(for the period 1 January 1997 to 31 December 1998:
Articles 1, 5, 6, 12, 13, 16 and 19)

Report registered at the Secretariat on 23 August 1999

CYCLE XV-1

ARTICLE 1

THE RIGHT TO WORK

Paragraph 1

Update on the information provided in the 3rd Report

A, B and C

In the area of employment policy, 1998 saw the preparation and implementation of a National Employment Strategy (PNE), drawn up in accordance with the guidelines for employment in the European Union adopted at the Luxembourg Summit on 20 and 21 November 1997.

In order to provide the solutions required to the specific problems of Portugal in this area, employment policy objectives are based primarily on:

- a. helping young people to make the transition to working life;
- b. promoting social and occupational integration and combating long-term unemployment and social exclusion;
- c. improving the basic skills and vocational qualifications of working people, through an approach based on lifelong learning, particularly as a means of preventing unemployment;
- d. preventive management and support during industrial reorganisation.

Employers' and workers' representatives were involved in drawing up the PNE, which centred on the following four areas:

- I. improving workers' employability;
- II. promoting an entrepreneurial approach;
- III. encouraging businesses and workers to be adaptable;
- IV. enhancing equal opportunities policies.

The implementation of the PNE is the subject of regular, multilateral follow-up work, which in 1998 mostly consisted of the preparation and launch of the measures and mechanisms upon which the scheme will be founded.

In the light of this new employment policy framework, it was decided that this report would describe the active labour market policy measures adopted during the reference period in those of the aforementioned areas to which this paragraph of Article 1 is most closely related, namely areas I, II and III, in order to reply to the questions set out in the form.

However, it should be pointed out that the measures described in previous reports are still in force and being applied and, as they have not been changed, they will not be mentioned again.

AREA I – IMPROVING WORKERS' EMPLOYABILITY

1. THE INSERJOVEM AND REAGE SCHEMES

Finding an appropriate job for young people is one of the main priorities of Portuguese employment policy. It is therefore logical for us to turn the spotlight on the preparation of the public employment services for the launch of the new schemes entitled INSERJOVEM (a comprehensive support scheme for young people embarking on working life) and REAGE (a comprehensive, individual support scheme for unemployed adults). These schemes were launched on 1 July 1998 in the four test areas identified by the PNE as priority areas.

Since 1 July 1998, in all the employment offices in the test areas, which cover 25% of the resident population, young people registered as unemployed for 3 months and adults registered for 6 months or more have been subject to a new preventive approach based on the drawing up of personal employment plans designed to lead to the offer of a new opportunity for integration (through training, retraining, work experience, etc) before the person in question has been unemployed for six months in the case of young people and 12 in the case of adults.

The monthly total of unemployed people called on immediately to begin preparing their *Personal Employment Plans* in the test areas has been estimated at around 6,000. Between July and October 1998, 9,968 young unemployed people and 18,228 adults began the process. Since 1 October 1998 the scheme has been extended to cover the entire region of Alentejo (the region with the highest unemployment levels), with the result that new regional employment networks have been set up ahead of schedule.

Furthermore, the publication of the legal instrument governing this extension (Cabinet Resolution No. 67/98 of 8 June 1998) resulted in the adoption of the Regional Employment Plan for Alentejo, which is supposed to be in force until 2003 and provides for an adapted version of the national employment strategy suitable for this region.

2. REGIONAL NETWORKS AND TERRITORIAL PACTS FOR EMPLOYMENT

In the Portuguese labour market, the improvement of occupational integration entails preventive policy measures, in particular the co-ordination of employment policies with policies to consolidate institutional partnerships with labour and management. This highlights the crucial importance of the reorganisation of the public employment services to improve individual and personalised support from both a cross-regional and a regional standpoint.

This territorial approach will be stepped up, particularly in 12 geographical areas which correspond to the **Territorial Pacts and Regional Networks for Employment**, which cover about a quarter of the resident population. The geographical distribution in each region will be as follows:

The North:

- Upper Tamega and Upper Lima Networks; Sousa Valley Pact.

The Centre:

- Serra da Estrela and Lower Mondego Networks;
- Marinha Grande Pact.

Lisbon and Tagus Valley:

- Western Region and Setúbal Peninsula Networks;

Alentejo:

- Guadiana River and Alentejo Coast Networks;
- Northern Alentejo Pact.

Algarve:

- Algarve-Guadiana Networks.

The main benefit of the territorial approach to these networks, apart from the increased cost-effectiveness brought about by the co-ordination of structural activities, is the groundbreaking co-operation that has been established to enhance human resources with the dual aim of stimulating employment and combating social exclusion.

The defining features of these networks lie in the following aspects:

- a. the central role of employment questions;
- b. an approval based on identifying activities and projects to be set up as an immediate response to local employment problems;
- c. the existence of successful and dynamic partnerships;
- d. the introduction of innovative ideas in the area concerned, particularly in terms of working methods, the type of partners involved and comprehensive solutions to employment problems.

These networks were launched and have become operational progressively and have been duly incorporated into the National Employment Strategy, so that the whole country should be covered by the year 2000.

3. THE ENDURANCE PROJECT

The PNE also attributes a central role to the launch of the Endurance project as a tool for the strategic rationalisation of the instruments aimed at promoting lifelong training and education.

The **ENDURANCE** project incorporates various instruments, most of which are already in the development stage, including in particular:

- The launch of a vocational training development strategy under the auspices of the Institute of Employment and Vocational Training (IEFP), covering aspects such as design and planning, educational guidance, monitoring and management, training assessment and development, occupational integration, the contribution of the various partners, and innovation.
- The **SABER +** programme, set up by Cabinet Resolution No. 92/98 of 14 July 1998, with a view to promoting adult education and training.
- The **EDUCATION AND TRAINING** programmes. By virtue of the joint order of the Ministry of Education and the Ministry of Labour and Solidarity, the IEFP, jointly managed Vocational Training Centres and other certified training institutions may, under appropriate

circumstances, offer, organise and run education and training courses with the joint objective of enabling young people and adults who have not completed upper secondary school to obtain the school-leaving certificate and complete a level II vocational training course.

4. RUMO PILOT PROGRAMME

The RUMO pilot programme was also launched in July 1998 and aims at personalised solutions for specific groups of people, particularly the long-term unemployed, using a systematic method combining vocational guidance, training and integration. It is currently being applied to 444 unemployed people. The whole country should be covered by the end of the year 2000.

5. THE PROGRAMME TO INTEGRATE YOUNG PEOPLE INTO WORKING LIFE

(PIJVA)

This programme was introduced to combat and prevent youth unemployment by means of an integrated policy providing appropriate responses to young people's needs at all stages of their vocational integration. Its role is to fulfil the following objectives:

- a. provide all young people with appropriate educational and vocational guidance enabling them, particularly when they make key choices, to devise a personal strategy on the basis of up-to-date information and personalised assistance;
- b. ensure that all young people acquire not only a basic education lasting nine years but also a secondary or higher education certificate or a qualification from an additional training course lasting at least one year which will help them enter a profession;
- c. make it easier for young people to establish contact with the working world and acquire work experience by offering sandwich courses in the various categories of education and vocational training and organising special courses geared to various target groups;
- d. promote young people's access to employment, whether as salaried staff or in a self-employed capacity, or help them to set up their own business, with technical and financial assistance, and stimulate the initiative and creativity of young people by getting them to share responsibility for solutions to their own employment problems.

The programme also includes a series of joint measures devised by the various government departments dealing with young people, particularly the Ministry of Education, the Ministry of Labour and Solidarity and the State Secretariat for Youth. Co-ordination is provided by an interministerial programme committee.

(Cabinet Resolution No. 44/97 of 21 March 1997, published in the Official Gazette D.R., 2nd series, No. 68, of 21 March 1997, and Cabinet Resolution No. 132/98, of 16 November 1998, published in the Official Gazette D.R., 2nd series, No. 265 of 16 November 1998).

6. THE TRAINING AND EMPLOYMENT PROGRAMME

The aim of this programme is to improve, by means of a vocational training course providing a qualification, the level of skill and employment of young people and adults who left the education system without having acquired a recognised vocational qualification, skilled

unemployed adults and workers at risk of losing their jobs, thereby improving and facilitating their integration or reintegration into working life or their vocational retraining.

The measure is applied to unemployed people over 18 years of age, with at least the compulsory education but no recognised vocational qualification, skilled unemployed people (levels I to V) over 30 years of age, and workers at risk of losing their jobs. The measure can be implemented by companies, co-operatives, professional associations, private social welfare institutions and other non-profit-making organisations.

Assistance is granted both to participants and to businesses. In the case of participants, assistance takes the form of classroom training and practical training in a working context, as well as training grants, accommodation and travel expenses, meal subsidies, a period of leave added to the training period and insurance against employment injury.

As far as businesses are concerned, the programme grants them compensation for labour charges in the case of workers at risk of losing their jobs who take part in the programme on the authorisation of their employers as well as a number of recruitment grants (D.N. No. 54/97 of 29 September 1997 and D.R. No. 47/98 of 7 May 1998).

7. VOCATIONAL TRAINING COURSES

The aim of this measure is to improve the social and occupational skills of qualified young people by encouraging them to undergo a period of training in industry. It is aimed at young unemployed people from 16 to 30 years of age with a higher or intermediate qualification.

The courses are promoted by public and private bodies with the technical and educational resources to organise vocational training courses on their premises (recipient bodies) and various types of association which can improve the range of courses on offer and take part in supervision and evaluation (organising bodies).

Grants are awarded both to the participants and to the organising bodies.

The main financial assistance granted to participants comprises a training grant, insurance against employment injury, meal vouchers, and travel and accommodation expenses. There is also provision for aid for the course instructor in the form of financial compensation set according to the level of qualification of the trainee(s) on the course. The organising bodies, for their part, receive 40,000 escudos (PTE) per approved trainee. (Order No. 268/97 of 18 April 1997, Order No. 1271/97 of 26 December 1997, and Order No. 814/98 of 24 September 1998).

AREA II – PROMOTING AN ENTREPRENEURIAL APPROACH

In recent years, macro-economic development and changes in sectors of activity have failed to produce satisfactory results in terms of absorbing the labour force or striking a better balance between the different regions, and this has led to the emergence of pockets of unemployment and compartmentalisation of the labour market, which in turn engenders both poverty and social exclusion. There are significant differences between the regions in respect of education, unemployment and wages.

The deployment of technical and financial resources aimed at developing human resources closely geared to regional needs is a first vital step in promoting regional and local employment and development.

1. BUSINESS START-UP HELP CENTRES

These Help Centres, set up under Order No. 1191/97 of 21 November 1997, aim to help people to set up new businesses by providing the right technical and physical conditions with a view to job creation. They give priority to the establishment of Business Niches ie physically and geographically delimited sites designed to promote the setting up, the enlargement and the consolidation of businesses.

These centres can be used by individuals over 18 years of age and private profit-making organisations. The IEFP offers the centres technical and other assistance, in particular by providing suitable sites and common logistical services.

2. BUSINESS NICHES

These are business premises complete with technical and physical support structures where young people can conduct entrepreneurial activities in the service sector. In exchange for a token rent, properly equipped offices including computer hardware and software are placed at the young people's disposal for a non-renewable three-year period.

The main objective is to stimulate young people's creative and entrepreneurial potential by providing them with the assistance they need to set up or enlarge businesses. The scheme is aimed at people aged 18 to 35 who have just graduated or completed an approved vocational training course and are prepared to work together with a minimum of 1 and a maximum of 3 other people to start up their own business.

The scheme is supported by the Ministry of Economic Affairs by means of the IAPMEI, the Ministry of Science and Technology by means of the JNICT, and the State Secretariat for Youth by means of the IPJ and the National Association of Young Entrepreneurs.

3. THE MICRO-BUSINESS INCENTIVE SCHEME

The aim of this scheme is to encourage overall job creation by promoting micro-businesses which help to stimulate the least developed regions economically and socially.

It is designed to assist in the setting up of businesses with a maximum of 9 staff or support existing businesses with more than 9 but fewer than 50 workers as well as non-profit-making organisations and individual promoters.

Technical support involves organising and helping to run training activities.

Financial support comes in various forms, including for example a regional subsidy or grants to finance up to 20% of capital outlay or job creation. In the latter case, grants are subject to the following ceilings:

- 6 times the national minimum wage in the case of persons unemployed for less than one year or at risk of losing their jobs;
- 12 times the national minimum wage in the case of persons unemployed for more than one year and less than two years, young people in search of their first job and persons receiving the guaranteed minimum income;
- 18 times the national minimum wage for persons unemployed for more than 2 years and people with disabilities.

(Cabinet Resolutions No. 35/97 of 7 March 1997 and No. 51/98 of 20 April 1998; Orders No. 26/97 of 26 March 1997 published in D.R. 2nd series No. 88 of 15 April 1998, and

No. 12619/97 of 20 November 1997, 2nd series, No. 286 of 12 December 1997, of the State Secretariat for Regional Development).

4. THE YOUNG ENTREPRENEURS SUPPORT SCHEME (SAJE)

The goal of the **SAJE** is to support projects aimed at creating jobs and expanding and modernising small and medium-sized businesses belonging primarily to young entrepreneurs aged 18 to 35.

The SAJE offers a whole series of financial incentives which mostly take the following forms:

- a. Grants for investment designed to create jobs;
- b. Venture capital;
- c. Bank loans.

Infrastructure support for people setting up businesses is provided using "business niches" (described above).

Candidates for these incentives must meet all the following conditions:

- a. The overall fixed capital outlay evaluated at current price must not exceed PTE 100,000,000.
- b. The project must be economically and financially viable.
- c. Work on the project must have begun at least 12 months before the application was made and must still be ongoing at that date.

(Legislative Decree No. 22/97 of 23 January 1997; Cabinet Resolution No. 13/97 of 25 January 1997, and Order No. 159-A/97 of 5 March 1997).

5. CULTURAL HERITAGE CONSERVATION

The aim of this project is to train young people and adults in activities related to cultural heritage conservation and promote job creation in this sector through self-employment or recruitment.

Activities may be run by public or private-sector bodies.

The scheme is aimed at young unemployed people between the ages of 18 and 25, long-term unemployed adults and unemployed people with a degree, two years of higher education or the equivalent of A-levels.

The assistance provided consists of technical support, guidance and assistance with applications, and financial aid, including training grants, recruitment subsidies and investment grants amounting to a maximum of 12 times the national minimum wage; the ceiling is raised to 24 times the national minimum wage if the candidate is setting up his or her own business.

(Order No. 53-A/96 of 17 December 1996).

6. INTEGRATION SERVICES

The aim of these services, set up under Order No. 348-A/98 of 18 June 1998, is to combat poverty and social exclusion through occupational integration or reintegration by helping

people to acquire or enhance personal, social and vocational skills suited to performing a particular activity.

The target groups are long-term unemployed people registered at Job Centres and unemployed people with disadvantages in the labour market.

Integration services take the form of non-profit-making organisations (associations, co-operatives, foundations and private social welfare institutions) whose goal is the social and occupational reintegration of the aforementioned groups.

Recipients are selected by the integration services, which must co-operate with other private and public institutions working in the field of employment and social integration.

The first period for applications ran from 19 June to 15 September 1998. Sixty-nine projects were adopted, involving 555 people and financial support amounting to PTE 1,277,900,450.

There is a clear preference for activities involving the provision of community services (cleaning, maintenance, gardening, etc), care for children and the elderly, and craft industries.

AREA III – ENCOURAGING BUSINESSES AND WORKERS TO BE ADAPTABLE

The following schemes are designed to help businesses and workers to be adaptable:

1. THE FACE PROGRAMME

The main objective of the programme is to prevent and alleviate the possible adverse social effects of industrial reorganisation, help to ensure that employment problems and shortcomings in the qualifications of the labour force do not present an obstacle to this process, promote the retraining and adaptation of human resources to new industrial conditions, and encourage the incorporation of reorganisation processes into local and regional development programmes.

2. SIRME PROGRAMME

SIRME is a programme which uses a system of incentives to stimulate the refurbishment and modernisation of business infrastructure.

It has a special budget for areas with a single industry or a single dominant company.

3. THE ROTATION PROGRAMME

This programme applies to businesses which wish to provide in-service training and need to recruit temporary replacement workers to ensure that production continues.

Under the scheme, employers who take on temporary staff to replace workers on training courses are exempted from social security contributions.

Table 1.1.1 shows the public expenditure incurred in respect of labour market programmes and the number of participants and is laid out in the same way as the table provided in the 3rd report.

**TABLE 1.1.1
PUBLIC EXPENDITURE AND PARTICIPANTS IN LABOUR MARKET PROGRAMMES**

PROGRAMME	1995		1996		1997		1998	
	Public expenditure (PTE millions)	Participants	Public expenditure (PTE millions)	Participants	Public expenditure (PTE millions)	Participants	Public expenditure (PTE millions)	Participants
ACTIVE MEASURES								
1. Labour administration and employment services *	15,895	-	17,792	-	20,195	-	-	-
2. Vocational training	36,491	254,134	48,738	296,469	50,599	350,497		
a. Training of unemployed adults and workers at risk of losing their jobs	7,162	8,925	8,360	16,076	14,944	29,087		
Training of unemployed people (QCA0942230)	3,963	4,203	4,623	8,087	9,196	16,988	-	-
Adverse changes in particular industrial sectors (QCA0942240)	1,404	1,374	1,473	1,978	597	1,894	-	-
Training of other disadvantaged categories (QCA0944240)	645	901	629	1,797	1,127	6,747	-	-
Training for former trainees (IEFP)	134	683	131	649	55	344	29	157
Training/employment scheme for adults and middle-ranking and senior managers (IEFP)	1,016	1,764	913	2,627	1,577	1,938	955	1,184
Workshop Schools (IEFP)	-	-	591	938	2,392	1,176	2,931	3,376
b. Training of employed adults	29,329	245,209	40,378	280,393	35,655	321,410	-	-
Teacher training (QCA0941120)	1,458	34,904	4,245	75,822	5,272	71,468	-	-
Continuing education (QCA94220)	7,145	32,916	7,538	46,748	7,388	67,271	-	-
Training of instructors (QCA0942320)	2,148	11,797	1,753	8,651	1,364	10,554	-	-
Civil service training (QCA0942410)	1,419	33,451	1,201	32,679	1,513	41,362	-	-
Training for agriculture (QCA0943160)	3,241	18,596	2,504	8,597	3,235	12,536	-	-
Training for fishing (QCA0943250)	366	1,808	250	1,540	59	297	-	-
Training for industry (QCA0943350)	6,852	90,252	7,786	49,785	8,834	55,247	-	-
Training for tourism (QCA0943440)	1,740	5,008	1,706	7,122	1,906	7,208	-	-
Training for health workers (QCA0944100)	909	16,477	1,769	38,678	2,488	47,928	-	-
Training in co-operation (IEFP)	4,051	-	11,626	10,771	3,596	7,539	3,223	6,161

* Labour administration and employment services (administrative costs of the employment services, placement services, vocational information and guidance, geographic mobility, UNIVA's – ie Entry-into- Working-Life Units – other employment support bodies)

TABLE 1.1.1. (CONTINUED)
PUBLIC EXPENDITURE AND PARTICIPANTS IN LABOUR MARKET PROGRAMMES

PROGRAMME	1995		1996		1997		1998	
	Public expenditure (PTE millions)	Participants	Public expenditure (PTE millions)	Participants	Public expenditure (PTE millions)	Participants	Public expenditure (PTE millions)	Participants
3. Measures to assist young people	53,608	95,801	52,736	129,013	38,071	80,848	-	-
a. Measures for unemployed and disadvantaged young people	13,355	10,782	11,822	13,124	10,025	13,033	-	-
Apprenticeship (QCA942110)	13,355	10,782	11,822	13,124	10,025	13,033	-	13,979
b. Assistance for apprenticeships and other, general types of training for young people	40,253	85,019	40,914	115,889	a) 28,046	a) 67,815	-	-
Vocational preparation (QCA942120)	10,312	10,160	9,628	13,709	8,275	14,575	-	-
Training and employment scheme for young people (IEFP)	410	933	349	1,369	892	1,409	876	3,238
Absorption-into-employment training schemes (IEFP)	9	-	75	58	156	470	4,173	9,985
Vocational colleges (QCA941130)	18,303	30,682	17,275	52,689	18,723	51,361	-	-
Social security rebates for job creation (IGFSS)	9,659	43,244	13,587	48,064	b)	b)	b)	b)
4. Recruitment assistance measures	13,114	42,280	18,516	57,115	16,144	49,384	17,272	54,281
a. Recruitment grants in the commercial sector	4,096	6,213	11,147	17,306	1,924	2,060	2,243	3,159
b. Assistance for the unemployed who start up businesses	4,979	8,761	2,040	5,013	4,372	6,419	5,362	5,713
Local employment schemes	4,008	3,050	340	6	2,728	1,354	3,522	1,810
Other schemes	971	5,711	1,700	5,007	1,644	5,065	1,840	3,903
c. Direct job creation (in the non-commercial sector) (POC)	4,039	27,306	5,329	34,796	9,848	40,905	9,667	45,409
5. Measures to assist the disabled	7,615	8,440	8,143	8,025	5,425	7,234	2,007	2,759
a. Vocational rehabilitation	6,449	5,611	6,934	5,845	4,386	6,092	635	1,265
b. Jobs intended for the disabled	1,166	2,829	1,209	2,180	1,039	1,142	1,372	1,494
PASSIVE MEASURES								
6. Unemployment benefit	132,984	176,718	132,338	182,074	12,692	165,013	-	-
7. Early retirement for reasons connected with the labour market	13,709	14,345	19,672	19,605	25,840	24,336	-	-

a. These amounts are artificially low because the figures relating to social security rebates for job creation are not available. However, it can be assumed that there were at least 40,000 participants.

b. see a.

- unavailable.

CHANGES IN EMPLOYMENT/UNEMPLOYMENT

In 1998 changes in the labour market occurred in a very healthy economic context as the Portuguese economy exceeded its estimated potential growth rate and achieved faster growth than its fellow European Union members.

The increase in the growth rate of gross domestic product in 1998 (more than 4%) resulted not only from the impetus of foreign demand – reflected in particular in a good year for the tourist industry thanks to Expo '98 – but also from investment in infrastructure, from the success of the housing sector, which benefited from a considerable reduction in interest rates, and from a greater increase in private consumption. The growth in the Portuguese economy went hand in hand with improvements in the labour market, reflected on the one hand in increased labour force participation and on the other in growing employment figures and a drop in the unemployment rate.

According to the findings of the latest Employment Survey by the INE (the Portuguese National Institute of Statistics), the employed population reached 47.8% of the total population in 1998. The overall labour force participation rate also rose during the reference period, reaching 50.4% in 1998, with the male participation rate at 57.2% and the female at 44%.

The unemployment rate, which was at 7.3% in 1996, fell considerably throughout the two years in question, settling at 5% in 1998. It is worth noting that this drop applied to both male and female unemployment rates and in all age groups apart from women over 54 years of age.

This reduction in the unemployment rate has led to a decline in the numbers of unemployed persons registered at the IEFP Job Centres.

At the end of 1998 there were 387,300 unemployed persons in mainland Portugal, which reflected to a reduction of 9.6% (or 41,200 people) on the previous year's figure. This abrupt drop in the unemployment rate was common to all the population groups surveyed but the largest percentage reductions were recorded among men and particularly among young men.

However, according to the data from the INE survey, the proportion of long-term unemployed (people out of work for over 12 months) in the total number of unemployed was still high, coming to 42.5% for 1998 even though it had declined in comparison with 1997 (43.6%).

The following tables show certain trends in the employment and unemployment figures derived from the INE Survey.

TABLE 1.1.2.

TOTAL POPULATION BY AGE GROUP AND SEX

Mainland

Thousands

	1997			1998*		
	MW	M	W	MW	M	W
Total pop.	9,382.1	4,474.8	4,907.4	9,463.2	4,557.9	4,905.4
0- 14	1,353.1	684.0	669.0	1,626.4	830.7	795.7
15 – 24	1,477.8	756.8	721.1	1,521.8	767.1	754.7
25 – 44	2,436.8	1,181.5	1,255.3	2,721.1	1,340.7	1,380.4
45 – 54	1,313.6	620.6	692.9	1,151.0	551.5	599.5
>54	2,801.4	1,232.1	1,569.2	2,443.0	1,067.9	1,375.1

Source: INE(IE)

* Series change

TABLE 1.1.3
WORKING POPULATION BY SEX AND AGE GROUP

Mainland

Thousands

	1997			1998*		
	MW	M	W	MW	M	W
Working pop.	4,644.9	2,533.4	2,111.4	4,765.7	2,606.0	2,159.6
15 – 24	661.0	364.7	296.3	727.6	386.7	340.9
25 – 44	2,110.8	1,100.8	1,009.8	2,358.9	1,261.0	1,098.0
45 – 54	1,023.7	562.8	461.0	898.6	502.3	396.3
>54	847.5	504.3	343.2	780.6	456.1	324.5

Source: INE(IE)

* Series change

TABLE 1.1.4.

LABOUR FORCE PARTICIPATION BY SEX AND AGE GROUP

Mainland

Thousands

	1997			1998*		
	MW	M	W	MW	M	W
Participation rate	49.5	56.6	43.0	50.4	57.2	44.0
15 – 24	44.7	48.2	41.1	47.8	50.4	45.2
25 – 44	86.6	93.2	80.4	86.7	94.1	79.5
45 – 54	77.9	90.7	66.5	78.1	91.1	66.1
>54	30.3	40.9	21.9	32.0	42.7	23.6

Source: INE(IE)

* Series change

**TABLE 1.1.5
PERCENTAGE OF THE POPULATION IN EMPLOYMENT BY SEX AND AGE GROUP**

Mainland

%

	1997			1998*		
	MW	M	W	MW	M	W
TOTAL	46.2	53.2	39.8	47.8	54.9	41.3
15 – 24	38.1	42.5	33.4	42.9	46.3	39.5
25 – 44	81.2	88.0	74.8	82.5	90.8	74.6
45 – 54	74.0	86.4	62.9	75.2	88.0	63.4
>54	29.1	39.1	21.3	31.2	41.6	23.1

Source: INE(IE)

* Series change

TABLE 1.1.6.

EMPLOYED POPULATION BY SEX AND AGE GROUP

Continent	1997			1998*			%
	MW	M	W	MW	M	W	
Employed population	4,331.8	2,379.8	1,952.0	4,526.4	2,501.6	2,024.8	
15 – 24	563.1	322.0	241.1	652.7	354.8	297.9	
25 – 44	1,978.6	1,039.3	939.2	2,246.2	1,217.1	1,029.2	
45 – 54	972.3	536.2	436.1	865.1	485.3	379.8	
>54	816.3	481.6	334.8	762.4	444.4	318.0	

Source: INE(IE)

* Series change

TABLE 1.1.7.
EMPLOYED POPULATION BY SECTOR OF ECONOMIC ACTIVITY AND BY SEX
Mainland

	1997(Thousands)			1998* (Thousands)		
	MW	M	W	MW	M	W
Overall total	4,331.8	2,379.8	1,952.0	4,526.4	2,501.7	2,024.8
Agriculture, forestry and hunting	576.1	268.5	307.6	585.6	278.2	307.4
Fishing	13.0	11.6	1.4	19.2	17.7	1.5
Mining and quarrying	15.7	14.2	1.5	15.7	13.8	1.9
Manufacturing	929.6	549.2	380.5	1,102.7	623.1	479.6
Food	104.9	63.1	41.8			
Textiles	299.4	86.2	213.2			
Wood and paper	115.4	89.7	25.7			
Chemicals	114.3	80.0	34.4			
Metals	112.4	97.8	14.6			
Machinery	76.9	54.0	22.9			
Cars	48.2	34.9	13.3			
Furniture	58.1	43.5	14.6			
Other						
Electricity/Gas/Water	35.4	30.4	5.0	30.1	26.3	3.8
Construction	388.4	371.5	16.9	486.1	467.4	18.8
Services	2,373.6	1,134.6	1,239.3	2,287.0	1,075.2	1,211.8
Shops, hotels and catering	815.0	460.7	354.2			
Shops	607.8	363.4	244.3	628.0	371.9	256.1
Hotels and catering	207.2	97.3	109.9	231.1	96.4	134.7
Transport and communications	129.0	104.4	24.7	169.2	133.4	35.8
Post and telecommunications	40.4	24.8	15.6			
Financial institutions, insurance	134.2	86.1	48.2	84.9	54.1	30.8
Computing, investment, development	197.0	110.2	86.8	172.6	89.3	83.3
Public services	278.2	165.8	112.5	265.3	168.1	97.2
Teaching	284.1	66.9	217.2	261.6	63.8	197.8
Health	197.9	45.3	152.6	189.9	36.4	153.5
Other	297.8	70.4	227.5	284.3	61.6	222.7

Source: INE(IE)

* Series change

**TABLE 1.1.8
WORKING POPULATION BY OCCUPATIONAL STATUS**

Mainland

	1997(Thousands)			1998 (Thousands)*		
	MW	M	W	MW	M	W
Self-employed persons with staff	262.7	189.5	73.3	282.2	209.7	72.5
Self-employed persons without staff	928.0	495.0	433.0	879.4	471.5	407.9
Wage earners	3,070.2	1,665.8	1,404.4	3,228.4	1,764.7	1,463.7
Unpaid family workers	67.8	27.9	39.9	136.4	55.7	80.7
Production co-operative members	3.0	1.7	1.4			
Total	4,331.8	2,379.8	1,952.0	4,526.4	2,501.6	2,024.8

Source: INE(IE)

* Series change

**TABLE 1.1.9
WAGE-EARNERS BY TYPE OF CONTRACT**

Mainland

	1996		1997		1998*	
	<i>Permanen t</i>	<i>Fixed term</i>	<i>Permanen t</i>	<i>Fixed term</i>	<i>Permanen t</i>	<i>Fixed term</i>
Total	2,639.7	376.8	2,623.8	435.8	2,792.5	421.2
Men	—	—	—	—	1,552.0	199.2
Women	—	—	—	—	1,240.5	222.0

Source: INE

* Series change

TABLE 1.1.10.
UNEMPLOYED POPULATION ACCORDING TO JOB SOUGHT

Mainland

Thousands

	1997			1998*		
	MW	M	W	MW	M	W
Total	313.1	153.7	159.4	239.3	104.4	134.8
1st job	61.0	25.5	35.5	42.4	14.9	27.5
New job	252.1	128.2	123.9	196.9	89.5	107.3

Source: INE(IE)

* Series change

**TABLE 1.1.11.
UNEMPLOYED POPULATION ACCORDING TO DURATION OF
UNEMPLOYMENT BY AGE GROUP AND SEX**

Mainland

	1995	1996	1997	1998*
Total	100.0	100.0	100.0	100.0
Less than 6 months	38.5	35.5	36.6	41.6
7 to 12 months	22.1	22.5	19.8	15.9
13 to 24 months	22.9	21.5	20.9	17.0
25 months or more	16.4	20.5	22.7	25.5
Long-term unemployed/ total unemployed	39.3	42.0	43.6	42.5
M	38.2	41.3	43.1	42.1
W	40.4	42.7	44.0	42.9
Under 25	26.6	26.7	25.1	26.2
M	26.0	27.6	23.5	
W	26.6	25.4	26.3	
25 to 44	42.8	45.6	47.2	43.8
M	38.8	40.1	43.5	
W	45.0	49.2	50.3	
Over 45	51.4	57.0	59.8	63.2
M	49.3	58.2	59.3	
W	52.5	54.8	60.4	

Source: INE Labour market survey (OEFPP)

* Series change

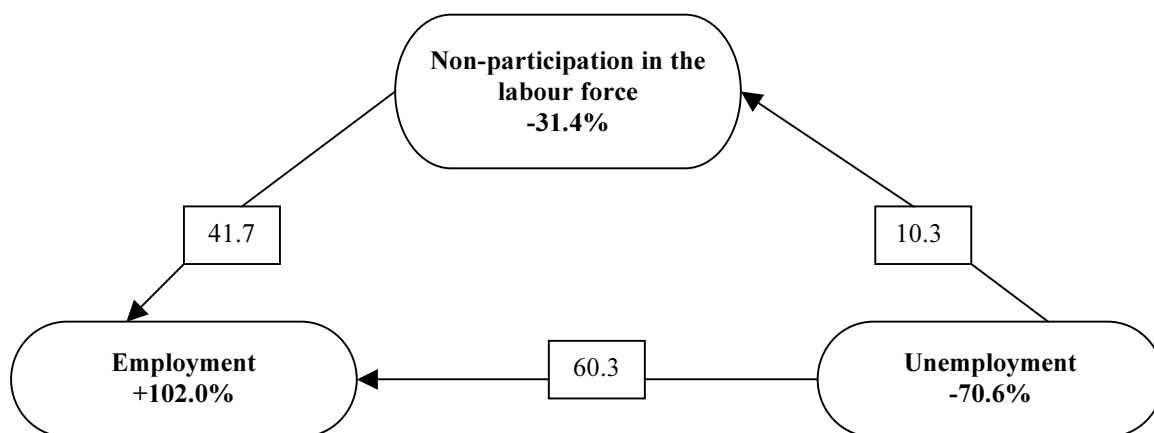
**TABLE 1.1.12.
TRENDS IN UNEMPLOYMENT RATES BY SEX AND BY AGE GROUP**

Mainland	%					
	1997			1998*		
	MW	M	W	MW	M	W
Unemployment	6.7	6.1	7.6	5.0	4.0	6.2
rate						
15 – 24	14.8	11.7	18.6	10.3	8.2	12.6
25 – 44	6.3	5.6	7.0	4.7	3.5	6.2
45 – 54	5.0	4.7	5.4	3.7	3.4	4.2
>54	2.8	3.5	1.8	2.3	2.6	2.0

Source: INE

* Series change

**NET TRANSITION BETWEEN EMPLOYMENT, UNEMPLOYMENT AND
NON-PARTICIPATION IN THE LABOUR FORCE
(1998 compared with 1997)**



Reply to the questions put by the Committee of Independent Experts

The Committee of Independent Experts asked to be informed about the reduction in the number of persons benefiting from the various employment measures.

First of all, it should be said that, in part VII of the 3rd Report, it was pointed out that Table 1.1.1, showing public expenditure incurred in respect of labour market programmes and the number of participants (and identical to the table supplied to the OECD), was structured differently from the tables included in previous reports.

Moreover, during the reference period, as is explained in the analysis of labour market trends above, there was a considerable reduction in the overall unemployment rate, from 7.3% in 1996 to 5% in 1998. The reduction related both to men (6.5% in 1996 compared with 4% in 1998) and to women (8.2% in 1996, 6.2% in 1998).

As regards the Committee's question, assuming that it must apply to measures to assist the young unemployed, we feel we should point out that neither table 1.1.1, as supplied in the 3rd report relating to 1996, nor the table in this report, which covers 1997 and 1998, provides any information on the number of participants in the scheme providing social security contribution rebates for job creation as the figures were not available; however, we can confirm that there have been more than 40,000 participants per year.

Furthermore, with regard to the measures referred to in Table 1.1.1, we would like to draw attention to the increase in the number of participants in vocational training schemes, whether unemployed adults or workers at risk of losing their jobs, among whom there was a 38% increase between 1996 and 1997, or working adults, among whom there was a 31% increase over the same period.

The extent of the increase in the number of vocational training scheme participants should be stressed, because Portuguese workers generally have very few qualifications and so improving their employability is one of the main priorities of the national employment policy.

The Committee requested more information on the effects on the labour market of the measures adopted under the Social Labour Market Programme.

The first thing to note is that the question raised focuses on the employment effects of the programmes and measures implemented under the Social Labour Market Programme; in our opinion this is not the only effect which should be assessed as other factors, such as the building and reinforcement of self-esteem, social re-integration, and the improvement of vocational and interpersonal skills, are undoubtedly also goals which should be striven for and highlighted.

To find out more about the implementation and the results of these programmes, reviews of the Non-Permanent Work Schemes and the Workshop Schools, including an assessment of the tangible results of these projects in terms of employability, have already been conducted.

The review of the **Non-Permanent Work Schemes** was based on responses from a sample of some 800 individuals who took part in the programme between 1994 and 1997. Sampling was the only viable way of conducting the review, given the relatively high number of participants.

The review provided the first ever opportunity to collect specific information on the results of the programme in terms of employability following participation.

According to the results:

- 22.3% of the participants found a job within the same body as set up the occupational activity and 16.1% of these given a permanent contract;
- 40% of the participants found work after taking part in the programme, which proved that the programme was a positive step for many of the persons involved;
- 47% considered that their participation in the Non-Permanent Work Schemes was an extremely important factor in their finding work.

It can be said therefore that, though they can and must still be improved, the Non-Permanent Work Schemes are a major success in terms of employability, albeit associated with a certain lack of job security and of qualifications.

As regards community work programmes¹, considerable numbers of participants were appointed following the conclusion of projects, either by the body which launched the project or by other bodies contacted by the project organisers.

It should be stressed that these projects generally include an element of vocational training, which improves the vocational skills of the participants and increases their employment potential.

Employment potential at the end of projects seems to be greater in certain fields where the organising bodies find it easier to take on new employees.

For the activities set up to promote the cultural and architectural heritage (Co-operation Protocol IEFP/IPPAR²/96) the statistics show that integration levels are satisfactory, particularly in the North, where some of the participants have been incorporated into the IPPAR staff and others have begun the process of setting up their own businesses.

In comparison with other projects which have already come to an end, employment levels for Health Auxiliaries (Co-operation Protocol IEFP/DGS³/96) have been particularly high, demonstrating the success of the programme and the need for professionals in this field. In the North and the Algarve statistics show an integration rate in the region of 100%, while in the Centre it is around 90%. There are no statistics for the other regions, partly because the projects are still in progress.

Some of the social welfare activities (Joint Order of the former Ministry of Training and Employment and the former Ministry of Solidarity and Social Security/96) are not yet over but, by way of an example, we can already say that, in the North, 70% of the participants have found employment.

Though the success of the scheme for school helpers (Joint Order 132-A/ME⁴/MQE/96) has already been acknowledged, their absorption into the labour market appears to have been difficult, although some have found posts, particularly in kindergartens.

¹ Implemented by means of protocols negotiated between the IEFP and other bodies as well as those governed by joint orders (Ministry of Labour and Solidarity and other ministries).

² Portuguese Institute of Architectural and Archaeological Heritage.

³ General Health Directorate.

⁴ Ministry of Education.

Finally, it should be said that these figures are not exhaustive and do not cover all the Joint Orders and Protocols, but they show that the activities carried out have the potential to help participants to find a job.

In the case of the **Workshop Schools Scheme**, we do not have reliable data on the employability of participants in training except for activities carried out during the first year of the scheme. This is the only year which can be properly reviewed as not all the activities launched in the second year have come to an end.

The survey revealed the following statistics concerning employability:

- 21% of the participants found work at the end of the scheme either within the organising body (4%) or with another employer (17%). A particularly high proportion found jobs in the Regions of the Algarve (44%) and Lisbon (28%);
- 16% of the participants have set up or are in the process of setting up their own businesses;
- 15% of the participants did not have a stable job and now find themselves working part time.

Generally speaking, considering that its activities have only just come to an end, the programme has resulted in an outstanding overall employment level (37%). though there are major differences in the regional figures, which vary between 73% for the Algarve and 17.5% for Alentejo.

The 37% employment rate is not the final figure because, at the time of the survey, 15% of the participants were still in an unclear employment situation while many others had not found work immediately after their training but had acquired vocational qualifications, which meant that they were bound to have some success in the labour market.

As regards the **Integration Services scheme**, the fact that it was only launched in 1998 means that it is too early to provide any information yet, since the activities last two years and it is only afterwards that they can be assessed.

The Committee wanted to hear the Portuguese government's opinion on the CGTP-IN's comments on the increasing insecurity of employment.

In connection with this comment, it should be said that the employers' and workers' representatives who signed the Strategic Concertation Agreement of 20 December 1996 decided that, in the light of the difficulties being experienced by a number of employers, exceptional rules on the length of fixed-term contracts should be established, whereby, if the end of the regulation period of 3 consecutive years including contract renewals fell in 1997 or 1998, the contract could be extended twice again, up to a maximum length of 4 consecutive years.

The Committee requested more information on working conditions in the Non-Permanent Work Schemes (Order No. 145/93 of 8 February 1993).

According to paragraph 4.1 of this order "*the relations between subsidised workers and the bodies for which they work, as well as their working conditions, including accident insurance, are governed by the applicable labour law and regulations, except as regards payment*".

In addition, paragraph 4.3 of the same order provides that, subject to the right to one day of rest per week as established by law or by a collective agreement and the duty to appear at

the IEFPP or the social security offices when notified to do so, workers shall have one day per week in which to look for suitable employment provided that they can prove what steps they took.

The Committee requested more information on the activities of the Observatory for Employment and Vocational Training.

As already pointed out in previous reports, the Observatory is a motivating body, with a Central Co-ordinating Unit (CCU) presided over by a representative of the Ministry of Labour and Solidarity.

The Observatory also relies on the services of the Institute of Employment and Vocational Training (IEFP). The Observatory operates:

- a. at national level, in particular through the intermediary of the Research Department of the IEFPP;
- b. at regional level by means of the IEFPP's Regional Delegations and each delegation's advisory board;
- c. at local level, through Job Centres and Vocational Training Centres and their advisory bodies.

From the outset the Central Co-ordinating Unit concentrated on collecting information which would enable the situation and development of the labour market to be analysed and problems to be pinpointed in advance whenever possible.

For this purpose the CCU experimented with the use of existing reports, which enabled it to acquire both an overall picture and a detailed understanding. This led it to draw up its **own analyses** (beginning at national level and moving on to regional level), which are set out in quarterly or yearly **fact sheets**.

The CCU has also had direct contact with regional and local officials of the IEFPP at regional meetings. The main aim is to arrive at a situation where the Regional Delegations and the Job Centres in particular act as **regional and local outposts of the Observatory**, sending the CCU forecasts relating in particular to job creation and job losses.

An understanding of regional potential is vital because it will help to find the real solutions to problems and not just stop-gap measures. This is why the CCU carried out a "**Study on the potential and energising factors of the Districts of Agueda and Estarreja**", which was designed to collect information on the underlying impetuses for economic development in different situations and has already been published. It has also produced a "**Social and Economic Study on Marinha Grande and the surrounding area – an assessment of regional potential**", which has also been published.

As for the continuing hunt for knowledge about regional and local features relating to job creation, job losses and economic potential, we can hope for a **major contribution from the regional and local networks of partners**. The national partners who communicate directly with the CCU have already been involved in extremely worthwhile **discussions** which have already been publicised.

Initially, dialogue was established with the three branches of the economy, agriculture, industry and services. and with representatives of the education, commerce and transport sectors, and manufacturing industries producing textiles, clothes and machinery. During a second phase, further discussions were held with agriculture and industry while initial contacts were made with tourist companies the hotel and catering trade. the motor industry,

the food-processing industry, banks, other companies providing banking services, and insurance companies. During a third phase, further discussions were held with the service industries and the commerce, construction and public works sectors; dialogue was also established with Expo '98 and the fish canning industry.

Information about the **effectiveness of political measures** is another area of concern to the CCU. By way of an experiment, an initial assessment of the outcome of measures to promote job creation has been made and has already been published. For some time now, the Observatory has been a member of a working group which has been making progress in this area of assessment.

The CCU has tried to explore means of using the information available, giving priority to the problems and proposals which have emerged from the discussions which have already taken place at national level. Progress is being made on following up the discussions held with representatives from the education, business and social welfare sectors and from Expo '98.

Paragraph 2

Update of the information provided in the third report

A. B. C.

There are no changes to report.

D.

Constitutional Law No. 1/97 of 20 September 1997 significantly amended the Constitution with regard to equality of opportunity and non-discrimination. In particular:

- Article 9 (Basic responsibilities of the state) was expanded by the inclusion of paragraph h, requiring the state *“to promote equality between men and women”*. This is a very important amendment inasmuch as the state now has a duty to bring change about, whereas its previous role was simply to guarantee the right to change.
- Article 26 (Other personal rights) was also amended, with the introduction of several important provisions, notably at the end of paragraph 1, where a right to legal protection against any form of discrimination is introduced. *“Everyone is recognised as having the right to his or her personal identity, personality development, [...] and to legal protection against any form of discrimination.”*

Moreover, this article is directly applicable and binding on public and private bodies, thus guaranteeing legal protection against any decision that violates the constitutional principle of equality prohibiting any discrimination on grounds of ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social circumstances.

- Article 59 (Rights of workers), paragraph b, under which all workers are entitled to *“the organisation of work in keeping with human dignity and personal self-fulfilment”* was extended by the addition of the words *“while reconciling the needs of vocational activity and family life”*.

1. Non-discrimination in employment

1.1 With regard to the **right to equal treatment for men and women** in their occupation and employment, Law No. 105/97 of 13 September 1997 (see Appendix 1.1), which applies to all public and private bodies, is intended to ensure its effective application.

Notable among the provisions of this law is Article 2, which defines as indirect discrimination *“any apparently neutral measure, criterion or practice which is disproportionately prejudicial to individuals of one sex, particularly by referring to civil or marital status in the absence of any objective non-gender-based reason or necessary circumstance justifying such reference.”*

In addition, under Article 3, a substantial difference between the sex balance in a given employer’s workforce and that found generally in the same sector is an indicator of discriminatory practice.

Another new aspect of the provisions is the fact that the burden of proof in cases of alleged discriminatory practice has been shifted so that it is now up to employers to prove that there are no practices, criteria or measures that discriminate on grounds of gender. With regard to the question of who may initiate proceedings in the relevant courts, Article 4 provides that, irrespective of whether individual workers or job applicants exercise their right to lodge a complaint, cases may be brought by the trade unions that represent the employees of the department where the right to equal treatment is alleged to have been breached.

So that discriminatory practices can be detected and monitored, the law requires public and private bodies to keep, for five years, records of all appointments made and lists of the various criteria used and the results obtained.

Concerning penalties, Article 8 stipulates that, without prejudice to any other penalties available under the law, all practices that discriminate directly or indirectly on the basis of gender shall be punishable by fines, on a scale of 5-10 times the level of the highest guaranteed minimum monthly earnings. In such cases an official report must be drawn up by either the General Labour Inspectorate or the relevant departments of the state or semi-state agency concerned, depending on whether the offence has been committed by a public or a private body.

Articles 8 and 9 further stipulate that for second and subsequent offences the minimum and maximum fines shall be doubled, and employers found guilty shall face additional penalties. In particular, they shall pay for the non-official publication in a major national newspaper of the relevant extract from the court ruling that discriminatory practice existed, and shall be required to display copies of the said extract in all the workplaces where they carry on their business.

Promoting equality of opportunity has been one of the Government’s priorities. Accordingly, the Council of Ministers, in Resolution 49/97 of 24 March 1997, approved a Comprehensive Equal Opportunity Plan with wide-ranging implications in the fields of recruitment, employment and training.

The plan is structured around seven major objectives and includes 51 measures that have already begun to be implemented. The aims are as follows:

1. to incorporate the principle of equality of opportunity between women and men into all economic, social and cultural policies;
2. to prevent violence and ensure that women who have been the victims of crimes of violence are properly protected;

3. to promote equality of opportunity in employment and labour relations;
4. to reconcile private life and work;
5. to guarantee social protection for families and expectant mothers;
6. to promote health;
7. to foster education, science and culture.

The 51 measures in the plan that are most concerned with eliminating discrimination in employment include the following:

- tighter controls - by the Commission for Equality in Labour and Employment (CITE) and the General Labour Inspectorate (whose staff will receive special training) - on how the legislation on discrimination in labour and employment is actually applied;
- the inclusion of related themes and of the issue of equal opportunities in basic and further training courses for teachers and instructors;
- the weighting of gender-related questions in studies on the impact of various measures and programmes of the Ministry of Labour and Solidarity;
- the introduction of specific measures to promote equality of opportunity in the regulations governing Community Support Framework programmes;
- the establishment, within the framework of the CITE, of an observatory to monitor how the theme of equality is dealt with in collective labour agreements, with a view to raising awareness of the issue among negotiators on both sides of industry and encouraging them to take positive action;
- incentives to companies to take positive action, for example through measures to recruit long-term unemployed women or to integrate women into areas of employment where they are under-represented;
- the promotion of, and widespread publicity for, specific financial and technical support programmes for women setting up their own businesses;
- incentives to the development of measures designed to reconcile work and private life, particularly through the introduction of new work patterns.

In March 1998 the application of the measures set out in the Comprehensive Equal Opportunity Plan was assessed for the first time. With regard to the first aim - incorporation of the principle of equality of opportunity between women and men into all economic, social and cultural policies - the following points were made:

- the equality advisors to the different ministries had collaborated systematically on incorporating an equality dimension into their respective sectors;
- information and awareness-raising activities, focusing on equal-opportunities issues, had been carried out among employees of central, regional and local government, the education system and social services bodies, among others. In this context, the Commission for Equality and Women's Rights (CIDM) had signed several protocols with municipalities, with a view to including an equality dimension in local policies and appointing equal opportunities officers at local level;

- there was a proposal to make equality one of the themes in training courses at several establishments, including the Centre for Municipal Studies and the National Institute of Administration, and in courses for teachers and other educationalists at various institutions including teacher training colleges and universities;
- the Government Order of July 1997 laying down guidelines for the use of the Structural Funds had stipulated that, in the context of the Community Support Framework programmes, priority must be given to measures and projects intended to contribute to real equality of opportunity.

For its part, the National Employment Strategy set out priorities to be pursued in 1998 in the context of the 4th pillar, concerning equality of opportunity between women and men. They included:

- combating segregation in the labour market and wage segregation;
- increasing the number of women who undertake vocational training to obtain qualifications;
- improving information about, preventing breaches of, and monitoring the application of the relevant legislation;
- closing the gap between the rates of male and female unemployment, especially among the young and long-term unemployed;
- reinforcing arrangements for integrating or re-integrating women into work and for combating social exclusion, which is a particular threat to women;
- defending the right of women workers to reconcile work and family life.

Because the inclusion of equality of opportunity between women and men as a theme in training helps to shape and determine public policy and enhances employability, a range of activities in this field has been developed for strategically important groups: negotiators on both sides of industry, lawyers, judges, public service employees, entrepreneurs, personnel officers, trainers and all those involved in different types of vocational training.

During the reference period, the CITE delivered 22 opinions in 1997 and 18 in 1998.

Of the 22 opinions published in 1997, 15 concerned the dismissal from employment of pregnant women and new or nursing mothers; four concerned gender-based discriminatory practices; and three related to gender-based discrimination on grounds of maternity.

Thirteen of the opinions published in 1998 were preliminary opinions on the impending dismissal of pregnant women, three concerned the CITE's interpretation of the law on maternity and paternity leave and one related to the discriminatory nature of a company's job application form.

A further development in the same field was the launch by the CIDM of the TRAMPOLIM project, under the NOW strand of the European Community initiative on "employment and the development of human resources". The project's aim is to disseminate information and raise awareness among municipalities in the autonomous regions, and other relevant local bodies, about the formation of networks to actively promote equality of opportunity and, more specifically, to raise women's standing in society and encourage their integration into the labour market as part of a process of regional development.

Since 1998 the CIDM's TRAMPOLIM/REDA project (which is also part of the NOW programme) has been concerned with the establishment of a national network of local authority equality advisors, responsible for encouraging "back to work" measures for women within municipal services.

The CIDM and CITE have organised numerous seminars and conferences to spread information about equality of opportunity and to publicise examples of good positive-action practice within companies and make company directors aware of the benefits of adopting such policies.

With regard to the monitoring of legislation on equality of opportunity between men and women, in 1997 the General Labour Inspectorate compiled official reports on 74 cases of unlawful sex discrimination and 28 cases where job descriptions or job evaluation documents were discriminatory.

The corresponding figures for 1998 were 14 and 15 cases, respectively.

On the question of the sex balance in the armed forces, the following table shows the relevant figures for 1998.

**TABLE 1.2.1
BREAKDOWN OF ARMED FORCES PERSONNEL BY SEX**

SERVICE	MEN	WOMEN
Navy	11,509	332
Army	27,589	1,486
Air Force	6,437	757
TOTAL	45,535 ¹	2,575 ²

¹ Including men doing compulsory military service

² Including women doing voluntary military service

The next table shows the proportion of female employees in certain occupations that were closed to women until 1974 and others where women have traditionally been in the minority.

TABLE 1.2.2

OCCUPATION	TOTAL	NUMBER OF WOMEN	% WOMEN
Closed to women up to 1974			
Judiciary and public prosecution service	2,251	885	39.3%
Diplomatic service	468	101	21.6%
Armed forces (as a career)	39,804	2,296	6.1%
Other occupations			
Doctors	31,383	13,636	43.5%
Lawyers	16,398	6,874	41.9%
Police officers			
PSP [police](1999)	19,893	1,307	6.6%
GNR [gendarmarie]	25,131	237	0.9%

1.2 In 1998, Law No. 20/98 of 12 May (see Appendix 1.2) introduced new rules on **the employment of foreign nationals**, other than nationals of EU member states, in Portugal. It cancelled Legislative Decree No. 97/77 of 17 March 1977 in its entirety (and specifically the requirement that 90% of the workforce in companies employing more than five people should be Portuguese nationals) and Section VI, Chapter II of Legislative Decree No. 491/85 of 26 November 1985, dealing with employment offences.

Article 2 of the new law implements the principle, laid down in Article 15 of the Portuguese Constitution, that aliens temporarily or habitually resident in Portugal shall enjoy the same rights as Portuguese citizens, by providing for equality at work and with regard to employment conditions resulting from rules established under statutory rules or collective agreements.

It should be noted that the formal requirements for drawing up a contract of employment with a non-national and the stipulation that the contract must be submitted to the authorities before the non-national is recruited do not apply where the contract is with a national of a member state of the European Economic Area or of a country that, with Portugal, has ratified an instrument (eg the European Social Charter) requiring the parties to accord equal treatment to each other's nationals.

With regard to the formulation of policies for social integration and for combating social exclusion among migrant workers, an Advisory Council on Immigration Affairs has been set up, attached to the Prime Minister's Office. Chaired by the High Commissioner for Immigration and Ethnic Minorities, it comprises two representatives each of immigrants' associations, industry (employers and employees) and social welfare organisations working with immigrants, plus a government representative from the Department of Migrations and the Portuguese Communities Abroad.

The advisory council has the following brief:

- to participate in the drafting of legislation concerning immigrants' rights;
- to co-operate in the implementation of social integration policies intended to eliminate discrimination and promote equality;
- to contribute to the preparation and implementation of, and to supervise, measures and activities designed to improve immigrants' living conditions;

- to play a part in the protection of immigrants' rights.

1.3 With regard to the legal protection of workers who engage in trade union activities, Article 55 of the Constitution affords general legal recognition of the right to organise and to carry out trade union activities within businesses and, as described in the section of this report concerned with Article 5, the ordinary law provides a range of safeguards against the dismissal of workers who have trade-union responsibilities in the workplace, thus underpinning the constitutional rights.

E.

Legislative Decree No. 246/98 of 11 August 1998 laid down a procedure for recognising the generally representative nature of non-governmental women's organisations, set out the types of technical and financial assistance such organisations might receive and provided for them to be registered. In particular, there are provisions for technical and financial assistance to women's NGOs working in the following fields:

- technical training in support of business initiatives, with a view to developing women's entrepreneurial potential;
- vocational training to increase the numbers of women working in new types of job and in sectors where they are under-represented;
- the introduction of support services to reconcile family life and work;
- the drafting of new proposals to round out and reinforce the law on equality of opportunity.

Law No. 80/98 of 24 November 1998 confirmed the status of women's associations among the social partners by providing, in Article 1 on the composition of the Economic and Social Council, for a council member to represent associations active in the field of equality of opportunity for women and men.

As described under D. above, it was decided as part of the National Employment Strategy to establish an **observatory to monitor the theme of equality in collective labour agreements**, with a view to detecting and preventing direct and indirect gender-based discrimination in such agreements, encouraging the introduction of positive measures and promoting a workplace culture of equality of opportunity between men and women.

The observatory, which has been operational since May 1998, is a tripartite body comprising representatives from both sides of industry, the Ministry of Labour and Solidarity and the CITE, with back-up from experts and researchers in the fields of economics, sociology and law.

In the context of the European Community's Leonardo da Vinci Programme, the CITE is promoting a project on **integrating equality of opportunity into the dialogue between employers and employees**, with the aim of training negotiators on both sides of industry and raising awareness in trade unions and employers' associations of the need to encourage women to become directly involved in collective bargaining.

Replies to questions raised by the Committee of Independent Experts

1. *Elimination of all forms of discrimination in employment*

The Committee of Independent Experts considered that Legislative Decree No. 97/77 was discriminatory with regard to access to employment for nationals of the contracting parties.

See update of information on point D.3 of this paragraph.

2. *Prohibition of forced labour*

The Committee of Independent Experts considered that the national legislation did not meet the requirements of Article 1, paragraph 2 of the Charter inasmuch as Article 385 of the Penal Code could be applied in circumstances beyond those permitted under Article 31 of the Charter.

Article 385 of the Penal Code makes it an offence for public employees to abandon their work station, stating that “*A public employee who unlawfully abandons his or her duties or displays negligence in performing them, with the intention of impeding or disrupting a public service, shall be liable to imprisonment for up to one year or a fine of up to 120 day-units.*”

With regard to its scope, this provision is self-restricting in that it refers not to workers in general but to a specific category of workers, namely public employees within the definition of Article 386 of the code: “*civilian public servants or administrative officers who perform public administrative or legal duties*”.

When the Penal Code was reformed by Legislative Decree No. 48/95 of 15 March 1995, the word **unlawfully** was inserted into the existing legal definition of the offence of abandoning one’s post. Under the new definition, one of the most important elements in this type of offence is the fact that the act of abandoning the post is *unlawful*, thus automatically excluding from the definition circumstances in which a post is abandoned in the exercise of a right, such as the right to strike, or where a public servant unreasonably refuses to perform a duty - such a refusal constituting a breach of discipline rather than an offence.

In fact, the provision is intended to apply where a public servant abandons his or her post by arbitrarily and deliberately leaving or intentionally remaining absent from the workplace in circumstances where the task in question cannot be carried out by another public servant in his or her place.

At the same time, in order to constitute the offence as defined, the act of abandoning one’s post must not only entail the objective element of *unlawfulness*, as described above, but must also involve a similar subjective element, namely a specific intention to defraud, since the public servant’s refusal to perform his or her duties must be both unlawful and motivated **by the intention of impeding or disrupting a public service**. Thus the presence of fraud, in a general sense, as a subjective element of the offence, is not sufficient.

It is clear from the foregoing and from the current wording of the article that the legislative intent in adding a succession of restrictive elements has been to limit the definition of the offence to cases in which a public servant acts in serious breach of his or her duties with the deliberate intention of impeding a public service or preventing it from functioning.

Thus the purpose of having such an offence is not to force public servants to work, but to ensure that public services do not function so inadequately as to violate the rights, freedoms and basic safeguards enjoyed by members of the public. It should be noted that there has never been a prosecution for the offence in question.

We can therefore conclude that the existence of such an offence does not extend the restrictions permitted under Article 31 of the Charter, nor is it in breach of the prohibition on forced labour.

Following the question about the scope of Article 385 of the Penal Code, the Committee of Independent Experts wished to know whether this article could also be applied to requisitioned workers.

To constitute the offence in question, the act of abandoning one's post must be **unlawful** - a stipulation that automatically excludes the case of workers abandoning their posts in exercise of the right to strike.

Moreover, the term *abandonment* is not synonymous with unreasonable refusal because the latter is a breach of discipline, thus covered simply by the relevant section of the Disciplinary Regulations for Employees of Central, Regional and Local Government, approved by Legislative Decree No 24/84 of 16 January 1984.

Therefore, the penalties applicable to requisitioned workers are those laid down in the Disciplinary Regulations for Employees of Central, Regional and Local Government, which are referred to in the orders implementing government decisions on requisitioning.

With regard to merchant navy crew members, the Committee of Independent Experts considered that, under those sections of Articles 132 and 133 of the Merchant Navy Penal and Disciplinary Code which were still in force, workers could find themselves guilty of a criminal offence in certain cases that went beyond the scope of Article 31 of the Charter. The committee pointed out that there were cases when crew members whose jobs directly concerned the maintenance, security and proper functioning of a ship could leave the vessel without necessarily endangering its security or the lives and wellbeing of those on board.

With a view to preparing draft legislation to amend the Merchant Navy Penal and Disciplinary Code, the Government has set up interdepartmental committees - which are still meeting - to study the question and propose the necessary amendments.

It should also be noted that the penalty provided for in the sections of Articles 132 and 133 of the code that are still in force has not actually been applied, and certainly not in the reference period for this report.

The Committee of Independent Experts requested information on all cases of the application of Legislative Decree No. 637/74 on civilian requisitioning, with the reasons for its application and details of the circumstances in each case.

Civilian workers were requisitioned only once during the reference period, namely during the court officers' strike, under Council of Ministers Resolution 46-A/98 of 30 March 1998 (see Appendix 1.3), implemented by Order 209-A/98 of 31 March 1998 (see Appendix 1.4).

The order lists the basic services for which civilian workers may be requisitioned, such as:

- *"bringing prisoners and persons remanded in custody before the courts and giving immediate effect to the subsequent court decisions";*
- *"carrying out those procedural measures strictly necessary to the safeguarding of citizens' freedom";*

- *“taking measures the postponement of which could prejudice the interests of minors, particularly bringing minors before the courts and applying appropriate measures for minors at risk”.*

As the order makes clear, the basis for civilian requisitioning is the need to safeguard fundamental public rights, in this case the right to liberty, by ensuring that prisoners are brought before the courts within the stipulated 48 hours, that the rules governing the duration and conditions of detention on remand and other forms of deprivation of liberty are observed, and that writs of *habeas corpus* can be given effect.

Paragraph 3

Updating of the information provided in the third report

A. B. C. D.

There are no changes to report. The tables below contain new labour-market data, showing the average annual turnover recorded at job centres throughout the reference period (Table 1.3.1), the average end-of-the-month turnover recorded in each year (Table 1.3.2) and the average end-of-the-year-unemployment rate by sex, age group and length of time out of work (Table 1.3.3).

TABLES 1.3.1 TURNOVER RECORDED AT JOB CENTRES THROUGHOUT THE YEAR

For figures, please see p. 60 of the original Mainland Portugal

			Thousands		% Variation	
			1997	1998	97/96	98/97
Applications for work	M+W W					
In work	M+W W					
Unemployed	M+W W					
First job	M+W W					
New job	M+W W					
Vacancies	M+W					
Placements	M+W W					

Source: IIEFP, Research Services Department

For figures, please see p. 61 of the original
North

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
Unemployed	M+W W				
First job	M+W W				
New job	M+W W				
Vacancies	M+W				
Placements	M+W W				

Source: IEF, Research Services Department

For figures, please see p. 61 of the original
Centre

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
Unemployed	M+W W				
First job	M+W W				
New job	M+W W				
Vacancies	M+W				
Placements	M+W W				

Source: IEF, Research Services Department

*For figures, please see p. 62 of the original
Lisbon and Tagus Valley*

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
Unemployed	M+W W				
First job	M+W W				
New job	M+W W				
Vacancies	M+W				
Placements	M+W W				

Source: IEF, Research Services Department

*For figures, please see p. 62 of the original
Alentejo*

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
Unemployed	M+W W				
First job	M+W W				
New job	M+W W				
Vacancies	M+W				
Placements	M+W W				

Source: IEF, Research Services Department

For figures, please see p. 63 of the original
Algarve

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
Unemployed	M+W W				
First job	M+W W				
New job	M+W W				
Vacancies	M+W				
Placements	M+W W				

Source: IEF, Research Services Department

For figures, please see p. 63 of the original
Azores

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
Unemployed	M+W W				
First job	M+W W				
New job	M+W W				
Vacancies	M+W				
Placements	M+W W				

Source: IEF, Research Services Department

For figures, please see p. 64 of the original
Madeira

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
Unemployed	M+W W				
First job	M+W W				
New job	M+W W				
Vacancies	M+W				
Placements	M+W W				

Source: IEFPP, Research Services Department

TABLES 1.3.2
AVERAGE END-OF-THE-MONTH TURNOVER RECORDED EACH YEAR

For figures, please see p. 65 of the original
Mainland Portugal

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
On work schemes*	M+W W				
Unemployed	M+W W				
First job	M+W				
New job	M+W				
Vacancies	M+W				

Source: IEFPP, Research Services Department

* Unemployed persons taking part in labour-market programmes (vocational training, job creation etc)

For figures, please see p. 65 of the original
North

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
On work schemes*	M+W W				
Unemployed	M+W W				
First job	M+W				
New job	M+W				
Vacancies	M+W				

Source: IEF, Research Services Department

* Unemployed persons taking part in labour-market programmes (vocational training, job creation etc)

For figures, please see p. 66 of the original
Centre

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
On work schemes*	M+W W				
Unemployed	M+W W				
First job	M+W				
New job	M+W				
Vacancies	M+W				

Source: IEF, Research Services Department

* Unemployed persons taking part in labour-market programmes (vocational training, job creation etc)

For figures, please see p. 66 of the original
Lisbon and Tagus Valley

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
On work schemes*	M+W W				
Unemployed	M+W W				
First job	M+W				
New job	M+W				
Vacancies	M+W				

Source: IEF, Research Services Department

* Unemployed persons taking part in labour-market programmes (vocational training, job creation etc)

For figures, please see p. 67 of the original
Alentejo

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
On work schemes*	M+W W				
Unemployed	M+W W				
First job	M+W				
New job	M+W				
Vacancies	M+W				

Source: IEF, Research Services Department

* Unemployed persons taking part in labour-market programmes (vocational training, job creation etc)

For figures, please see p. 67 of the original
Algarve

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
On work schemes*	M+W W				
Unemployed	M+W W				
First job	M+W				
New job	M+W				
Vacancies	M+W				

Source: IEFP, Research Services Department

* Unemployed persons taking part in labour-market programmes (vocational training, job creation etc)

For figures, please see p. 68 of the original
Azores

		Thousands		% Variation	
		1997	1998	97/96	98/97
Applications for work	M+W W				
In work	M+W W				
On work schemes*	M+W W				
Unemployed	M+W W				
First job	M+W				
New job	M+W				
Vacancies	M+W				

Source: IEFP, Research Services Department

* Unemployed persons taking part in labour-market programmes (vocational training, job creation etc)

Source: IEFP Research Services Department

Replies to questions raised by the Committee of Independent Experts

The Committee of Independent Experts requested information on the number of licences and permits issued to private employment agencies and temporary work agencies, and on more personalised services available to job seekers.

First, we must make clear that we have been unable to input full data concerning private employment agencies and temporary work agencies.

However, we can confirm that two private employment agencies and some 180 temporary work agencies are currently registered.

With regard to more personalised services for job seekers - both young people and adults - a number of measures are currently being introduced. Some, such as the *job clubs*, have been described in previous reports and others (notably the *Inserjovem* initiative) are described in the section of this report dealing with Paragraph 1.

Moreover, consultations are taking place with both sides of industry with a view to the ratification of ILO Convention 181 (on private employment agencies) and a draft amendment to the relevant legislation has already been prepared.

ARTICLE 5

THE RIGHT TO ORGANISE

Updating of the information provided in the third report

A B C D E

The 4th revision of the Constitution of the Portuguese Republic enshrined in Constitutional Law No. 1/97 of 20 September 1997 introduced amendments to Article 55 (trade union freedoms), already cited in the first report on the implementation of the Charter, and to Article 56 (rights of trade unions and collective agreements).

The amendments made concern para. 6 of Article 55, which now provides for workers' elected representatives to be informed and consulted, while in the case of Article 56, sub-paragraph c) of paragraph 2 has been amended and a new sub-paragraph e) added, extending the material scope of trade unions' rights.

The current wording of Article 55 is thus as follows:

1. Workers are free to form trade unions as a prerequisite and guarantee for the building of their solidarity in defence of their rights and interests.
2. Trade union freedoms are guaranteed to workers without discrimination, in particular the following:
 - a. Freedom to establish trade unions at every level;
 - b. Freedom of membership, no worker being required to pay dues to a trade union of which he or she is not a member;
 - c. Freedom in the organisation and internal regulation of trade unions;

- d. The right to engage in trade union activity within businesses;
 - e. The right of trade unions to different aims, as determined by their constitutions.
3. Trade unions shall be governed in accordance with the principles of democratic organisation and management, based on regular elections to their governing bodies by secret ballot, and they shall not be dependent on any prior authorisation or recognition, as they are founded upon the full participation by the workers in all aspects of trade union activity.
4. Trade unions shall be independent of employers, the State and religious denominations and political parties and other political associations. Adequate guarantees for that independence shall be laid down by law as the foundation for the solidarity of the working classes.
5. Trade unions have the right to establish relations with or to join international trade union organisations.
6. The workers' elected representatives shall enjoy the right of information and consultation as well as adequate legal protection from any form of constraint, coercion or limitation in the legitimate performance of their functions.

Article 56 has also been reworded, so that it now reads:

- 1. Trade unions have the right to defend and promote the defence of the rights and interests of the workers they represent.
- 2. Trade unions have the right:
 - a. To participate in the preparation of labour legislation;
 - b. To participate in the management of social security institutions and other bodies whose aim is to satisfy the interests of the working classes;
 - c. To be heard with regard to economic and social plans and to accompany the implementation thereof;
 - d. To be represented on bodies engaged in the harmonisation of social matters, as provided by the law;
 - e. To participate in the processes of company restructuring, particularly as they relate to training initiatives or when there is a change in working conditions.
- 3. Trade unions have the powers necessary for exercising the right to conclude collective agreements, which shall be guaranteed by law.
- 4. The rules governing the powers to conclude collective labour agreements, and the validity of their provisions, shall be prescribed by law.

It should be pointed out that the articles in question appear in Chapter III on rights, freedoms and guarantees of workers and, by virtue of Article 18, are directly applicable to, and binding on, both public and private bodies.

Finally, it should be noted that as part of its efforts to monitor compliance with trade union legislation, the General Labour Inspectorate drew up 4 reports in 1997 and 10 in 1998 concerning non-compliance with this legislation.

Answers to the questions raised by the Committee of Independent Experts

With regard to the formation of trade unions, the Committee of Independent Experts noted that the quorum required for the formation of a professional association under paras. 2 and 3 of Section 8 of Legislative Decree 215-B/75 was not applied in practice, the Minister for Labour having approved the opinion given by the advisory council of the Attorney General, which was legally binding on the ministry and the government departments responsible for registering trade unions or employers' associations. The Committee nevertheless considered that the provisions in question ought to be repealed.

It should be noted that this situation has drawn comments from the ILO Committee of Experts in connection with the application of Convention No. 87 on freedom of association and protection of the right to organise.

Although the government has declared itself in favour of repealing the provisions in question, there are no immediate plans to do so.

The fact is that revising Legislative Decree No. 215-B/75 of 30 April 1975 on trade unions and Legislative Decree No. 215-C/75 on employers' associations has not been regarded as a **priority**, either by the bodies vested with legislative power, ie the Assembly of the Republic and the Government, or by labour and management. Proof of this can be seen in the fact that no plans have been made for a review of this legislation in the various social concertation agreements concluded between the Government and the two sides of industry over the past eleven years.

It should further be noted that since the opinion given by the Attorney General, confirmed by the ministerial decision of 6 June 1979, there have been no reports of any impediments to the formation of trade unions or employers' associations, neither side having made the slightest complaint in this regard.

The Committee of Independent Experts asked to be informed of the outcome of an appeal brought before the Portuguese courts following the decision handed down on closed shop practices in the merchant navy.

There has not yet been a ruling on this case.

The Committee of Independent Experts asked for information on the protection against reprisals for trade union activity and in particular protection against dismissal on grounds of trade union activities.

To reiterate and expand upon the information provided in the first report⁵:

With regard to the measures provided for in the legislation designed to guarantee trade union freedom

* The law provides that any agreement or instrument the purpose of which is to dismiss, transfer or in any way harm the interests of a worker on grounds of trade union

⁵ Cf the reply on this article and on Article 1, paragraph 2.

activities is prohibited and will be deemed to be null and void (Section 37, sub-section b) of Legislative Decree No. 215-B/75 of 30 April 1975).

* Failure to comply with this provision is punishable by a fine ranging from PTE 40,000 to PTE 4,000,000. In addition, the perpetrators of any such acts, be they directors, managers of any kind or workers in positions of responsibility, may be sentenced to a term of imprisonment ranging from 3 days to 2 years (same statutory text, Section 38, paras. 1 and 2 and Legislative Decree No. 131/82 of 23 April 1982).

* Any trade union officials or trade union representatives convicted for failure to comply with this provision forfeit the privileges attached to their office (same statutory text, para. 3).

With regard specifically to protection against dismissal for engaging in trade union activities, in addition to the measures just mentioned, the law also provides the following guarantees:

. The dismissal of workers standing for office on the governing bodies of trade unions, as well as workers who currently hold such office or who have done so in the past 5 years and who took office after 25 April 1974, is presumed to be without just cause (Section 24, para. 1 of the said Legislative Decree No. 215-B/75).

. Where dismissal is not shown to be justified, the worker in question may choose either to be reinstated in the company, whilst retaining the entitlements which had accrued to him or her at the date of dismissal, or to accept compensation equivalent to double that payable under the law, the relevant contract or collective agreement. On no account may such compensation amount to less than twelve months' pay (same subject, same statutory text, para. 2).

. The dismissal of workers who are currently serving as trade union representatives or who have done so in the past five years and who took up this position after 25 April 1974 is presumed to be without just cause (same statutory text, Section 35, para. 1).

. Where dismissal is not shown to be justified, the relevant provision will be that which applies in the event of the dismissal, without showing just cause, of workers standing for office on the governing bodies (same subject and same statutory text, para. 2).

. This guaranteed statutory protection for trade union representatives also applies to members of workers' committees, co-ordinating committees and sub-committees under Section 54, para. 4 of the Constitution and Section 16 of Law No. 46/79 of 12 September 1979.

With regard to the procedure for dismissal, the law provides special guarantees where the dismissal of workers' representatives is concerned.

Reinforcing the prohibition on dismissal without just cause as set out in Section 3, para. 1 of Legislative Decree No. 64-A/89 of 27 February 1989⁶, for all workers, this same text stipulates that the procedure for dismissing workers' representatives must satisfy the following conditions:

. A copy of the notice of intention to dismiss as well as the *** sent to the worker by the employer must be forwarded not only to the Workers' Committee (standard procedure) but

⁶ Legal rules governing the termination of individual contracts of employment and the formalisation lapse of fixed-term contracts.

also to the trade union representing the worker in question (same statutory text, Section 10, para. 3).

. The duly justified decision must be notified not only to the worker and the workers' committee (standard procedure) but also to his or her trade union (same subject and Section 10 of the same statutory text).

. Any appeals against the dismissal of trade union representatives or committee members are dealt with under urgent procedure (same statutory text, Section 12, para. 6).

. If the worker concerned is a trade union representative or member of a workers' committee, a court may, on an application by the worker, make an order suspending the dismissal in cases other than where the court finds there to be a reasonable probability of establishing just cause (same statutory text, Section 14, paras. 1 and 3).

. Where the accused worker is a member of the workers' committee or a trade union representative, the disciplinary procedure governing dismissal does not provide for any waiving of formalities, even in firms with fewer than 20 employees (Section 15, para. 4), as is the case for workers in general (Section 15, paras. 1 and 2).

With regard to collective dismissal (owing to the elimination of posts), the same statutory text (legal rules approved by Legislative Decree No. 64-A/89) provides the following guarantees for trade union representatives and members of workers' committees.

. That they should have a preferential right to continued employment within the same section and within the same grade unless there is a different criterion laid down in the collective agreement (same statutory text, Section 23, para. 4).

. Failure to observe this preferential right entitles the worker concerned, as a trade union representative or official, to compensation equivalent to double that to which he or she would be legally entitled under the relevant contract of employment or collective labour agreement. On no account may this compensation amount to less than twelve months' pay (same principle and same statutory text, para. 5).

In the event of termination of the contract of employment owing to the elimination of posts, the legal rules approved by Legislative Decree No. 64-A/89 provide the following guarantees for trade union representatives.

. The notice from the employer informing the worker that his or her post is to be eliminated and that, consequently, his or her contract is to be terminated must be sent not only to the workers' committee or the inter-union committee representing him or her (standard procedure), but also to each of the workers concerned and to their trade union if these workers are trade union representatives (same statutory text, Section 28, paras. 1 and 2).

Where a contract of employment is terminated on the ground that the worker is unsuited to the post, the law provides the following guarantees for trade union representatives:

. The notice from the employer terminating the contract of employment must be sent not only to the worker and to the workers' committee or the inter-union committee or the trade union committee representing him or her (standard procedure), but also to the trade union of which the worker is a representative. Failure to comply with any of these formalities will result in the termination of the contract of employment being invalidated (Section 4, paras. 1 and 2 of Legislative Decree No. 400/91 of 16 October 1991 in conjunction with Section 8, para. 1 c) of this same statutory text).

. Any appeals against the dismissal of trade union representatives or members of workers' committees are dealt with under urgent procedure (Section 8, para. 4 of Legislative Decree No. 400/91).

Where the normal working time is reduced or the contract of employment suspended for some reason contingent upon the employer, the law stipulates that trade union representatives and members of workers' committees:

. have a preferential right to continued employment under normal working conditions within the same organisational or operational unit and within the same occupational grade unless different arrangements, as set out in a collective labour agreement, are applied to them (Section 11, para. 1 of Legislative Decree No. 398/83 amended by Legislative Decree No. 210/92 of 2 October 1992);

. the reduction or suspension in no way affects their right to the normal performance of their duties as trade union representative or member of the workers' committee within the firm (same principle and same statutory text, para. 2).

The Committee of Independent Experts wished to know who was covered by Section 50 of Legislative Decree No. 215-B/75 and by the Council of Ministers Resolution of 9 June 1976.

It should be noted that on 19 March 1999, ie after the period covered by this report, Legislative Decree No. 84/99 was published, which deals with the exercise of trade union freedom by public administration workers.

This legislative decree covers all workers who, in accordance with the established hierarchy and disciplinary procedures and in return for payment, hold either permanent or temporary public service positions, even though they are employed under individual contracts of employment. The decree applies to the departments of the central, regional and local public authorities, to public associations and foundations, and to public institutions.

The new regulations guarantee public administration workers the right to exercise freedom of association, and introduce a number of provisions guaranteeing the exercise of trade union activities by trade union representatives as well as the establishment and organisation of trade unions for public administration workers.

The Committee of Independent Experts wished to know what the recently amended Constitution provided in this respect.

The principles of freedom of association and trade union freedom are still enshrined in the Constitution, in Article 46 and Article 56 respectively.

These articles, however, were amended by Sections 25 and 30 of Constitutional Law No. 1/97 of 20 September 1997.

Para. 4 of Article 46, for example, has been reworded as follows:
Article 46 (freedom of association)

1....

4. Armed, quasi-military, militarised or paramilitary associations, other than those of the State or the Armed Forces, and racist organisations or those that adopt fascist ideology are not permitted.

Sub-paragraphs (c) and (e) of para. 2 of Article 56 have also been reworded as follows:

Article 56 (Rights of trade unions and collective agreements)

1.

2. Trade unions have the right:

...

c. To be heard with regard to economic and social plans and to accompany the implementation thereof;

...

e. To participate in the processes of company restructuring, particularly as they relate to training initiatives or when there is a change in working conditions.

The Committee of Independent Experts asked Portugal to confirm that the rights guaranteed under Article 5 of the Charter applied to nationals of other Contracting Parties to the Charter lawfully resident or regularly working within Portuguese territory.

Under the current legislation, there is no discrimination as regards exercise of the right to organise by nationals of other Contracting Parties to the European Social Charter.

The Portuguese Constitution, in fact, assigns foreign nationals and stateless persons temporarily or habitually resident in Portugal the same rights and duties as Portuguese citizens (Article 15). In order to ensure the application of this constitutional principle, Law No. 20/98 of 12 May 1998 (Section 2) provides that foreign nationals lawfully resident or present in Portugal shall enjoy, in the exercise of their occupational activities, the same conditions of employment as those enjoyed by Portuguese workers.

Legislative Decree No. 215-B/75 of 30 April 1975 (trade union law) and Law No. 46/79 of 12 September 1979 (workers' committees), meanwhile, confer the right to organise on all workers, including foreigners. ILO Convention No. 98, which was ratified by Portugal, deals with the eligibility of trade union representatives and members of workers' committees.

Further to the reply provided in the third report on the International Rules for Ships in Madeira (MAR), the Committee of Independent Experts wished to know whether Portuguese collective agreements applied to foreign seamen (cf. Section 22 of Legislative Decree No. 96/89 of 28 March 1989).

Under Section 22 of Legislative Decree No. 96/89 of 28 March 1989, the recruitment and working conditions of foreign seamen are simply governed by the provisions of the international conventions in force in the Portuguese legal system. The domestic provisions, whether legislative or contractual, are therefore not taken into account.

1st general question

The Committee of Independent Experts wished to know whether there were any provisions in national legislation which granted special privileges to representative trade unions or the "most representative" trade unions. If so, there was a series of related questions to be answered.

As described in the first report with regard to Article 5 and paragraph 2 of Article 6, Portuguese legislation does not contain any representativeness criteria, either for trade unions or for employers' associations. The question does not apply therefore.

2nd general question

The Committee of Independent Experts requested information about the eligibility of trade union representatives who are nationals of other Contracting Parties to sit on works councils and other official bodies in which management and labour participate, such as employment tribunals, social security institutions, public bodies representing trades and professions, etc.

The reply to this question has already been given above, in response to the Committee's request for confirmation that the rights guaranteed under Article 5 of the Charter apply to nationals of other Contracting Parties lawfully resident or regularly working within Portuguese territory.

7(

, QJULG 7LWRYD

THE RIGHT TO BARGAIN COLLECTIVELY

Paragraph 1

Update on the third report

Act No. 23/98 of 26 May 1998 introduced the collective bargaining system and participation by public administration workers governed by public law (Appendix VI 1).

This law repealed Legislative Decree No. 45-A/84 of 3 February 1984 which instituted the right to collective bargaining and participation by civil servants and state employees through trade unions in setting their working conditions.

Section 10 of the legislative decree, which excludes the armed forces, is still in force, however.

The new law grants public administration workers governed by public law the right to collectively negotiate the regulations governing them and treats as collective bargaining any negotiations between trade unions and public authorities on matters relating to the regulations for the purpose of signing an agreement.

When such an agreement is reached, in full or in part, it is set down in a separate document signed by the parties and the Government is then obliged to adopt the legislative or administrative measures necessary for its full and detailed implementation, within 180 days, without prejudice to any other time-limits which may be set by the parties.

Agreements on matters which require legislative approval must, however, be submitted to the Assembly of the Republic within 45 days.

The scope of collective bargaining has been widened to include, in addition to the areas covered in the previous legislation, matters to do with setting or amending:

- . the procedure for establishing, modifying or terminating the employment relationship;
- . career structure (including salary scale) under the general and special rules or attaching to special occupations;
- . the length and organisation of working hours;
- . the rules governing holidays, absence and leave;
- . the rules governing collective rights;
- . occupational health and safety;
- . basic and in-service training;
- . disciplinary rules;
- . the rules on movement between posts;
- . recruitment and selection procedures;
- . the grading system.

The right of participation has also been significantly extended in that public administration workers may now take part, through their trade unions, in:

- . the preparation of employment programmes;
- . the supervision and implementation of occupational health and safety measures;
- . the management of public administration workers' social security institutions and other organisations protecting workers' interests, in particular welfare services, the ADSE and the General Pension Fund;
- . amending the pension rules;
- . framing the public administration vocational training policy;
- . improving the quality of public services;
- . auditing the public services;
- . applying for legislative approval on any matter on which there is negotiation or worker participation;
- . drafting internal regulations concerning the working conditions in each department;
- . drawing up the rules governing accidents at work and occupational illnesses;

. drafting legislation concerning any area of the general or special civil-service rules not covered by negotiation.

Under the new law, therefore, the areas excluded from collective bargaining or worker participation have become narrower in scope and are now concerned solely with the structure, powers and responsibilities of public administration.

There have also been some major changes in the sphere of conflict resolution, particularly as regards additional negotiations, requests for which must now come from the trade unions if the negotiating period has expired without an agreement being reached. The request must be made at the close of the final negotiation meeting, or, alternatively, in writing within five working days following the close of the negotiating process. All the parties concerned must be notified of the request. Additional negotiations, when requested in the manner described, are compulsory but must not last longer than 15 working days.

Additional negotiations are a final attempt to reach an agreement and have the direct effect of preventing any negotiations under way on the same issues with whatever body from being deemed to have terminated. Should the additional negotiations end without reaching an agreement, the Government may take whatever decision it thinks appropriate provided that it does not concern matters for which the legislative approval of the Assembly of Republic is needed. The Government is represented in the additional negotiations by Government members, and the head of the public authority must chair the negotiations.

Answer to the question put by the Committee of Independent Experts

The Committee of Independent Experts asked the Portuguese authorities to comment on the observation by the General Federation of Portuguese Trade Unions (CGTP-IN) that whenever one side of industry failed to subscribe to a newly established concertation (ie consultation) agreement within the Economic and Social Council, it was not allowed to take part in the subsequent meetings.

As stated in the previous reports, joint consultation between workers and employers takes place, at national level, within the Economic and Social Council.

With regard to the observation by the CGTP-IN, it should be pointed out that it was because the CGTP-IN refused to sign the Short-Term Concertation (ie consultation) Agreement concluded on 24 January 1996 that it did not attend subsequent committee meetings pertaining to the agreement. The CGTP-IN did nevertheless attend all the meetings of the Economic and Social Council's Standing Committee on Industrial Consultation at which the matters in question were discussed, if only from a technical point of view.

The agreement's committees are no longer in operation and the CGTP-IN, even though it did not sign the agreement, is currently involved in the joint consultation procedure on an equal footing with the other social partners.

Paragraph 2

Update on the third report

A and C

No change.

B

The following tables show the published collective labour agreements in force.

TABLE 6.2.1.

COLLECTIVE LABOUR AGREEMENTS IN FORCE

1997		1998	
Number of agreements ⁽¹⁾	Number of workers covered ⁽²⁾	Number of agreements ⁽¹⁾	Number of workers covered ⁽²⁾

1997		1998	
Number of agreements⁽¹⁾	Number of workers covered⁽²⁾	Number of agreements⁽¹⁾	Number of workers covered⁽²⁾
790	2 043 333	820	2 043 333

Source:

⁽¹⁾ DGCT

⁽²⁾ DETEFP - Personnel tables 1997. The figures for 1998 are not yet available.

TABLE 6.2.2.

COLLECTIVE LABOUR AGREEMENTS PUBLISHED ⁽¹⁾

1997		1998	
Number of agreements⁽¹⁾	Number of workers covered⁽²⁾	Number of agreements⁽¹⁾	Number of workers covered⁽²⁾
387	1 399 082	371	1 397 059

Source:

⁽¹⁾ DGCT

⁽²⁾ DETEFP - Personnel tables 1997. The figures for 1998 are not yet available.

Answer to the question put by the Committee of Independent Experts

The Committee deferred its conclusion and referred back to the question raised under Article 5 which, it recalled, presupposed the guarantee of complete freedom to organise (Conclusions IV, p. 46).

Cf. the reply to Article 5.

Paragraph 3

Update on the third report

A, B and C

No change.

Answer to the question put by the Committee of Independent Experts

The Committee of Independent Experts asked whether it was still intended to proceed with the repeal, announced in the other reports, of Section 36 of Legislative Decree No. 519-C1/79 of 29 December 1979, amended by Legislative Decree No. 209/92 of 2 October 1992, and asked to be informed of any labour regulation order which might be issued by the Minister for Employment and the minister responsible for the sector concerned in the event that labour or management repeatedly refused to negotiate and where obvious delaying actions or tactics were intended, in any way whatsoever, to impede the smooth progress of negotiations.

Further to what was said in the previous reports, it should be noted that the repeal of these provisions, which, incidentally, are not applied in practice, is expressly provided for in the Strategic Concertation (ie consultation) Agreement (1996-99).

As a result of the commitment in the agreement to repeal of Section 36 of Legislative Decree No. 519-C1/79, as amended by Legislative Decree No. 209/92 of 2 October 1972, labour regulation orders may be adopted only when, in the absence of a trade union or employers' association, there is a need to promote collective bargaining.

No labour regulation orders were issued during the reference period.

Paragraph 4

Update on the third report

A

No change.

B and C

Constitutional Act No. 1/97 of 20 September 1997 added a new para. 3 to Article 57 of the Portuguese Constitution, with the result that the former paragraph 3 is now paragraph 4.

The new para. 3 of Article 57, concerning the right to strike and prohibition of lock-outs expressly states:

3. During a strike, services necessary for the safety and maintenance of equipment and installations and minimum services necessary to meet essential social needs shall be provided as specified in law.”

E

The following tables show the available statistics on strikes which took place during the reference period.

TABLE 6.4.1
NUMBER OF STRIKES, STRIKING WORKERS AND WORKING DAYS LOST, BROKEN DOWN BY LENGTH OF STRIKE
Continent **1996**

DURATION OF STRIKE	SINGLE-ENTERPRISE STRIKES			MULTI-ENTERPRISE STRIKES			TOTAL		
	Strikes	Striking workers (thousands)	Days lost (thousands)	Strikes	Striking workers (thousands)	Days lost (thousands)	Strikes	Striking workers (thousands)	Days lost (thousands)
TOTAL	243	23.2	29.8	31	27.2	23.1	274	50.5	52.9
<= 1 day	106	8.7	2.1	5	2	0.6	111	10.8	2.7
> 1 and < = 5 days	122	13.6	18.8	25	2.5	19.5	147	38.5	38.4
> 5 and < = 10 days	8	0.7	4	-	-	-	8	0.7	4
> 10 and < = 15 days	4	0.1	1.3	1	0.2	3	5	0.4	4.3
> 15 and < = 25 days	1	0	0.2	-	-	-	1	0	0.2
> 25 and < = 50 days	2	0.1	3.3	-	-	-	2	0.1	3.3
> 50 days	-	-	-	-	-	-	-	-	-

Source: DE/MQE

TABLE 6.4.2.
NUMBER OF STRIKES, STRIKING WORKERS AND WORKING DAYS LOST, BROKEN DOWN BY LENGTH OF STRIKE
Continent **1997**

DURATION OF	SINGLE-ENTERPRISE STRIKES	MULTI-ENTERPRISE STRIKES	TOTAL
-------------	---------------------------	--------------------------	-------

	Strikes	Striking workers	Days lost (thousands)	Strikes	Striking workers	Days lost (thousands)	Strikes	Striking workers	Days lost (thousands)
TOTAL	236	30.8	50.0	29	15.1	30.1	265	45.9	80.1
<= 1 day	68	4.2	0.9	3	9.9	18.6	71	14.0	19.5
> 1 and < = 5 days	149	16.0	20.9	23	5.2	10.9	172	21.1	31.8
> 5 and < = 10 days	13	7.0	12.7	2	0.1	0.5	15	7.1	13.2
> 10 and < = 15 days	1	2.1	9.1	1	0	0.1	2	2.1	9.2
> 15 and < = 25 days	3	1.5	5.0	-	-	-	3	1.5	5.0
> 25 and < = 50 days	1	0*	0.2	-	-	-	1	0*	0.2
> 50 days	1	0*	1.2	-	-	-	1	0*	1.2

Source: DE/MQE

* Value less than half the reference unit used.

**TABLE 6.4.3.
NUMBER OF STRIKES, STRIKING WORKERS AND WORKING DAYS LOST, BROKEN
DOWN BY LENGTH OF STRIKE**

Continent		1° Quarter 1998 ⁽¹⁾		
DURATION OF STRIKE	OF STRIKES	STRIKING WORKERS	DAYS LOST	
TOTAL	53	13634	23261	
<= 1 day*	14	1822	657	
> 1 and < = 5 days	33	11387	16692	
> 5 and < = 10 days	5	186	1132	
> 10 and < = 15 days	-	-	-	
> 15 and < = 25 days	1	239	4780	
> 25 and < = 50 days	-	-	-	
> 50 days	-	-	-	

Fonte: DE/MQE

(1) The full-year figures for 1998 are not yet available.

Answer to the questions raised by the Committee of Independent Experts

a) *The Committee of Independent Experts held that Portuguese legislation, namely Section 2 of Act No. 65/77 of 26 August 1977, was incompatible with Article 6, paragraph 4, as this provision required that all workers be allowed to call a strike, and not just trade unions (Conclusions XIII-4, p. 361).*

Article 57 of the Portuguese Constitution, revised by Constitutional Act No. 1/97 of 20 September 1997, stipulates that:

1. *"The right to strike is guaranteed.*
2. *Workers are entitled to determine which interests are to be protected by means of strikes; the range of those interests shall not be restricted by law.*
3. *During a strike, services necessary for the safety and maintenance of equipment and installations and minimum services necessary to meet essential social needs shall be provided as specified in law.*
4. *Lock-outs are prohibited"*.

Section 2 of Act No. 65/77 of 26 August 1977, which has not been amended, reads:

1. *Decisions to call strikes shall be taken by trade unions.*
2. *Without prejudice to the right conferred above on trade unions, workers' assemblies may decide to call strikes, by secret ballot, if the majority of workers in their enterprise are not members of trade unions and if the assemblies are convened for that specific purpose by 20% or 200 of the workers.*
3. *The decisions of such assemblies shall be valid if the majority of workers in the enterprise participate in the ballot and if the strike notice is adopted by an absolute majority of the votes cast".*

Portuguese legislation thus confers the power to call a strike not only on trade unions but also on non-unionised workers, subject to the conditions set out above.

b) *With regard to minimum services, the Committee of Independent Experts - which had taken the view, in its previous conclusion, that there were many sectors in which a minimum service was provided for - observed that the wording of Section 8 of Act No. 65/77 introduced by Act No. 30/92 of 22 October 1992 had been declared unconstitutional by Constitutional Court judgment No. 868/96 of 4 July 1996 and that this finding of unconstitutionality also applied to sub-paragraph g) of para. 2 and paras. 4 to 9 of Section 8.*

Since this finding of unconstitutionality has general force of law for the provisions of sub-paragraph g) of para. 2 and paras. 4, 5, 7, 8 and 9 of Section 8 of Act No. 65/77, in the version introduced by Act No. 30/92 of 20 October 1992, the previous wording of Section 8 has been adopted, so the list of sectors which appears there still applies.

c) *As pointed out by the Committee of Independent Experts, one result of this, as described in the last report received by the Committee, is that "the Government has ceased defining by order the minimum services which have to be guaranteed in the event of a strike".*

What the previous report, about which this comment was made, meant was that the Portuguese Government has stopped defining minimum services on the basis of para. 6 of Section 8 of Act No. 65/77, in the version introduced by Act No. 30/92, as this version has been declared unconstitutional. According to the Principal State Counsel (PGR), however, it is in fact open to the Government to define minimum services, as explained below under (d) and (e).

d) *In addition to the comment dealt with above, the Committee of Independent Experts requested clarification of the statement and asked who would now decide which minimum services must be guaranteed in the event of a disagreement between the parties.*

With the return to the previous law, the power to specify minimum services is no longer expressly vested in the Government.

As can be seen below, however, several opinions issued by the Principal State Counsel have held that, in certain circumstances and within certain limits, specifying minimum services is a responsibility of the Government.

The following are key extracts from those opinions:

P.G.R. Opinion No. 100/89, ratified by the Minister for Health and published in the official gazette, D.R. No. 276, 2nd series, of 29 November 1990.

"Determining the level, content and scope of vital minimum services that are in the community's fundamental interest depends in each instance on an examination of the specific circumstances to decide what is expedient, must have regard to considerations of constitutionality, legality and proportionality and is a matter for the Government".

P.G.R. Opinion No. 18/98, ratified by the Minister for Justice and published in the official gazette, D.R. No. 175, 2nd series, of 31 July 1998:

"It is for the Government to lay down the level, content and scope of minimum services by issuing a reasoned order, and it must do so only after hearing the trade unions or strike committees even when non-striking workers are available".

The most recent opinion given by the P.G.R., Opinion No. 1/99, ratified by the Minister for Health and published in the official gazette, D.R. no. 52 of 3 March 1999 contains the following conclusion:

"Determining the level, content and scope of vital minimum services that are in the community's fundamental interest is bound by considerations of legality and proportionality and is a matter for the Government".

Even though these opinions have underlying reference to the civil service, insofar as this sector is not covered by specific measures it is the general provisions of Act No. 65/77 that are applied to it. They also apply to the private sector.

Opinions of the Principal State Counsel are not binding on the courts, and any Government decisions based on them are subject to judicial review.

e) *The Committee of Independent Experts concluded that a minimum service no longer had to be provided in the transport sector since para. 1, sub-paragraph g) of Section*

8 of the Strikes Act had been declared unconstitutional. The Committee asked for confirmation of this.

It should first be made clear that the provision referred to by the Committee of Independent Experts appears not in para. 1(g) but in para. 2(g) in the new version introduced by Act No. 30/92.

Constitutional Court judgment no. 868/96 of 4 July 1996, published in the official gazette, D.R. No. 240, 1st series, of 16 October 1996, declared Section 8(2)(g) of Act No. 65/77 unconstitutional in respect of the wording introduced by Act No. 30/92, and reinstated the original wording, ie:

“g) transport, the loading and unloading of animals and perishable foodstuffs”.

Thus minimum services are in no way ruled out in the transport sector in the event of a strike, should the need arise.

f) The Committee of Independent Experts insisted that the report respond to the questions on minimum services raised in Conclusions XIII-5

. Minimum services are services that are necessary in order *“to satisfy essential social needs”* under Article 57 of the Constitution and Section 8(1) of Act No. 65/77.

It is difficult to generalise about the kind of minimum services it might be decided were necessary in a given strike (one would have to see, for example, which essential social needs the institution or service affected needed to meet; the extent of the strike; the bodies responsible for calling the strike and how representative they were; how long the strike was to last and how much support there was for it; who else performed the same functions and to what extent they could meet any essential social needs that might be threatened).

Conclusion no. 11 of the above-mentioned **P.G.R. Opinion No. 1/99** states:

“The concept of minimum services is indeterminate and depends on questions of expediency and relative importance in the specific case, the core content being those services which are considered necessary and appropriate to meet essential needs and avert irreparable damage”.

This opinion also states:

“Although the right to strike has been established as a fundamental right, it is not an absolute right overriding all others”.

Legal theory holds, in particular, that:

“Minimum service logically implies a reduction in normal services. Where the competent authority insists on near-full delivery of a particular service during a strike, the effect may actually be to undermine the legitimate exercise of the right to strike. Whenever the distinction between minimum service and maximum service becomes blurred, the right to strike is imperilled”.

. Once the minimum services have been specified, trade unions and workers are bound to provide them throughout the strike under Section 8(1) and (3) of Act No. 65/77 when there are not enough non-striking workers to provide them in a normal manner.

Deciding which workers are to be assigned to the provision of minimum services is a matter for the unions and, where appropriate, the workers, but never the employer: legal opinion and case-law both agree on this point.

The following conclusions of **P.G.R. Opinion No. 1/99** are likewise worth noting:

“12. - The services affected by the strike cannot act in the trade unions’ stead if the trade unions fail to assign workers – as they are required to do in every case – to provision of minimum services”.

“13. - The requisitioning provided for in Section 8(4) of Act No. 65/77 requires that the authorities first satisfy themselves that minimum services are not being provided in a strike giving rise to the effects specified in para. 1 of Section 7 of this Act”.

Where the minimum services are not provided, the Government can order requisitioning under Legislative Decree No. 637/74 of 20 November 1974, as amended by Legislative Decree No. 23-A/79 of 14 February 1979.

. As regards the criteria which the courts apply in the light of Article 31 of the Charter, the following decisions would appear to be of particular relevance:

In the appeal by SINDETELCO (the Democratic Trade Union of Telecommunications and Post Office Workers) against the joint order of 4 March 1993 issued by the Minister for Public Works, Transport and Communications and the Minister for Employment and Social Security that workers at the Portuguese Marconi Radio Company provide precautionary minimum overtime services during a 7-day strike, the Court justified its dismissal of the appeal as follows:

. *The right to strike is indeed constitutionally guaranteed in Article 57 of the Portuguese Constitution but when it is interpreted literally, as the applicant seems to do, it can sometimes have the effect of paralysing enterprises and institutions which serve collective needs that must be met immediately and it may thus clash with the exercise, by those who use those enterprises' or institutions' services, of other fundamental rights. That is why the Strikes Act, Section 1 of which incorporates the provisions of Article 57 of the constitution, endeavours to harmonise (Section 8(1)) workers' interests and users' interests with which they might conflict if a strike caused paralysis ... Since imposing such duties may involve some restriction of the right to strike, however, the requirement is confined to what is strictly necessary for the protection of the socially vital interests concerned ...*

. And in its findings: *"There is no evidence, either, that the order overstepped the bounds which the law sets, whether as regards respecting workers' right to strike or observing the legal principles of necessity, appropriateness and proportionality which govern the requiring of minimum services"*.

In the appeal by SITAVA (the Aviation and Airport Workers' Union) against the joint order of the Minister for Public Works, Transport and Communication and the Minister for Employment and Social Security that minimum services be provided during the strike on 6, 7 and 8 March 1994 at Air Portugal, the Court justified its decision to set aside the order on the following grounds in particular:

. *"It is the type of needs, their urgency and the specific circumstances that determine what minimum services striking workers are required to provide"*.

. *"The concept of vital minimum services as thus defined is that which best fits the principles of appropriateness, proportionality and necessity ... which, moreover, are central to the principle that restriction of the fundamental rights enshrined in paras. 2 and 3 of Article 18 of the Portuguese Constitution is permissible only in exceptional cases ...*

. *Viewed in this light, the contested order clearly infringes Section 8 of the Strikes Act: it has not been shown that the normal, regular operation of all flights between the mainland and the Autonomous Regions is necessary to meet the basic transport needs of the Autonomous Regions in terms of connections with the mainland once measures have been taken to guard against any risk"*.

The court's decision also cites the interpretation given in **P.G.R. Opinion No. 86/88, BMJ 325**, page 247 on this matter and the following passage in particular:

. *While such workers have the right to strike, the law states that the community of which they are part are also entitled to satisfaction of the social needs which the firm's activities*

seek to meet through its activities ... There is a conflict of rights here and even, in some cases, a conflict of values which is best resolved by having the greater good prevail".

ARTICLE 12

THE RIGHT TO SOCIAL SECURITY

Paragraph 1

Updating of the information provided in the third report

THE SOCIAL SECURITY SYSTEM

I.1. The general scheme for employed workers

a) Invalidity, old-age and survivor's pensions

Pursuant to the principles laid down in the Government programme and the strategic consultation agreement concluded in December 1996, Order No. 1239/97 of 16 December 1997 revised and adjusted the levels of invalidity, old-age and survivor's pensions with effect from 1 December 1997. Pensions lower than or equal to PTE 250,000 were increased by 3.3%, and pensions greater than PTE 250,000 were increased by 2.5%.

Order No. 1239/97 also allows for an extraordinary adjustment in the case of pensioners between ages 65 and 75 who receive less than the minimum monthly wage but have a long history of contributions.

Among the extraordinary adjustments made during 1996 and 1997 in favour of the oldest pensioners on the general scheme who receive a low level of benefit but have a relatively long contribution history, Order No. 800/98 of 22 September 1998 revised the levels of general invalidity and old-age pensions awarded to those having contributed for at least 15 years.

This adjustment, which took effect on 1 October 1998, awarded a sliding scale of increases on the basis of the number of years' contributions. A **maximum increase** and a **maximum pension level** were established for each step on the scale, as follows:

Pensioners with 15 or 16 years' contributions receive a **maximum increase** of PTE 1,500; those with at least 40 years' contributions receive a maximum of PTE 10,000.

Pensioners with 15 or 16 years' contributions receive a **maximum pension** of PTE 32,800; those with at least 40 years' contributions receive a maximum of PTE 41,300.

This measure forms part of the policy undertaking made within the framework of social consultation and designed to guarantee a minimum level of invalidity and old-age pensions in keeping with the following principles:

- The minimum benefit payable to those with a full contribution history is brought into line with the national minimum wage currently in force, less the social security contribution payable by employed workers (11%).
- In the case of pensioners with at least 15 years' contributions, a fair minimum benefit level is guaranteed in proportion to the length of their contribution history.
- In the case of other pensioners, all existing statutory guarantees are maintained.

Accordingly, Article 3 of Order No. 800/98 establishes, with effect from June 1999, the right of employees in these categories to a minimum pension indexed to the national minimum wage, less the social security contribution payable by employed workers (11%).

The minimum benefit level varies according to the length of each recipient's contribution history, from 65% for pensioners with 15 or 16 years' to 100% for those with at least 40 years' contributions.

Order No. 1018/98 of 4 December 1998 provides for an annual pensions adjustment commencing on 1 December 1998. It further provides that general invalidity and old-age pensions whose start date fell before 1 January 1994 and statutory and regulatory pensions awarded pursuant to Legislative Decree No. 329/93 of 25 September 1993 before 1 January 1996 are to be adjusted as follows:

- a) pensions lower than or equal to PTE 250,000 are increased by 3.3%;
- b) pensions greater than PTE 250,000 are increased by 2.5%.

Moreover, the increase in invalidity and old-age pensions over PTE 250,000 cannot be less than the maximum increase resulting from the application of paragraph a) above. It is limited to a maximum of 50% of the minimum pension payable to those with fewer than 15 years' contributions.

In the case of pensioners with a contribution history of more than 15 years, minimum benefit levels apply at each step in the scale and run from PTE 34,100 for those with 15 or 16 years of contributions to PTE 42,670 for those with a history of at least 40 years.

b) Family benefits

Legislative Decree No. 133-B/97 of 30 May 1997, which took effect from 1 July 1997, introduced important changes to the family benefits scheme. The purpose was to implement a new social policy designed to offset families' costs, while honouring the universal right to the benefits in question, account being taken of available resources.

These changes concerned:

b.1) Types of benefit

The most innovative aspect of this decree was its creation of a new benefit known as the **family allowance for children and young people**. This replaces the combined family, birth and nursing allowances and is proportional to the income of the family unit.

The supplementary allowance for disabled children and young people has been replaced by the *disability supplement*, which is paid in addition to the family allowance for children and young people. This benefit is designed to meet the extra costs borne by families with disabled children under the age of 24, where the disability involves specific educational or therapy needs.

The other family benefits payable in cases of disability under the former scheme remain unchanged.

The following family benefits are now therefore available:

- family allowance for children and young people;
- special education allowance;

- life-long monthly allowance;
- attendance allowance;
- funeral expenses grant.

b.2) Conditions for the award of benefits Conditions applying to recipients

Under the former scheme, in order to be eligible for family benefits, employees had to have a continuous history of social security cover. Cover was considered to have lapsed where contributions were interrupted for a period of 12 consecutive months.

Under the new scheme, eligibility depends mainly on employees' having contributed for 6 months, which need not be consecutive, during the 12 months preceding the last month but one prior to the date on which a benefit application is made or, in the case of the funeral expenses grant, preceding death.

Conditions applying to dependants

The new scheme takes account of rules adopted in connection with compulsory schooling (which lasts 9 years) and the minimum age for starting employment (16), and considers the age of dependants in relation to schooling.

The family allowance for children and young people is awarded as follows⁷:

- a) for all children and young people up to and including 16 years of age;
- b) for young people between 16 and 18 years of age in basic education or at an equivalent or immediately subsequent level of instruction, or on a compulsory final placement before completing a course of study;
- c) for young people from 18 to 21 years of age in secondary education or at an equivalent or immediately subsequent level of instruction, or on a compulsory final placement before completing a course of study;
- d) for young people from 21 to 24 years of age in higher education or the equivalent, or on a compulsory final placement before completing a course of study;
- e) for all young people up to 24 years of age who have a disability making them eligible for the disability supplement to the family allowance for children and young people.

b.3) Level of the family allowance for children and young people

The level of this allowance depends on three criteria: family income, the number of dependants and their age.

⁷ ' HSHQGHQW FKLOGUHQ DUH UHJDUGHG DV LQFOXGLQJ FKLOGUHQ RI D VSRXVH ZDUGV FKLOGUHQ DGRSWG RU LQ WKH SURFHVV RI DGRSWLRQ DQG PLQRUV ZKR VH FXVWRG\ KDV EHHQ DZDUGHG WR WKH EHQHI LW UHFLSLHQW E\ YLUWXH RI D FRXUW RUGHU RU DGPLQLVWUDWLYH GHFLVLRQ

Income is considered on a three-point scale as a multiple of the minimum monthly wage (MMW) which is guaranteed to all employees and in force at the date on which the assessment is made.

Level one: income less than or equal to 1.5 x MMW;

Level two: income greater than 1.5 x MMI but not greater than 8 x MMW;

Level three: income greater than 8 x MMW.

Various family benefit levels are given in tables 12.1.1.A and 12.1.1.B.

TABLE 12.1.1.A

SOME GENERAL SOCIAL SECURITY SYSTEM BENEFIT LEVELS⁸ (IN PTE)
1997

FAMILY BENEFITS - JANUARY TO JUNE			
FAMILY ALLOWANCE			
First and second child	2,770		
Third and subsequent children	4,300		
Nursing allowance	4,500		
BIRTH GRANT	24,450		
MARRIAGE GRANT	20,330		
FUNERAL EXPENSES GRANT	29,130		
SUPPLEMENTARY ALLOWANCE FOR DISABLED CHILDREN AND YOUNG PEOPLE			
Under 14 years of age	6,520		
14-18 years of age	9,530		
18-24 years of age	12,720		
FAMILY BENEFITS - JULY TO DECEMBER			
FAMILY ALLOWANCE FOR CHILDREN AND YOUNG PEOPLE	INCOME SCALE		
	Level 1	Level 2	Level 3
Child under 12 months old			
First and second child	13,200	10,550	7,270
Third and subsequent children	19,800		
Child over 12 months old			
First and second child	4,000	2,850	2,770
Third and subsequent children	6,000		
PENSIONS AND RELATED SUPPLEMENTS	12/96 – 11/97		12/97 – 11/98
MINIMUM BENEFITS			
Old-age/invalidity pension	30,100		31,300
Survivor's pension	18,060		18,780
DEPENDANT'S SUPPLEMENT	4,560		4,740
ATTENDANCE ALLOWANCE	10,460		10,875

⁸)LJXUHV DUH PROWKO\ H[FHSW I RU I XQHUDO H[SHQVHV PDUULDJH DQG ELUWK JUDQWV

TABLE 12.1.1.B
SOME GENERAL SOCIAL SECURITY SYSTEM BENEFIT LEVELS⁹ (IN PTE)
1998

FAMILY BENEFITS – JANUARY TO DECEMBER			
FAMILY ALLOWANCE FOR CHILDREN AND YOUNG PEOPLE	INCOME SCALE		
	Level 1	Level 2	Level 3
Child under 12 months old			
First and second child	14,000	11,000	7,270
Third and subsequent children	21,000	14,800	9,450
Child over 12 months old			
First and second child	4,200	2,950	2,770
Third and subsequent children	6,300	4,000	3,600
PENSIONS AND RELATED SUPPLEMENTS	12/97 – 11/98		FROM 12/98
MINIMUM BENEFITS			
Old-age/invalidity pension	31,300		32,600
Survivor's pension	18,780		19,560
DEPENDANT'S SUPPLEMENT	4,740		4,930
ATTENDANCE ALLOWANCE	10,875		11,310

c) The invalidity pension and HIV carriers

c.1) Legislative Decree No. 216/98 of 16 July 1998

This decree, which entered into force on 1 September 1998, introduced specific welfare provisions for HIV carriers, who enjoy more favourable conditions for the award of an invalidity pension than are available under the general social security scheme.

These special conditions are a shorter qualifying period, preferential terms for calculating the standard income and the optimisation of the annual income figures used in calculating the level of benefit.

c.2) Qualifying period

- Three calendar years, which need not be consecutive, of contributions as evidence of income, or the equivalent.

c.3) Benefit level

- 3% of the recipient's average income in the best three calendar years during the most recent 15 years of contributions. The maximum and minimum benefit levels are 80% and 30% respectively of the average income after social security deductions.

d) Maternity and child-care benefits

Act No. 102/97 of 13 September 1997 was published during the reference period. This act modified the provisions of Act No. 4/84 of 5 April 1984 on maternity and paternity protection. It gives working mothers and fathers the right to special leave for the care of severely disabled or chronically ill dependent children under twelve years of age. This leave is

⁹)LJXUHV DUH PROWKOK\ H[FHSW I RU WKH IXQHUDO H[SHQVHV JUDQW

granted for a period of 6 months, which can be extended to a maximum of 4 years. An allowance is payable during the period of leave on condition that the child is part of the family unit and lives in the parental home.

Pursuant to Legislative Decree No. 347/98 of 9 November 1998, which governs the enforcement of this act's social security provisions, the allowance is set at 65% of the figure calculated as the recipient's income, and the maximum allowance payable is equal to the highest guaranteed minimum monthly wage.

Act No. 18/98 of 28 April 1998 extends the period of maternity leave from 98 to 120 days. This act is being implemented progressively. Between 1 January and 31 December 1999, 110 days' leave are allowed, but as of 1 January 2000 this period will be extended to 120 consecutive days.

In cases of multiple births, the period of maternity leave is extended by a further 30 days for each additional child.

THE SOCIAL PROTECTION SCHEME FOR CIVIL SERVANTS

There has been no change, except that the family benefit provisions of Legislative Decree No. 133-B/97 of 30 May 1997 and the welfare scheme set up by Legislative Decree No. 216/98 of 16 July 1998 for HIV carriers, both of which are described above, also apply to civil servants.

Replies to the questions raised by the Committee of Independent Experts

The Committee asked for comments on the criticism by the CGTP-IN trade unions federation of the low level of compensation for accidents at work and the failure of attempts to make improvements.

During the reference period, Act No. 2127 of 3 August 1965, which constituted the legal basis for work accident and occupational sickness compensation, was amended by Act No. 100/97 of 13 September 1997.

The aim of the amendments is to ensure that victims of a work accident or occupational disease receive adequate compensation. They also meet the need to bring this branch of law into line with the realities of the working environment and with progress made in complementary labour relations legislation, the decisions of the courts and the relevant international agreements.

With the aim of improving the level of benefits awarded to employees suffering an accident or occupational disease, the act in question makes significant changes to the previous scheme. The most important of these are:

- a revised system for calculating compensation and pensions. Instead of being tied, as hitherto, to a notional level of pay, these are now calculated on the basis of the employee's actual pay;
- a broader interpretation of what constitutes a work accident. In particular, cover is now extended to all travel risks, with the express inclusion of travel between the workplace and the meal place and any accident occurring when the employee's regular itinerary - a key concept in the definition of a work accident - is changed on justifiable grounds;

- a broader interpretation of the concept of dependent family members in line with increases in life-long annual pension levels in the case of total permanent incapacitation for work of any description;
- early access to pension rights where these are not substantial. This in no way affects the implementation of a transitional scheme under which insurance providers will be able to make gradual changes so as not to have to face the potential dangers of meeting all early redemption requests simultaneously;
- improved protection for employees through the issuing of pay receipts in the name of the company providing insurance against the risk in question on the date of their issue.

In order that the self-employed may also enjoy adequate compensation levels for injuries resulting from accidents at work, Article 3 of Act No. 100/97 obliges them to take out insurance to cover the benefits available under the act.

Lastly, Article 39 of the act provides for a Work Accidents Fund to replace the previous fund for calculating pension levels for accidents at work. The new fund has administrative and financial independence and offers a wider range of safeguards, among which are adjustments in work accident benefits and supplementary Christmas allowances, the payment of work accident insurance premiums on behalf of firms experiencing difficulties and the duty to reinsure against work accident risks where cover has been refused.

The measures governing implementation of this act were laid down during the course of 1999. They will be described in the seventh report on the implementation of the European Social Charter.

The Committee of Independent Experts asked for information on social security provision for agricultural workers.

Article 69 of the Social Security Act, No. 28/84 of 14 August 1984, provides for the special scheme for agricultural activities to be gradually incorporated into the general social security scheme. The special scheme was amended accordingly by Legislative Decree No. 81/85 of 28 March 1985.

Agricultural workers were fully incorporated into the general scheme through Legislative Decree No. 401/86 of 2 December 1986, which was implemented by Regulation No. 75/86 of 30 December 1986 (since amended) by Regulation No. 9/88 of 3 March 1988). The only remaining members of the previous scheme are a closed group of pension recipients.

In accordance with this legislation, agricultural workers and assimilated persons became compulsory members of the general social security scheme for employed workers or of that for the self-employed, depending on their employment circumstances. As for employers, they are covered in their capacity as contributors to the scheme.

The benefits system

Depending on their circumstances, agricultural workers are entitled to benefits under the general scheme for employees or under the scheme for the self-employed.

In substance, therefore, agricultural employees are eligible for sickness, maternity, occupational disease, unemployment, invalidity, old-age and death benefits and family allowances.

As regards protection in the case of accidents at work, as for all employed workers this is compulsory and provided by insurance companies under the supervision of the Ministry of Finance.

Self-employed agricultural workers have compulsory basic cover, which provides maternity, invalidity, old-age and death benefits. In addition, they can opt for more extensive cover comprising sickness, work accident and occupational disease benefits and family allowances.

Generally speaking, these benefits are awarded and calculated as stipulated under the general schemes for employed workers and the self-employed.

Contribution rates

Given the nature of agricultural activity, this category of workers enjoys lower contribution rates than those provided for under the general scheme. The total rate payable for skilled employees is 32.5% (0.5% of which is for occupational sickness cover). The employee's contribution is 9.5%, and the employer's 23%.

The contribution rate applicable to unskilled employees is 29%, the employee's contribution being 8% and that of the employer 21%.

The contribution rate for self-employed agricultural workers on the compulsory benefits scheme alone is 25.4%, but this rises to 32% if they take out the more extensive optional cover.

Since the basic contribution rate for the self-employed before the entry into force of Legislative Decree No. 328/93 of 25 September 1993, which set up the new social security system for self-employed workers, was either 8 or 15%, the decree set a calendar according to which these rates would gradually rise.

The compulsory basic rate of 8% went up to 17% in 1997 and 20% in 1998. Under the optional scheme, the rate rose to 20% in 1997 and 24% in 1998.

Workers previously contributing at 15% were charged the full rate as from 1997.

The following tables give details of the changes introduced by this new legislation.

III. STATISTICAL DATA

THE SOCIAL SECURITY SYSTEM

TABLE 12.1.2

POPULATION CONCERNED

(Mainland and Autonomous Regions – in thousands)

RECIPIENTS	GENERAL SCHEME		VOLUNTARY SOCIAL SECURITY SCHEME		SPECIAL SCHEME FOR AGRIC. ACTIVITIES ¹⁰		NON-CONTRIB. SCHEME	
	1996	1997 ¹¹	1996	1997 ²	1996	1997 ²	1996	1997 ²
Active recipients					-	-	-	-
Children and assimilated persons¹²					13	4		
Pensioners:								
Invalidity			14	5				
Old-age			5	5				
Survivors			5	5				

Source: IGFSS Social Security Statistics – Volume I. Actual data.

¹⁰ &ORVHG JURXS

¹¹ 3URYLVLRQDO I LJXUHV

¹² 1XPEHU RI FKLOGUHQ DQG DVVLPLQDWHG SHUVROV ZKR UHFHLYHG IDPLO\ DOORZDQFHV IRU FKLOGUHQ DQG \RXQJ SHRSOH DQG WKH OLIH ORQJ PRQWKO\ DOORZDQFH GXULQJ WKH ILQDO TXDUWHU

¹³)LJXUHV IRU ODGHLUD 5HJLRO XQDYDLQDEOH

¹⁴ , QFOXGHG LQ WKH JHQHUDO VFKHPH

TABLE 12.1.3
 RECIPIENTS OF CERTAIN BENEFITS
 (Mainland and Autonomous Regions – in thousands)

BENEFITS	GENERAL SCHEME		VOLUNTARY SOCIAL SECURITY SCHEME		SPECIAL SCHEME FOR AGRIC. ACTIVITIES ¹⁵		NON-CONTRIB. SCHEME	
	1996	1997 ¹⁶	1996	1997 ²	1996	1997 ²	1996	1997 ²
Maternity benefit			-	-	-	-	-	-
Birth grant			-	-	-	-	-	-
Nursing allowance			-	-	-	-		
Sickness benefit					-	-	-	-
Unemployment benefit¹⁷			-	-	-	-	-	-
Allowance for the integration of young people into working life	-	-	-	-	-	-		
Pensioners receiving special additional allowances:								
Invalidity			18	4				
Old-age			4	4				
Survivors			4	4				

Source: IGFSS Social Security Statistics – Volume I. Actual data.

¹⁵ &ORVHG JURXS

¹⁶ 3URYLVLRQDO I LJXUHV

¹⁷ ' HFHPEHU

¹⁸ , QFOXGHG LQ WKH JHQHUDO VFKHPH

TABLE 12.1.4
EXPENDITURE ON CERTAIN BENEFITS
(Mainland and Autonomous Regions – in millions of PTE)

BENEFITS	GENERAL SCHEME		VOLUNTARY SOCIAL SECURITY SCHEME		SPECIAL SCHEME FOR AGRIC. ACTIVITIES ¹⁹		NON-CONTRIB. SCHEME ²⁰	
	1996	1997 ²¹	1996	1997 ³	1996	1997 ³	1996	1997 ³
Maternity benefit					-	-	-	-
Birth grant					-	-		
Nursing allowance					-	-		
Family allowance for children and young people ²²					-	-		
Sickness benefit					-	-	-	-
Unemployment benefit			-	-	-	-	-	-
Allowance for the integration of young people into working life								
Pensions: Invalidity Old-age Survivor's								
Attendance allowances granted to pensioners: Invalidity Old-age Survivor's			23 5 5	5 5 5				

Source: IGFSS Social Security Accounts.
(-): benefit not available under this scheme.

¹⁹ &ORVHG JURXS

²⁰ 6LQFH WKLK KDV LQFOXGHG WKH VRFLDO VXSSOHPHQWV I RU LQYDOLGLW\ ROG DJH DQG VXUYLYRU\ SHQVLROV XQGHU WKH JHQHUDO VFKHPH

²¹ 3URYLVLRQDO I LJXUHV

²² \$V RI -XO\ WKH DOORZDQFH I RU FKLOGUHQ DQG \RXQJ SHRSOH UHSODFHG WKH IDPLO\ ELUWK DQG QXUVLQJ DOORZDQFHV

²³ , QFOXGHG LQ WKH JHQHUDO VFKHPH

TABLE 12.1.5
SOCIAL SECURITY RECEIPTS AND EXPENDITURE
(Mainland and Autonomous Regions – in millions of PTE)

RECEIPTS			EXPENDITURE		
	1996	1997 ²⁴		1996	1997 ¹
1. Current receipts			3. Current expenditure ²⁵		
Contributions (general scheme)			General scheme ²⁶		
Contributions (voluntary social security scheme)			Non-contributory scheme		
Social VAT (additional 1%)			Social welfare		
Transfers from State budget			Minimum income	-	
Other receipts			Total		
Total			4. Capital expenditure		
2. Capital receipts			Financial investment		
Depreciation			Tangible assets		
Sales (buildings and others)			PIDDAC ²⁷		
Transfers from State budget			Depreciation		-
Loans		-	Other		
Total			Total		
TOTAL RECEIPTS (1+2)			TOTAL EXPENSES (3+4)		

Source: IGFSS Social Security Accounts.

²⁴ 3URYLVLRQDO I LJXUHV

²⁵ ,QFOXGHV DGPLQLVWUDWLRQ FRVWV

²⁶ ,QFOXGHV YROXQWDX\ VRFLDO VHFUXLW\ VFKHPH VSHFLDO VFKHPH I RU DJULFXOWXUDO DFWLYLWLHV RFFXSDWLRQDO GLVHDVHV VFKHPH DQG RWKHUV

²⁷ &HQWUDO \$GPLQLVWUDWLRQ ,QYHVPHQW DQG 'HYHORSPHQW ([SHOGLWXUH 3URJUDPPH

TABLE 12.1.6
SOCIAL SECURITY SCHEME FOR THE CIVIL SERVICE
POPULATION COVERED
(Mainland and Autonomous Regions – in thousands)

RECIPIENTS	1995	1996	1997 ²⁸
Active recipients	637.7	647.9	654.2
Children²⁹	30.6	31.5	27.5
Supplementary benefits	6.4	7.5	6.5
Pensioners: Invalidity/old-age	258.1	272.7	285.1
Survivors	105.8	108.9	111.3

Source: 1997 Report of the General Pension Fund.

TABLE 12.1.7
SOCIAL SECURITY SCHEME FOR THE CIVIL SERVICE
CURRENT RECEIPTS AND EXPENDITURE
(in millions of PTE)

RECEIPTS	1996	1997	EXPENDITURE	1996	1997
Members' contributions			Family allowances³⁰		
Transfer from State budget			Supplementary allowances³		
Other			Pensions³¹: Invalidity/old-age Survivor's		
			Funeral expenses grants		
			Administration		
			Other³²		
Total			Total		

Source: 1995 Report of the General Pension Fund.

²⁸ 3URYLVLRQDO I LJXUHV

²⁹ &KLOGUHQ RI SHQVLRQHUV RQO\

³⁰)RU SHQVLRQHUV RQO\

³¹ (VWLPDWHV

³² &DSLWDO H[SHQGLWXUH I LQDQFLDO FRVWV DQG FRUUHFVLRQV RQ SUHYLRXV \HDUV

Paragraph 2

Updating of the information provided in the third report

In 1998 Portugal reported in detail on the implementation of ILO Convention No. 102 and more succinctly on the implementation of the European Code of Social Security (ECSS). The following tables, which were drawn up on the basis of the form issued by the ILO, give figures on the population covered and benefit levels in 1997.

POPULATION COVERED

1.	Health care		
	• ILO Convention 102 and ECSS	50%	
	• Portugal	100%	
2.	Sickness benefit		
	• ILO Convention 102 and ECSS	50%	
	• Portugal	92.4%	
3.	Unemployment benefit		
	• ILO Convention 102 and ECSS	50%	
	• Portugal	94.7%	
4.	Old-age pensions		
	• ILO Convention 102 and ECSS	20%	
	• Portugal	47.9%	
5.	Work accident and occupational disease benefit		
	• ILO Convention 102 and ECSS	50%	
	• Portugal	82.9%	
6.	Family allowances		
	• ILO Convention 102 and ECSS	20%	
	• Portugal	46.4%	
7.	Maternity benefit		
	• ILO Convention 102 and ECSS	20%	
	• Portugal	47.8%	
8.	Invalidity pensions		
	• ILO Convention 102 and ECSS	20%	
	• Portugal	47.9%	
9.	Survivor's pensions		
	• ILO Convention 102 and ECSS	20%	
	• Portugal	47.9%	

BENEFIT LEVELS

1.	Sickness benefit		
	• ILO Convention 102 and ECSS	45%	
	• Portugal	69.1%	
2.	Unemployment benefit		

	• ILO Convention 102 and ECSS	45%
	• Portugal	93%
3. Old-age pensions		
	• ILO Convention 102 and ECSS	40%
	• Portugal	50.2%
4. Work accident and occupational disease benefit		
a) Temporary incapacity		
	• ILO Convention 102 and ECSS	50%
	• Portugal	69.6%
b) Permanent incapacity		
	• ILO Convention 102 and ECSS	50%
	• Portugal	98.6%
c) Survivor's		
	• ILO Convention 102 and ECSS	40%
	• Portugal	72.5%
5. Maternity benefit		
	• ILO Convention 102 and ECSS	45%
	• Portugal	100%
6. Invalidity pensions		
	• ILO Convention 102 and ECSS	40%
	• Portugal	81.1%
7. Survivor's pensions		
	• ILO Convention 102 and ECSS	40%
	• Portugal	74.2%

Paragraph 3

Updating of the information provided in the third report

Within the framework of the general social security scheme, improvements were made during the reference period to pensions and family allowances. These improvements are described above in relation to Article 12, paragraph 1.

As can be seen in tables 12.3.1 and 12.3.2, both social protection expenditure and total social security expenditure increased as a percentage of GDP, reflecting the efforts made to improve the levels of protection available under the system.

TABLE 12.3.1
CHANGE IN SOCIAL PROTECTION EXPENDITURE
AS A PERCENTAGE OF GDP

YEAR	SOCIAL PROTECTION AS %AGE OF GDP
1996	22.3
1997	23.3

Source: Department of Information and Statistics.

TABLE 12.3.2
CHANGE IN TOTAL SOCIAL SECURITY EXPENDITURE
AS A PERCENTAGE OF GDP

YEAR	TOTAL SOCIAL SECURITY EXPENDITURE	GDP	SOCIAL SECURITY EXPENDITURE AS %AGE OF GDP
1996	1,759.2	16,474.0	10.68
1997	1,920.7	17,916.1	10.72

Source: Reports of the Central Bank of Portugal; Department of Statistics and Economic Studies; IGFSS – Social Security Accounts.

Replies to the questions raised by the Committee of Independent Experts

The Committee of Independent Experts wished to be informed of the results of the work of the special committee charged with preparing a White Paper on Social Security.

It also asked for precise information on the reforms adopted in the social security system during the reference period.

The White Paper Committee was set up by Council of Ministers Resolution No. 22/96 on the basis that the social security system, which Article 63 of the Constitution of the Republic establishes as a universal right, is of such fundamental value that it must be preserved through the implementation of the necessary reforms to guarantee its survival.

The committee was charged with proposing government measures to ensure the system's continued viability while maintaining financial equilibrium. Moreover, the principles of justice and solidarity on which the Government's programme is built are to be observed. The specific terms of these proposals are as follows:

- to prepare essential short and medium-term measures in support of reforms by making clear recommendations dealing specifically with each of the contributory and non-contributory schemes and with the social action programme;
- to make recommendations to the Government, in general terms, for medium and long-term measures which have received the greatest possible approval both on the committee and from the relevant employers' and trade union organisations. Implementation of these recommendations must meet the policy objectives of the Government programme;
- to submit specific recommendations to the Government for measures in areas related to and thus closely connected with the social security system, especially those whose aim is to make family benefits more selective, to ensure that the costs associated with social security contributions will not rise or will be better managed, or to achieve a balance between pro-active and re-active methods of resolving employment difficulties.

The final version of the White Paper reflects the committee's unanimous view that social security reforms must be an integral part of all reforms whose effect is to bring about significant structural changes. These include tax reforms and all measures whose general objective is social and economic progress by means of consultation between both sides of industry; they also include measures designed to improve productivity, to extend and expand basic training and vocational qualifications, to prevent and overcome unemployment, to provide preventive health care, to improve the health system and procedure in cases of incapacity, and to reform government departments and the civil service.

I. Measures to guarantee the system's continued viability

There was unanimous agreement on the following proposals:

- As regards the financial responsibility of the State, which derives from outline legislation adopted in 1984,

- that the State be made exclusively responsible for financing all solidarity measures and the public component of social action;
 - that the State share responsibility for financing loan rate exemptions, reductions and rebates as well as falls in receipts and increases in expenditure due to the taking of early retirement;
 - that the State contribute to the private component of social action;
- As regards retirement rights,
- that the retirement age be made flexible, and that pension increases be proportional to the period of time worked beyond the age of 65 so as to take account of the continuation of contributions and thus of the accumulation of pension rights during any additional years;
 - that those aged between 60 and 65 be eligible for retirement on condition that they have a full contribution history of at least 42 years, a proportional reduction being made for each year that retirement is taken before 65;
- That improvements be made to the system for gathering information on the build-up of debt (eg. prompt detection of non-payment through the modernisation of the computer system, making it possible to take immediate action) and to procedures for institutional measures against evasion and fraud (such as supervision and debt collection), and that a programme for evaluating existing prevention and debt collection measures on an ongoing basis be set up in order to optimise future policies in this respect;
- That information be made available every year on the funds held in the general scheme and on the balance transferred and credited to the Social Security Financial Stabilisation Fund (FEFSS);
- That the State gradually pay back its debt to the social security system and reimburse credits made to the FEFSS;
- That the contributory scheme and the financial management of the scheme for self-employed workers be reformed so as to become self-sufficient:
- a) by ensuring the financial equilibrium of the various sections for which self-financing is acceptable;
 - b) by applying actuarial contribution rates for each sector of cover;
 - c) by incorporating some elements of funding (particularly in the case of pensions) into the purely contributory scheme, which is limited to the maximum possible level of benefit under the general scheme.

A number of committee members proposed, as an alternative to this final paragraph, that contributions be calculated on the basis of total income before the deduction of tax rather than on contractual pay as at present.

II. Measures to improve efficiency

- Separation of the single social tax into the parts corresponding to each contingency, and keeping separate accounts for each.

- New outline social security legislation to rationalise and simplify current schemes and contribution structures. The obligation on employed workers and the self-employed to subscribe to a single general social security scheme would be abolished.
- New outline legislation on social protection for the self-employed, which would take account of disparities in economic status, income levels and social and professional concerns, and of the resulting variation in social circumstances. Measures would include co-ordination between the tax and social security authorities in order to avoid remunerative activity being undeclared and clarify problems relating to the legal definition of self-employment.
- Steps to expand and strengthen the specific involvement of employers' and trade union organisations and society at large in running the social security system:
 - at national level, by formalising specific Economic and Social Council themes and related strategic annual consultation activities;
 - at regional and local level, by promoting the specific involvement of both sides of industry and by making it compulsory to publish information on the system's management on a regular basis.
- Moves to ensure that assistance is appropriate to individual circumstances by recommending that the tax reform programme take account of daily sickness and unemployment benefits (which are intended to replace remuneration for employment) when taxable income is being calculated. On the other hand, the corresponding rise in the lower level for liability to tax must be applied impartially.

III. Measures to increase fairness

- Continuation of the policy of scaling minimum pension levels according to the number of contributions paid, and in favour of pensioners with the longest contribution history. The means-tested social supplement allocated when the pension level is less than the agreed minimum would be unaffected.
- Selectivity and means-testing in the case of all solidarity and social action benefits as a way of avoiding any injustice caused by the system of universal and unrestricted access to benefits, which can sometimes be abused. Three members of the committee expressed reservations about this proposal.
- The nationwide implementation of steps to improve enforcement of the guaranteed minimum income, and the use of related resources to restructure the social action programme.
- A review of the tax treatment of retirement savings plans in order to reduce the disproportionate advantage enjoyed by the better-off as compared with the less wealthy, by spreading the reduction in tax liability across the tax burden as a whole, using it specifically to build up each type of individual provident fund.

Following consideration of the White Paper in its final version, the Government presented the Assembly of the Republic with a bill to reform the social security system. The 7th report will give details of this bill.

Finally, in line with its reforms to the social security system the Government agreed the following measures during the reference period:

- introduction of a guaranteed minimum income (cf. Article 13);
- increases in pensions, in particular those at the lower end of the scale, by way of extraordinary adjustments (cf. paragraph 1 above);
- a new universal family allowance for children and young people which is fairer than previous benefits (cf. paragraph 1 above);
- new measures to counter benefit fraud and a special debt collection procedure;
- an increase in the amount transferred from the State budget to the social security budget (cf. table 12.1.5);
- the transfer of general scheme surpluses into the funded element of the scheme, thus increasing its viability.

Paragraph 4

Updating of the information provided in the third report

No changes.

Replies to the questions raised by the Committee of Independent Experts

The Committee noted that Portugal did not guarantee equal treatment to Maltese nationals with regard to health care coverage, in that national legislation made access to the national health service contingent on reciprocity and no reciprocal agreement had been concluded with Malta.

Despite the lack of a reciprocal social security agreement with Malta, the Portuguese authorities are unaware of any instances where access to the national health service was restricted because an individual resident in Portugal was a foreign, still less a Maltese, national. Only three Maltese nationals were resident in Portugal in 1997 and 1998.

The Committee asked for confirmation that the accrued social security rights of Turkish and Cypriot nationals who had worked in Portugal could be preserved, specifically through the export of benefits.

In this connection, it should be noted that the general social security scheme in Portugal guarantees cover for all irrespective of nationality, and that this includes the payment of benefits abroad. Consequently, Portugal is in compliance with this requirement.

The Committee asked for information on the preservation of accruing rights in the case of Contracting Parties to the European Social Charter (paragraph 4b).

In this regard, the situation of the following Parties varies.

- TURKEY

Since Portugal and Turkey are Contracting Parties to the European Convention on Social Security, aggregate periods of insurance and employment completed in Contracting Parties are taken into account both for the granting of benefits and for the calculation of those benefits covered by the directly applicable articles of that Convention. However, periods completed by Turkish nationals in Contracting Parties to the Social Charter which have not

ratified the Social Security Convention are not taken into account when benefits are granted and calculated.

- **CYPRUS**

Relations between Portugal and Cyprus with regard to social security are governed by the European Interim Agreements on Social Security. The aggregation of periods of insurance and/or employment or residence which can be taken into account is governed by a co-ordinating bilateral agreement.

- **SLOVAKIA and POLAND**

Relations between Portugal and these two Parties are governed by the Association Agreements concluded between the European Union and its Member States on one hand, and Slovakia or Poland on the other. The aggregation of periods of insurance, employment and residence is subject to the provisions of these agreements.

- **MALTA**

Portugal and Malta have concluded no bilateral agreements on social security, and Malta would not appear to be party to any multilateral conventions on the co-ordination of social security legislation.

ARTICLE 13

RIGHT TO SOCIAL AND MEDICAL ASSISTANCE

Updating of information supplied in the third report A and B

Non-contributory Social Security scheme

As explained in the reply on Article 12 in this report, family benefits under the social security general scheme have undergone major changes as part of a new policy on offsetting family expenses.

Given that the rules on some family benefits payable under the non-contributory scheme - such as the family allowance, the nursing mother's allowance and the supplementary allowance for children and young people with disabilities - were the same as those for the general scheme, it was necessary to harmonise the two schemes⁴ (Legislative Decree 133-C/97, of 30 May 1997).

The family allowance for children and young people is thus allocated to descendants⁵ as follows:

- f) all children and young people up to the age of 16;
- g) young people aged 16 to 18 who are enrolled in basic education, an equivalent course or one at the next level, or who are completing end-of-course work experience necessary for the award of a diploma;
- h) young people aged 18 to 21 who are enrolled in secondary education, an equivalent course or one at the next level, or who are completing end-of-course work experience necessary for the award of a diploma;
- i) young people aged 21 to 24 who are enrolled in higher education or an equivalent course, or who are completing end-of-course work experience necessary for the award of a diploma;
- j) all young people up to the age of 24 who have a disability warranting the payment of the family allowance disability supplement for children and young people.

Children and young people with disabilities are also entitled to a family allowance disability supplement for children and young people, the special education allowance and the attendance allowance, in accordance with the provisions of the social security general scheme.

The tables below show the monthly rates for certain benefits payable under this scheme.

⁴ The means test applicable to the payment of benefits under the non-contributory scheme has been maintained.

⁵ Descendants include children of the spouses, children under their guardianship, adopted children or children in the process of being adopted and minors entrusted to the beneficiary's care by a court order or administrative decision.

TABLE 13.1.1.A
MONTHLY RATES FOR CERTAIN BENEFITS PAYABLE UNDER THE NON-
CONTRIBUTORY SCHEME
1997

PTE	
PENSIONS AND BENEFITS	1997
<i>SOCIAL PENSION:</i> OLD-AGE AND INVALIDITY SURVIVOR'S ATTENDANCE ALLOWANCE	21 000 * 8 850
FAMILY BENEFITS	JANUARY TO JUNE 1997
<u>FAMILY ALLOWANCE</u>	
For each child or person assimilated thereto 3rd child and subsequent children	2 770 4 300
NURSING MOTHER'S ALLOWANCE	4 500
<i>SUPPLEMENTARY ALLOWANCE FOR CHILDREN AND YOUNG PEOPLE WITH DISABILITIES</i>	
up to the age of 14 aged 14 to 18 aged 18 to 24	6 520 9 530 12 720
	1997
	JULY TO DECEMBER 1997
FAMILY ALLOWANCE FOR CHILDREN AND YOUNG PEOPLE Children aged < = 12 months Children aged > 12 months	13 200 4 000
SUPPLEMENTARY ALLOWANCE FOR CHILDREN AND YOUNG PEOPLE WITH DISABILITIES up to the age of 14 aged 14 to 18 aged 18 to 24	6 520 9 530 12 720

* Calculated, as explained in the first report, by applying the percentages stipulated under the general scheme to the social or old-age pension.

**TABLE 13.1.1.B
MONTHLY RATES FOR CERTAIN BENEFITS PAYABLE UNDER THE NON-
CONTRIBUTORY SCHEME
1998**

PENSIONS AND BENEFITS	PTE	
	1998	
	DEC/97 TO NOV/98	DECEMBER
SOCIAL PENSION OLD-AGE AND INVALIDITY SURVIVOR'S ATTENDANCE ALLOWANCE	22 100 * 9 290	23 600 * 9 750
FAMILY ALLOWANCES	JANUARY TO DECEMBER	
FAMILY ALLOWANCE FOR CHILDREN AND YOUNG PEOPLE Children aged < = 12 months Children aged > 12 months	14 000 4 200	
FAMILY ALLOWANCE SUPPLEMENT FOR CHILDREN AND YOUNG PEOPLE WITH DISABILITIES up to the age of 14 aged 14 to 18 aged 18 to 24	8 100 11 800 15 800	

* Calculated, as explained in the first report, by applying the percentages stipulated under the general scheme to the social or old-age pension.

Guaranteed Minimum Income benefit

Drawing on the experience gained in the experimental pilot project discussed in the third report, Legislative Decree no. 196/97 of 31 July 1997 (Appendix XIII-1) laid down regulations for the implementation of Act No. 19-A/96 of 29 June 1996, which introduced the Guaranteed Minimum Income scheme.

The minimum income scheme has been extended to the whole country, and deals with situations previously covered by the allowance for the integration of young people into working life⁶.

⁶ As explained in the first report, this allowance was confined to a pecuniary benefit granted to young people aged 18 to 25 who had never worked and belonged to households with a *per capita* income of less than 60% of the minimum wage. It should be noted that, unlike the guaranteed minimum income scheme, this benefit did not make any provision for work placement.

Section 3 of the Act⁷ provides that everyone over the age of 18, along with *minors who are financially independent*, is entitled to the guaranteed minimum income benefit; the eligibility criteria are given in the third implementation report, although *the following cases* are now also taken into consideration:

- a) *emancipation by marriage;*
- b) *having other children who are financially dependent solely on the applicant or on the applicant's own household;*
- c) *pregnancy.*

Under Section 4 of the Act, the household of those entitled to this benefit includes, in addition to the list of members given in Section 6 of Act 19/96 (and included in the third report), *any person of full age who pools his/her finances with the applicant and is financially dependent on the applicant or on the applicant's household, where:*

- a) *s/he is a student;*
- b) *s/he has been exempted from active availability for work placement;*
- c) *the household's total income is equal to, or greater than, the corresponding minimum income.*

The minimum income levels presented were updated during the reference period, being set at *PTE 21 000 in 1997* and *PTE 22 100 in 1998*; these levels are identical to those of the social pension.

Decisions concerning the award of this benefit and calculation of the amount payable are based on *the gross income of members of the household, from whatever source and of whatever kind* (Section 9 of Legislative Decree no. 196/97).

Under Section 10 of the Act, *80% of earned income is taken into account when calculating the level of the minimum income benefit, after the deduction of workers' contributions to the compulsory social security schemes. Where the recipient starts a job after being awarded the benefit, 50% of the income subsequently earned is taken into account for a continuous or aggregate period of 12 months.*

Section 16 also provides for *compensation of costs relating to housing or accommodation for the applicant's household; where they exceed 25% of the minimum income for such a household, the benefit is increased by an amount equal to these costs, up to a ceiling equal to the highest housing allowance payable for a household of that size.*

Going back to the simulation exercise described in the third report, the new updated amounts for this benefit are as follows: a family of two adults and two children below the age of 18 with a monthly income of PTE 40 000 will be entitled to a *minimum income benefit* of PTE 26 300 by virtue of the following calculation:

$$\text{Minimum income benefit} = (2 \times \text{PTE } 22\ 100 + 2 \times \text{PTE } 11\ 050) - \text{PTE } 40\ 000 = \text{PTE } 26\ 300.$$

⁷ Changes made to the descriptions given in the third report are in italics.

The tables below provide information about the application of the minimum income benefit for the reference period and up to 31 December 1998.

Some statistical data on the application of the minimum income benefit are also presented.

Table 13.1.3 shows that the main reason for rejecting applications is that the person's income exceeds the threshold set (about 86% of cases). This is also the main reason for stopping the payment of this benefit (about 70% of cases).

TABLE 13.1.2
GUARANTEED MINIMUM INCOME
GEOGRAPHICAL DISTRIBUTION
31.12.98

	TOTAL NUMBER		
REGIONS	MUNICIPALITIES	INHABITANTS	NO. OF PEOPLE AFFECTED BY THE MEASURE
NORTH	66	3 033 855	135 609
CENTRE	101	2 313 145	80 249
LISBON / TAGUS VALLEY	49	3 205 654	87 118
ALENTEJO	43	477 261	18 963
ALGARVE	16	341 404	16 283
AZORES	19	237 795	33 508
MADEIRA	11	253 426	21 186
NATIONAL TOTAL	305	9 862 540	392 916

Source: National Commission for the Minimum Income

TABLE 13.1.3
GUARANTEED MINIMUM INCOME
AWARD BY REGION
31.12.98

REGIONS	APPLICAT IONS REGISTER ED FAMILIES	ACCEPTED CURRENT		ACCEPTED EXPIRED		APPLICATIONS REJECTED	
		FAMILI ES N ^o .	INDIVID UALS N ^o .	FAMILI ES N ^o .	INDIVID UALS N ^o .	FAMILI ES N ^o .	INDIVID UALS N ^o .
NORTH	86 774	40 475	122 274	4 553	13 335	31 335	84 719
CENTRE	53 085	22 511	65 887	5 093	14 362	12 483	34 344
LISBON / TAGUS VALLEY	53 332	24 377	71 891	5 547	15 227	17 702	46 529
ALENTEJO	11 040	4 978	15 870	981	3 093	2 649	7 195

ALGARVE	8 416	4 568	14 472	558	1 811	2 676	6 954
AZORES	13 452	7 928	29 631	1 199	3 877	2 445	8 350
MADEIRA	16 944	5 570	17 645	975	3 541	6 433	20 433
NATIONAL TOTAL	243 043	110 407	337 670	18 906	55 246	75 723	208 524

Source: National Commission for the Minimum Income

TABLE 13.1.4
GUARANTEED MINIMUM INCOME
DISTRIBUTION BY AREA OF INTEGRATION OF BENEFICIARIES TAKING PART IN
PLACEMENT PROGRAMMES

PLACEMENT AREAS		No. OF PEOPLE	
EDUCATION	Compulsory schooling	10 778	
	Secondary schooling	939	
	Remedial education	8 150	
	Out-of-school education	568	
VOCATIONAL TRAINING	Special vocational training	704	
	Special vocational training (as part of the INTEGRAR project)	1 244	
	Initial qualification	430	
	Vocational qualification	702	
	Apprenticeship	556	
	Education and training	385	
EMPLOYMENT	Information and vocational guidance	2 320	
	Labour market	1 946	
	Job creation	755	
	Training and employment	1 059	
	Placement on the labour market	5 013	
	Job search assistance	240	
	Occupational rehabilitation	160	
	HEALTH	Primary prevention	5 462
	Consultations/Treatment	12 273	
	Detoxification:	- Alcoholism	1 185
		- Drug addiction	919
SOCIAL WELFARE	Kindergartens	1 408	
	Child-minders/family day nurseries/other day nurseries	1 373	
	Leisure activities	1 869	
	Support for children and young people	133	
	Home help	672	
	Day centres/centres for the elderly	227	
	Psycho-social support	19 057	
	Social/family education	5 386	
	CAO attendance	135	
HOUSING	Access to housing	1 350	
	Housing assistance / improvement	5 873	
	Rehousing	2 463	
	Legalising housing situation	706	

Source: National Commission for the Minimum Income

**TABLE 13.1.5
BENEFICIARIES EXEMPTED FROM WORK PLACEMENT AND GROUNDS FOR THEIR EXEMPTION**

TOTAL NUMBER	61 260
HEALTH	7 815
AGE (under 16)	30 577
AGE (over 65)	6 302
ALREADY TAKING PART IN AN ACTIVITY WHEN THE BENEFIT IS AWARDED	7 726
CARING FOR/ASSISTING PARENTS	3 051
STUDENT	5 789

Source: National Commission for the Minimum Income

C.

Lastly, table 13.1.6 shows spending on benefits under the non-contributory scheme:

**TABLE 13.1.6
PUBLIC SPENDING ON BENEFITS UNDER THE NON-CONTRIBUTORY SCHEME**
million PTE

BENEFITS	1996	1997
FAMILY BENEFITS	1 281.1	1 673.4
PENSIONS AND SUPPLEMENTS	56 623.9	56 861.9
SOCIAL SUPPLEMENTS TO PENSIONS UNDER THE GENERAL SCHEME PAID SINCE 1.1.94 (SURVIVOR'S + INVALIDITY + OLD-AGE)	11 524.3	18 684.6
ALLOWANCE FOR THE INTEGRATION OF YOUNG PEOPLE INTO WORKING LIFE	40.5	33.8
GUARANTEED MINIMUM INCOME	-	9 754.8
TOTAL	69 469.8	87 008.5

Source: IGFSS - Social Security Accounts

Replies to the questions raised by the Committee of Independent Experts

Regarding evaluation of the minimum income benefit, the Committee of Experts noted that there was a close correspondence between the national minimum wage⁸ and this benefit in the case of a family of two adults and two children. On the other hand, it also noted that a single adult without dependants would only be able to claim PTE 20 000 (1996), and requested information about the cost of living in Portugal and other additional information enabling it to determine whether the minimum income benefit and other existing allowances were sufficient to meet people's basic needs in an adequate manner.

Firstly, as explained in the third report, the Guaranteed Minimum Income (GMI) is designed to provide the poorest and most socially disadvantaged individuals and families with resources to help satisfy their basic needs and foster economic integration and work placement.

The GMI consequently comprises a pecuniary benefit payable under the non-contributory social security scheme - *the minimum income benefit* - and a *work placement programme*.

As a benefit payable under the non-contributory scheme which is aimed at cases of insufficient resources not covered by existing social security benefits, the *minimum income benefit* must be compatible with the social pension, since the purpose of the latter is also to guarantee claimants a minimum income⁹. The level of the *minimum income benefit* is therefore indexed to that of the social pension.

As regards the level of these benefits, it was pointed out in the fourth report on implementation of the Charter, in relation to Article 4 § 1, that no figures were available for the budget required to meet minimum needs in terms of non-food goods and services. An estimated monthly budget for the minimum needs of adults has therefore been drawn up, based on assessment of a balanced diet and the relative share of spending on food and drink in overall family expenditure (for the first three deciles) according to statistics provided by the Family Budgets Survey (1994-1995).

The same methods were used to update the cost of this diet, by applying the estimated share of spending on food and drink to the total expenditure of families in the first decile (49.13%). In 1998, this calculation yielded the sum of PTE 14 677 for spending on food and drink; the resulting estimated monthly budget for basic needs came to PTE 29 875.

As regards health care, recipients of these benefits are exempt from contributions to the "share system" (see first report, Article 11); they are also entitled to a housing allowance up to a maximum level, in the case of a single person, of PTE 5 800 in 1997 and PTE 5 900 in 1998.

The *minimum income benefit* - a tool for combating poverty by ensuring economic integration and work placement for the most disadvantaged - must be considered in the context of the country's level of development; moreover, the amount received should not discourage people able to work from looking for a job.

As regards changes in the level of the *minimum income benefit* (and the social pension), it increased by 5% in 1997 and 5.2% in 1998; these percentages were

⁸ In the French version of Conclusions XIV-1, the expression "revenu minimum national" should read "salaire minimum national", which is more accurate. It should be noted that the minimum wage was PTE 56 700 in 1997, and PTE 54 600 in 1996.

⁹ See first report.

considerably higher than the inflation rate for those years (2.2% and 2.8%). The *minimum income benefit* also increased as a proportion of the minimum wage, from 36.6% in 1996 to 37.5% in 1998.

Lastly, it is important to emphasise the complexity of setting levels for minimum income benefits, as is clearly illustrated by a recent (1997) study on "Minimum Income Policies in the European Union"¹⁰, by Pierre Guibentif and Denis Bouget.

The Committee wished to know how many people were in receipt of social assistance during the reference period.

Since the current system for processing social security data does not take account of the allowances in question, it is only possible to give the amount of overall spending on them (see the table in the reply on paragraph 4 of this Article).

The Committee asked for confirmation that Act 19-A/96 allows for appeals to an independent body, either under Act No. 28/84 of 14 August 1984 on social security, or under another provision.

As stated in the first report, benefits payable under the social security schemes, including the non-contributory scheme, are guaranteed as rights in accordance with the Social Security Act (Act No. 28/84).

Decisions by the social security institutions can therefore be subject to appeals to a higher institution and to court proceedings. Sections 39 and 40 of Act No. 28/84 of 14 August 1984 and the Code of Administrative Procedure set out the situations and conditions governing appeals.

As the minimum income benefit is payable under the non-contributory scheme, it is therefore subject to appeals on these terms.

The Committee requested information on the activities of the Santa Casa da Misericórdia in Lisbon.

The Santa Casa da Misericórdia (SCML), through its *Social Welfare and Health Service*, assists the underprivileged and those at social risk. A number of activities may be listed.

* *Social support*, both at municipal level and through the *emergency social service*, which provides psycho-social assistance and pecuniary and other benefits and oversees the guaranteed minimum income scheme.

¹⁰ Page 28. For 13 European Union member states, the authors compare the levels applicable to single people in terms of hourly wages in industry. The figures obtained range from 22 hours (D) to 75 hours (L); Portugal is in the same group as A, E, F, Irl, Fin and S, with an agreed figure of approximately 40 hours. A comparison of these levels as a proportion of GDP ranges from 15% to 44%; Portugal and D have figures of about 15%, whereas the highest percentage was found in DK. The authors note, however, that the significance of these figures is relative in that countries change position when the same indicators are applied to households with more than one member.

On page 94, the authors acknowledge that it is very difficult to evaluate the above findings without first defining a set of indicators that reflect the cost of basic needs in each country more accurately; they add that benefits have to take account of low wage levels or, where applicable, the minimum wage.

- * Services offered by the *social facilities network* run directly by the SCML: day nurseries, kindergartens, leisure workshops, community centres, day centres, home help services, children's and young people's homes, old people's homes and community centres.
- * *Vocational training* and active job search assistance, along with specific programmes aimed at *socially deprived* groups and groups *at serious social risk, such as ethnic minorities or the homeless*.
- * As regards health, SCML medical centres provide free medical care and medication.

It should be noted that the SCML assists both Portuguese and foreign nationals in difficult socio-economic situations. In 1998, it provided medical care and medication to 352 foreign users.

The table below gives statistical data on the activities of the SCML in 1998.

AREAS/SPHERES OF ACTION	N ^o . OF USERS
ASSISTANCE TO CHILDREN AND FAMILIES	3 870
ASSISTANCE TO THE ELDERLY	3 681
SOCIAL SUPPORT	61 158
INTEGRATED LOCAL WORK	8 255
ASSISTANCE AND WORK PLACEMENT FOR THE HOMELESS	943
VOCATIONAL GUIDANCE, TRAINING AND INTEGRATION INTO WORKING LIFE	653
SOCIAL ADVANCEMENT PROGRAMME FOR GYPSIES	267 individuals 64 couples 246 families
SOCIAL WORK BY THE POUAL	115
HOLIDAY PROGRAMMES	8 697
COOPERATION WITH THE IPSS	17 779

The Committee asked to be informed about trends in migratory flows of Cypriot nationals.

In 1997 and 1998, two Cypriot nationals were resident in Portugal.

Paragraph 2

Updating of the information supplied in the third report

There are no changes to report.

Replies to the questions raised by the Committee of Independent Experts

The Committee wished to know whether there are any legal or practical obstacles that might hinder persons in receipt of social or medical assistance in the exercise of their social and political rights, and whether nationals of other Contracting Parties legally resident or regularly working in Portugal suffer restrictions in the exercise of their social and political rights on the ground that they are in receipt of medical or social assistance.

The answer on this paragraph in the first report on implementation of the Charter noted that Portuguese legislation does not contain any discriminatory rules. This reflects the fundamental principles enshrined in the Constitution of the Republic of Portugal - human dignity, universality and equality - and in the direct applicability of rules relating to rights, freedoms and guarantees.

In order to strengthen the principle of non-discrimination, Constitutional Act No. 1/97 of 20 September 1997, which sets out the fourth revision of the constitution, amended Article 26 of the Constitution as follows: "Everyone is recognised as having the right to his or her personal identity, *personality development*, civil capacity, citizenship, good name *and reputation, and likeness, the right to speak out and the right to the protection of the privacy of his or her personal and family life and to legal protection against any form of discrimination*".

Moreover, the Constitution does not make the exercise of fundamental rights dependent on Portuguese citizenship. Article 15 enshrines the principle of equality between foreigners or stateless persons and Portuguese citizens; they are entitled to *national treatment*, ie treatment at least as favourable as that accorded to nationals.

We may therefore conclude that there are no restrictions on the exercise of social and political rights by recipients of social or medical assistance, irrespective of whether they are Portuguese or foreign nationals.

Paragraph 3 Updating of the information supplied in the third report

The table below shows the number of individuals and families having taken advantage of consultations with the Regional Social Security Centres, broken down according to the ceiling of *per capita* household income.

NUMBER OF USERS HAVING TAKEN ADVANTAGE OF CONSULTATIONS WITH THE SOCIAL SERVICE, BROKEN DOWN ACCORDING TO THE CEILING OF *PER CAPITA* HOUSEHOLD INCOME

CEILING OF <i>PER CAPITA</i> HOUSEHOLD INCOME	1996	1997 (c)
(a) (b) I<15%NMW	59 689	
15%NMW < I<30%NMW	40 024	
30%NMW < I<50%NMW	24 662	
50%NMW < I<70%NMW	10 175	
70%NMW < I<100%NMW	5 051	
I>100%NMW	4 255	
Unknown	12 441	
TOTAL	156 297	0

Source: IGFSS - Social Security Statistics - Material Data - Volume II - Community Work

- (a) I - *Per capita* income
- (b) NMW - National minimum wage
- (c) Data unavailable

Paragraph 4
Updating of the information supplied in the third report

There are no changes to report.

Replies to the questions raised by the Committee of Independent Experts

The Committee concluded that Portugal did not satisfy this provision of the Charter, since social assistance was granted only to nationals of other Contracting Parties legally within Portuguese territory if local resources permitted.

We would like to reiterate the information previously supplied, and explain that Portugal accords equal treatment to Portuguese nationals and nationals of the other Contracting Parties in respect of all social assistance benefits, the main aim of which is to prevent situations such as lack of resources and social breakdown or exclusion.

The granting of such assistance is based on case-by-case analysis of socio-economic need; anyone in a difficult situation, regardless of nationality, can receive these benefits within the limits of the financial resources available.

In order to assess the extent to which the availability of resources may have affected the payment of social assistance benefits during the reference period, the General Directorate of Social Welfare consulted the bodies responsible for awarding such benefits so as to draw up a list of any applications that had not been satisfied.

Analysis of the information received showed that no applications had been rejected and no complaints had been laid by applicants. This is because the resources allocated to this area were considerably increased so as to avoid certain problems that had arisen in the past.

Since 1995, spending on social assistance benefits has followed the trend shown in the table below.

PTE 10³

1995	1996	1997	1998
2 243 059	3 515 409	5 681 977	7 812 422

Analysis of these figures gives a percentage increase of 122% from 1996 to 1998.

ARTICLE 16

THE RIGHT OF THE FAMILY TO SOCIAL, LEGAL AND ECONOMIC PROTECTION

Update of the information provided in the third report

A

FAMILY BENEFITS

Amount of family benefits

January to June 1997

Family Allowances

- for each child or equivalent	PTE 2 770/month
- third and subsequent children	PTE 4 300/month ³³
- nursing mothers' allowance	PTE 4 500/month
- birth grant	PTE 24 450/month
- marriage grant	PTE 20 330
- funeral grant	PTE 29 130
- supplementary allowance for disabled children and young persons	
- up to the age of 14	PTE 6 520/month
- from 14 to 18 years	PTE 9 530/month
- from 18 to 24 years	PTE 12 720/month
- life-long monthly allowance	PTE 21 000/month
- attendance allowance	PTE 10 460/month

July to December 1997

Legislative decree No. 133/97 of 30 May 1997, which came into effect on 1 July 1997, introduced major changes to the family benefits system, mainly in respect of the content of legislative decrees 197/77 (17 May 1977), 170/80 (29 May 1980) and 29/89 (23 January 1989), with a view to defining a new social policy to help families meet their expenses through a more equitable redistribution of income, while acknowledging the universal right to such benefits and bearing in mind the financial equilibrium of the system.

Some of the more noteworthy changes include:

1. The categories of benefit available
 - a new benefit, called *family allowance for children and young persons*, the size of which varies with the family's income, replaced the former family allowance, nursing mothers' allowance and birth grant.
 - The supplementary allowance for disabled children and young persons was replaced by a *disability supplement*, in addition to the family allowance for children and young persons, to offset the increased expense of the pedagogical therapeutic assistance required by dependant children under 24 years of age with disabilities.

The other family benefits granted for disabilities are maintained.

The list of family benefits is now as follows:

- family allowance for children and young persons
- special education allowance
- life-long monthly allowance
- attendance allowance
- funeral grant.

2. conditions of entitlement

2.1 – conditions to be met by beneficiaries

Under the previous system the general condition of entitlement to family benefits was one full years' uninterrupted contribution to the social security scheme.

Under the new scheme beneficiaries must have paid 6 (not necessarily consecutive) months' social security contributions during the twelve-month period ending two months prior to the application date (or, in the case of the funeral grant, the date of death).

³³ if the family income is less than one-and-a-half times the minimum wage.

2.2- conditions applicable to dependent children

The new text takes into account the duration of compulsory schooling (9 years) and the minimum age for access to employment (16 years), making entitlement conditional on age in relation to level of schooling.

The family allowance for children and young persons is granted:

- k. to all children and young people up to and including 16 years of age;
- l. for young people from 16 to 18 years of age enrolled in basic education, the equivalent or higher, or undergoing end-of-school training required to obtain a diploma;
- m. for young people from 18 to 21 years of age enrolled in secondary education, the equivalent or higher, or undergoing end-of-school training required to obtain a diploma;
- n. for young people from 21 to 24 years of age enrolled in higher education, or the equivalent, or undergoing end-of-course training required to obtain a diploma;
- o. to all young people up to 24 years of age with disabilities entitling them to the family allowance disability supplement.

3. Amount of the family allowance for children and young persons

The size of the allowance depends on the family income and the number and age of the children.

Three income levels have been established based on the minimum monthly wage (MMW) in force when the income is assessed.

Level one – income less than or equal to 1.5 MMW

Level two – income more than 1.5 MMW but not more than 8 MMW

Level three – income in excess of 8 MMW.

The size of the family allowance disability supplement varies with the age of the child concerned.

TABLE 16.1

Amount of family benefits

1997			
Family benefits	<u>July to December</u>		
Family allowance for children and young persons	Salary levels/PTE		
	Level one		
	Children up to 12 months 1st and 2nd child	13 200/month	
	3rd and subsequent children	19 800/month	
	Children over 12 months 1st and 2nd child	4 000/month	
	3rd and subsequent children	6 000/month	
		Level two	Level three
	Children up to 12 months	10 550/month	7 270/month
	Children over 12 months	2 850/month	2 770/month
	Disability supplement to the family allowance for children and young persons		
up to age 14	6 520/month		
from age 14 to 18	9 530/month		
from age 18 to 24	12 720/month		
Life-long monthly allowance	21 000/month		
Attendance allowance	10 460/month		
Funeral grant	29 130		

1998

Order 50/98 of 4 February 1998 fixed the amounts applicable as of 1 January 1998. The new amounts reflect the positive discrimination approach pursued by the government in its social and family policy, through the family allowance for children and young persons, with particular emphasis on children and young people with disabilities. The family allowances for children and young persons paid to low-income families increased proportionally more than those paid to higher-income families. The law also increased the benefit granted for the third and subsequent children to families in the level two and three income groups, not just those in the lowest income group as it had in 1997.

TABLEAU 16.2

Amount of family benefits

1998			
Family benefits	<u>January to December</u>		
	<u>Salary levels/PTE</u>		
	<u>Level one</u>	<u>Level two</u>	<u>Level three</u>
Family allowance for children and young persons			
Children up to 12 months			
1st and 2nd child	14 000/month	11 000/month	7 270/month
3rd and subsequent children	21 000/month	14 800/month	9 450/month
Children over 12 months			
1st and 2nd child	4 200/month	2 950/month	2 770/month
3rd and subsequent children	6 300/month	4 000/month	3 600/month
Disability supplement to the family allowance for children and young persons			
up to age 14	8 100/month		
from age 14 to 18	11 800/month		
from age 18 to 24	15 800/month		
Life-long monthly allowance	22 100/month		
Attendance allowance	10 875/month		
Funeral grant	30 000		

ASSISTANCE MEASURES FOR MOTHERS AND FATHERS

The Portuguese Parliament passed Law 18/98 of 28 April 1998 (Appendix XVI-I) amending Law 4/84 of 5 April 1984, itself already amended by Law 17/95 of 9 June 1995. Article 9 of the new law introduced the right of working women to 120 days' consecutive maternity leave, 90 of which must be taken after childbirth, and the remaining 30 days at any time before or after childbirth.

Implementation of this law is to be staggered, however:

- from 1 January to 31 December 1999 maternity leave is limited to 110 days.
- from 1 January 2000 it increases to 120 consecutive days.

In the event of multiple births, maternity leave is extended by 30 days for each additional child.

If there is a clinical risk requiring the hospitalisation of the mother-to-be the duration of leave prior to childbirth may be increased by 30 days without affecting the right to 90 days' maternity leave after childbirth (Article 9 para. 3).

The *special leave of absence for assistance to children*, previously limited to between six months and two years, may now be extended to a maximum of three years upon the birth of the third and following children (idem, Article 14 para. 2).

When an employee returns to work following the leave of absence provided for in Article 14, the employer is required to provide training or retraining (idem, Article 15 A).

FISCAL MEASURES

The table below shows the rate of income tax and the ceilings applicable to taxable income for 1997 and 1998.

TABLE 16.3

Rate of Income Tax

Taxable income x PTE 1 000	Rate (%) Normal		Rate (%) Average	
	1997	1998	1997	1998
Up to 1 050	15	15	15	15
1 050 to 2 435	25	25	20,682 6	20,680 0
2 435 to 6 150	35	35	29,333 3	29,299 4
Over 6 150	40	40	-	-

Source: OE

Certain items of expenditure are tax deductible. Those more directly related to the size of the family are listed below:

i. Deduction from total net income

1997 – 1998

a. Healthcare expenses of the taxpayer and his or her family which are not reimbursed, and interest on any debts contracted in order to pay them:

fully deductible

b. Healthcare expenses of the taxpayer's ascendants and collaterals up to those three times removed, who are disabled and live with the tax payer and whose income does not exceed the highest national minimum wage (PTE 56 700 in 1997 and PTE 58 900 in 1998):

fully deductible

c. Expenses incurred for the education and re-education of the disabled taxpayer or his or her disabled descendants:

fully deductible

d. life, sickness and accident insurance premiums for disabled taxpayers or their disabled dependants

fully deductible

e. maintenance allowances paid by the taxpayer and compensation paid by court decision for breach of employment contract:

fully deductible

f. 1997 deductions for the following items of expenditure:

- health expenses of ascendants who are not disabled and whose income does not exceed the highest national minimum wage;
- expenses incurred with institutions providing assistance to the elderly for the benefit of the taxpayer and his or her ascendants and collaterals, up to those three times removed, whose personal income does not exceed the highest national minimum wage;
- expenses incurred for the acquisition of new devices using renewable energy (limited to PTE 60 000 or PTE 30 000 respectively for married or single taxpayers)

are limited to the following amounts:

<i>married taxpayer</i>	<i>PTE 327 000</i>
<i>single taxpayer</i>	<i>PTE 163 000</i>

TE9901959 (TAPE 2)
0704-27/8/99-ID1027

Adding the educational expenses of the taxpayer and his or her children brings these figures to a maximum of

PTE 375 000

whatever the marital status of the taxpayer, and in families with three or more children this maximum figure increases by PTE 20 000 for each child, if they are studying and expense has been incurred for their education.

1998 deductions for the following items of expenditure:

- health expenses of ascendants who are not disabled and whose income does not exceed the highest national minimum wage;
- expenses incurred with institutions providing assistance to the elderly for the benefit of the taxpayer and his or her ascendants and collaterals, up to those three times removed, whose personal income does not exceed the highest national minimum wage;
- expenses incurred for the acquisition of new devices using renewable energy (limited to PTE 60 000 or PTE 30 000 respectively for married or single taxpayers)

are limited to the following amounts:

married taxpayer PTE 332 000

single taxpayer PTE 166 000

Adding the educational expenses of the taxpayer and his or her children brings these figures to a maximum of

PTE 385 000

whatever the marital status of the taxpayer, and in families with three or more children this maximum figure increases by PTE 20 000 for each child, if they are studying and expense has been incurred for their education.

g. Sickness and accident insurance premiums of the taxpayer or his or her dependants who are not disabled and contributions made to optional health insurance systems:

1997 and 1998

married taxpayer

max PTE 72 000

single taxpayer

max PTE 36 000

h. Deductions for expenditure on the following items:

- interest on and repayment of debts contracted for the purchase, construction or renovation of the tax payers home or of premises leased to a tenant as his or her main place of residence³⁴;
- expenditure on services provided under contracts with housing co-operatives or when tax payers pool their resources to purchase homes for themselves or to let;
- rent paid for the tax payer's permanent place of residence under the urban lease Scheme;
- expenditure under leasing contracts on the taxpayer's permanent place of residence where the payments do not constitute capital repayments

are limited to the following amounts:

1997

1998

PTE 305 000

PTE 308 000

ii. Tax relief

The flat-rate deductions applicable to each taxpayer in 1997 and 1998 are:

	1997	1998
a. Single taxpayer	PTE 34 500	PTE 35 200
b. Married taxpayer	PTE 26 300	PTE 26 800

³⁴

Except when the money used comes from a building society savings account.

c.	Each dependant		PTE 19 000 ³⁵	PTE 19 400 ³⁶
d.	Ascendants	living	with	the
	taxpayer	(whose	income	does
	not	exceed	social	allowance
	under	the		non-contributory
	scheme)		PTE 19 000	PTE 19 400

ASSISTANCE MEASURES FOR YOUNG PEOPLE

The average monthly number of beneficiaries of the housing allowance granted to young households under the terms of Legislative Decree 162/92 of 5 August 1992 was

1997	1998
19 526	22 763

the total cost was, respectively,
PTE 8 736 000 and PTE 10 373 000

B

The following table gives a breakdown of the social services and facilities run by the Regional Social Security Centres or by private welfare institutions, together with the number of beneficiaries and the number of staff employed.

³⁵ To which is added PTE 210, PTE 430 or PTE 550, where the household is composed of 2, 3 or more dependants.

³⁶ To which is added PTE 220, PTE 440 or PTE 560 where the household is composed of 2, or more dependants.

TABLE 16.4

Social services and facilities
1996

Services and facilities	Number of services and facilities	Beneficiaries	Own staff	Other staff
Child minders	604	2 315	-	-
Family day nurseries	44	2 118	-	-
Day nurseries + mini-day nurseries	368	9 209	681	1 581
Kindergartens	432	24 348	1 225	2 344
Day nurseries and Kindergartens	984	91 513	4 282	11 076
Recreational activity centres for children and young people	1 363	74 171	2 099	4 217
Holiday camps	-	83 602*	-	-

Source: IGFSS

*Annual attendance

C

The National Council for the Family, an advisory body, helps to define overall family policy through research and proposals.

During the reference period it was working on a "comprehensive family policy plan", which was adopted by the government in 1999.

The National Council for the family is also behind the "National Plan Against Domestic Violence" which the government should soon be adopting.

Finally, under the Comprehensive Family Policy Plan, Family Mediation Offices have been opened by agreement with four municipalities in the greater Lisbon agglomeration.

D

Law 47/98 of 10 August 1998 amended Articles 1775 and 1781 of the Civil Code, concerning consensual divorce and conflictual divorce respectively.

The amendments effectively do away with the time lapse required in the event of consensual divorce and generally halve the requisite time in the event of contentious divorce.

The new law also did away with Article 1784 under which applications for divorce based on deterioration of the spouse's mental faculties should be rejected if the divorce was likely to substantially aggravate the spouse's mental condition.

E

The housing allowance introduced as a social welfare allowance under Law 46/85 was granted to 6 991 tenants in 1997.

The following noteworthy changes to housing programmes already mentioned in the previous reports occurred in 1997 and 1998:

1. Special re-housing programme in the Lisbon and Oporto metropolitan areas (Legislative Decrees 163/93 and 76/96).

The following table shows the contracts concluded in 1997 and 1998 for the construction or purchase of a dwelling.

TABLE 16.5

Non-repayable aid for housing

	1997		1998	
	Number of dwellings	Total Investment*	Number of dwellings	Total Investment*
Lisbon metropolitan area	4 239	36.825	3 723	32.982
Oporto metropolitan area	806	7.482	990	8.482
TOTAL	5 045	44.307	4 713	41.464

*Billions of PTE

In 1997, the State paid out PTE 18.8 billion in non-repayable aid.

In 1998 the state's contribution was PTE 22.1 billion, an increase of 18% over the previous year.

These figures take the participation of the PER/family into account (Legislative Decree 79/96).

This new programme, introduced in 1996, helped to re-house 223 families in 1997 and 512 in 1998, the families concerned being allowed to choose the location of their dwelling, which naturally contributes to better social integration.

2. Re-housing Programme (Legislative Decree 226/87)

The following table shows the number of contracts concluded under this programme and the sums invested.

TABLE 16.6

	Number of dwellings	Total investment*
1997	1 100	8.2
1998	1 060	8.4

*Billions of PTE

The non-repayable aid provided by the state amounted to approximately PTE 8.2 billion in 1997 and 1998.

3. Low-cost housing construction programme

386 dwellings in this programme were completed in 1998, under construction contracts concluded previously, in keeping with the legislation in force since 1993.

4. Development contracts for housing

Loans underwritten in respect of this scheme amounted to PTE 22.5 billion in 1997 and PTE 18.4 billion in 1998, for 3 097 and 2 406 dwellings respectively.

5. Subsidised loan schemes

The interest subsidies paid out by the state under this scheme amounted to:

TABLE 16.7

	1997	1998
Interest subsidies for cost-controlled housing construction	5.0*	3.9*
Interest subsidies for the purchase of dwellings	49.9*	69.5*

*Billions of PTE

6. Co-operative housing sector aid programme

Loans advanced for the co-operative sector amounted to PTE 7.4 billion in 1997 and PTE 7.3 billion in 1998, for the construction of 859 dwellings in 1997 and 770 in 1998.

7. Special scheme for financial assistance for renovation of rented housing

In 1996 two programmes were introduced to boost the results already achieved by the RECRIA programme, with a view to improving living conditions in old buildings and enhancing the image of older city neighbourhoods.

The REHABITA programme introduced by Legislative Decree 105/96 of 31 July 1996, concerns critical urban rehabilitation and transformation zones, with larger non-repayable subsidies than under the RECRIA programme and loans at subsidised interest rates for the remainder of the rates, for conservation and enhancement work carried out by municipalities at their own initiative or in lieu of owners or tenants.

The second new programme, called RECRIPH, introduced by Legislative Decree 106/96 of 31 July 1996, introduced special financing facilities for conservation and enhancement work carried out by joint owners of old buildings.

The following table shows the number of projects and the sums involved in these three programmes.

TABLE 16.8

		Total Investment*	Number of projects	Non-repayable State aid
RECRIA	1997	8.274	3 811	3.155
	1998	4.506	1 384	1.659
REHABITA	1997	1.795	465	0.889
	1998	2.794	599	1.133
RECRIPH	1997	0.140	162	0.028
	1998	0.231	309	0.051
Assistance with building renovation	1997	10.209	4 438	4.072
	1998	7.531	2 292	2.843

*Billions of PTE

8. Operational intervention programme: urban renovation
The following table shows the sums invested in this programme.

TABLE 16.9

	1997		1998	
	Investment approved*	Investment made*	Investment approved*	Investment made*
Measure 1– Renovation of shanty towns	9.653	6.256	9.196	5.822
Measure 2– Rehabilitation of run-down areas	5.749	3.273	4.469	3.661
TOTAL	15.402	9.529	13.665	9.483

*Billions of PTE.

Investments approved in 1997 and 1998 may cover several years, but the work must be completely finished by December 2001.

F

The findings of the family budget survey conducted by the National Statistical Institute for the years 1994 and 1995 are now available, so it is now possible to update the information given in the first report, based on the survey carried out in 1989/90.

In this survey the socio-economic category is defined on the basis of employment status, occupation, rank, branch of activity and public or private sector.

In the 1989/90 survey the public/private sector variable was not taken into account. Accordingly to make the findings of the two surveys comparable, the "socio-economic category of the representative of the family" was redefined taking the "public sector" in the restricted "public administration" sense, and the "private sector" to mean the "entrepreneurial sector".

In the following analysis the socio-economic category has been defined only for the "representative of the family", and it should be borne in mind that the choice of the family "representative" was left entirely to the family themselves and is not based on any pre-established or standard criterion.

Tables 10 and 11 show the breakdown of families by type of family unit and by socio-economic category of the representative of the family.

TABLE 16.10

Breakdown of families by type of family unit

Type of family unit	I.O.F. 89/90*	I.O.F. 94/95*
	%	%
Single person under 30 years old	0.2	0.24
Single person between 30 and 65 years old	3.7	3.81
Single person 65 years old or more	7.6	9.98
Couple with no children, both under 65	10.3	7.64
Couple with no children, one over 65	12.2	14.58
Couple with one child age 16 or under	10.8	8.14
Couple with two children age 16 or under	11.0	6.58
Couple with three or more children age 16 or under	3.3	1.81
Monoparental ayant des enfants de <= 16 ans	2.6	1.34
Couple ou monoparental ayant des enfants de >16 ans à <= 21 ans	2.1	4.80
Autre type de cellule familiale	36.2	41.08

Source: INE

*IOF – Enquête sur les budgets familiaux

The table reveals a substantial drop between the two surveys' in the number of "families without children".

In 1989/90 27.7% of family units had no children, compared to 17.9% in 1994/95, a drop of 9.8%.

The number of family units made up of a single person, on the other hand, increased by 2.5% from 11.5% in 1989/90 to 14% in 1994/95.

Furthermore, the number of family units with single dependant children from 16 to 21 years of age increased by 2.7%, which can be explained by the fact that young people are staying at school longer and longer and leaving the family later.

TABLE 16.11

Percentage breakdown of families according to the socio-economic category of the family representative (1994-95) and comparison with 1989-90

Socio-economic category of the representative of the family	1989/90	1994/95
	%	%
<i>- Private sector</i>	32.8	31.7
Salaried employee – blue collar	19.0	16.5
Other salaried employees	13.8	15.2
<i>- Public sector</i>	6.8	4.5
Salaried employee – blue collar	1.2	1.0
Other salaried employees	5.6	3.5
<i>- Other active categories</i>	23.3	23.7
Self-employed (except farming)	12.3	12.0
Entrepreneurs and farmers	9.9	8.4
Unemployed	1.1	3.3
<i>- Inactive</i>	37.3	38.6
Retired	33.1	34.1
Pupils/students and NS conscripts	0.1	0.1
Persons who look after the home	2.7	2.8
Permanent incapacity for work	0.7	1.6
Others	0.7	1.5

Source: INE. Family budget survey 1994-95

The following tables compare families' mean annual expenditure and income according to the 1994/95 Family Budget Survey with the figures from the 1989/90 survey.

TABLE 16.12

Breakdown of mean annual expenditure
Comparison between 1989-90 and 1994-95

	I.O.F. 89/90		I.O.F. 94/95	
	95 Prices*	%	95 Prices	%
1. Food, beverage and tobacco	612 851	29.10	553 376	23.86
2. Clothes and footwear	194 292	9.23	145 519	6.27
3. Housing, heating and lighting	301 133	14.30	477 551	20.59
4. Domestic furnishings and appliances	140 648	6.68	160 872	6.94
5. Health and medical care	73 137	3.47	106 886	4.61
6. Transport and communication	357 580	16.98	439 321	18.94
7. Leisure, entertainment, education and culture	77 291	3.67	96 950	4.18
8. Other goods and services	281 023	13.34	286 029	12.33
9. Other expenditure	68 109	3.23	52 886	2.28

Source: INE

*PTE

TABLE 16.13

Breakdown of mean annual income
Comparison 1989/90 and 1994/95

	I.O.F. 89/90		I.O.F. 94/95	
	95* Prices	%	95 Prices	%
Ordinary monetary revenues				
Employed worker	961 561	47.0	1 159 018	45.8
Self-employed worker	280 766	13.7	312 309	12.3
Revenue from property	69 846	3.4	60 148	2.4
Periodic transfers	308 724	15.1	457 174	18.1
Extraordinary monetary revenue				
Severance pay	3 563	0.2	10 779	0.4
Non-periodic transfers	68 161	3.3	74 689	3.0
Revenues in kind				
Self-consumption	72 671	3.6	50 430	2.0
Self-supply	23 255	1.1	19 386	0.8
Self-rental	116 694	5.7	271 144	10.7
Wages in kind	114 142	5.6	20 859	0.8
Non-monetary transfers	24 395	1.2	93 200	3.7
TOTAL	2 043 778	100.0	2 529 136	100.0

Source: INE

*PTE

Replies to the questions raised by the Committee of Independent Experts

The Committee wished to be informed of the practical measures adopted by the Family Council.

Cf. reply to points C and D, above.

The Committee asked if there was still discrimination between Portuguese nationals and nationals of the contracting parties in connection with housing allowances.

Proposals to amend the legislation on housing is currently being presented to the government, one of the proposed amendments being to eliminate the discrimination between Portuguese nationals and those of other Contracting Parties in respect of entitlement to the housing allowance (Legislative Decree No 162/92, of 3 august 1992), and another concerning access to social housing allocated by the municipal authorities (Regulation No 50/77), although the restrictive measures implicit in this regulation were not applied in practice, as stated in previous reports.

ARTICLE 19

THE RIGHT OF MIGRANT WORKERS AND THEIR FAMILIES TO PROTECTION AND ASSISTANCE

Paragraph 1

Updating of the information provided in the third report

A

Following the publication of Act No. 17/96 of 24 May 1996, the procedure for special regularisation of the situation of nationals of countries whose official language is Portuguese and of other foreign nationals has been implemented. Its purpose is to legalise the situation of foreign nationals unlawfully present in the country and to create favourable conditions for their social and economic integration.

A National Committee for Special Regularisation has been set up for this purpose. The committee comprises representatives of a number of bodies concerned with the interests of and problems facing immigrants, in particular the High Commission for Immigration and Ethnic Minorities, embassies, trade union confederations and immigrants' associations.

Several meetings have been held to make foreign nationals aware of the need to regularise their situation and inform them of the regularisation procedure, drawing particular attention to the forms to be completed, the departments to which to apply for residence permits and the rights secured to foreign nationals.

As regards immigrants, it should be pointed out that in order to guarantee the existence of mechanisms enabling immigrants to be consulted on, and take part in, the work done to further their social integration and prevent exclusion, Legislative Decree No. 39/98 of 27 February 1998 set up an Advisory Council on Immigration Affairs which is attached to the Presidency of the Council of Ministers and under the authority of the High Commissioner for Immigration and Ethnic Minorities.

The members of this advisory council are the High Commissioner for Immigration and Ethnic Minorities and representatives of immigrants' associations, employers' organisations and trade unions, social solidarity institutions working with immigrants and a government representative from the emigration and Portuguese communities sector.

The Advisory Council on Immigration Affairs:

- participates in drafting legislation on immigrants' rights;
- assists in implementing social integration policies designed to eliminate discrimination and promote equality;
- helps to define and implement measures and action to improve immigrants' living conditions;
- helps to defend immigrants' rights.

Regarding emigrants, note that in April 1997, Portuguese nationals living abroad elected the Council of Portuguese Communities which had been instituted by Act No. 48/96 of 4 September 1996. This council acts both as a consultative body on policies on emigration and Portuguese communities abroad, and as a representative body for non-

governmental organisations of Portuguese nationals abroad. Its main tasks include defending the rights of Portuguese workers abroad and those of their families, helping to get measures adopted to improve these workers' living, working and residential conditions, and co-operating with Portuguese and foreign institutions to promote cultural, social and economic measures aimed at integrating Portuguese workers abroad.

B

Act No. 65/98 of 2 September 1998 amended the Criminal Code and brought fraud relating to work and employment within the scope of Article 222.

This article makes fraud relating to work or employment of immigrants or emigrants punishable by up to five years' imprisonment and a fine of up to 600 days. Under this article, any person who causes pecuniary damage to another by means of persuasion or deceitful promises of work or employment abroad, for the purpose of unlawful self-enrichment or enrichment of a third party, and any person who causes pecuniary damage to a another person living abroad, by means of persuasion or deceitful promises of work or employment in Portugal, for the purpose of unlawful self-enrichment or enrichment of a third party, is liable to these penalties.

In accordance with Article 218 of the Criminal Code (aggravated fraud), the penalty is two to eight years' imprisonment when:

- the pecuniary damage caused involves a particularly large amount;
- the person concerned makes a living out of fraudulent practice, or
- the injured party is in straitened circumstances.

On the same subject, attention is drawn to Article 134 of Legislative Decree No. 44/98 of 8 August 1998 on aiding illegal immigration, which provides for a prison sentence of up to three years for any person who, in any way whatsoever, aids or abets any foreigner to enter the national territory illegally. When that person does so for the purpose of self-enrichment, the sentence is from one to four years' imprisonment. The attempted offence incurs the same penalties.

Article 135 of this legislative decree, concerning associations set up to assist illegal immigration, provides for a prison sentence of between one and five years for any person who founds a group, association or organisation with the aim of committing the offence provided for in Article 134 as described above.

Any person belonging to such a group, association or organisation is liable to an aggravated sentence which, in the case of the ringleaders, can be up to eight years' imprisonment.

Replies to the questions asked by the Committee of Independent Experts

The Committee of Independent Experts asked for detailed information on the subject of misleading propaganda and asked whether the High Commissioner for Immigration and Ethnic Minorities might have a role to play in this regard.

As already noted in section B above, the notion of *misleading propaganda* is covered by Article 222 of the Criminal Code on fraudulent practices in the field of work and employment.

Furthermore, in the context of the responsibilities conferred on him by law, and which were described in the third report, the High Commissioner for Immigration and Ethnic Minorities' promotes consultation and dialogue with bodies representing immigrants in Portugal and ethnic minorities, and looks into the problems of integrating those persons in co-operation with trade union and employers' organisations, social solidarity institutions and other bodies active in this field.

As regards misleading propaganda, the High Commission's role is to disseminate information concerning immigrants' rights, in order to prevent discriminatory situations, and to promote measures to assist immigrants and ethnic minorities.

In the performance of its duties, the High Commission, in conjunction with the government departments responsible for entry, residence and departure of foreign nationals, can propose measures aimed at preventing the illegal recruitment of foreign labour and alert the relevant departments, in particular the Aliens and Frontiers Department inspectors and labour inspectors, to any infringements of the legislation on the employment of foreign citizens on the national territory, including fraudulent practices in the field of work and employment.

Although it is not the High Commission's role to take part in criminal proceedings concerning the fraudulent practices in question, it does inform the victims of their rights and the legal means available to them for their defence, and may lodge a complaint with the *Provedor de Justiça* (the ombudsman) for any action or omission on the part of the authorities which is prejudicial to immigrant workers' interests.

As far as the illegal recruitment of Portuguese workers is concerned, the General Directorate for Consular Affairs and Portuguese Communities is continuing its campaigns to inform all nationals wishing to work abroad of their rights.

Various bilateral meetings have been held with the corresponding authorities in the countries concerned in order to resolve cases of illegal recruitment of Portuguese workers.

Paragraph 2

Updating of the information provided in the third report

A and B

Through its social welfare and health services, *La Santa Casa da Misericórdia* in Lisbon (SCML) helps all the region's inhabitants, including foreign nationals, who find themselves in difficult circumstances or socially at risk.

Its main activities are:

- social welfare assistance through the city council and the Emergency Welfare Department, where psycho-social, financial and other kinds of help are available;
- services through the network of social and welfare centres directly run by the SCML: crèches, kindergartens, community centres, day centres, home-help services, youth and children's hostels, elderly persons' homes and community social centres.

In the health field, the SCML provides medical services in its health units, where consultations, treatment, medicines and auxiliary diagnostic facilities are available free of charge.

Paragraph 3

Updating of the information provided in the third report

During the reference period, a protocol was signed between the Union of *Misericórdias* (Almshouses) and the State Secretariat for Portuguese Communities for the setting-up of social solidarity structures for expatriate Portuguese communities by the establishment of *Misericórdias* abroad. This protocol supplements the range of schemes developed by the Union of *Misericórdias* to help the most underprivileged people in Portugal, whether Portuguese or foreign nationals, and social solidarity schemes to help the most underprivileged Portuguese living abroad.

Paragraph 4

Updating of the information provided in the third report

A

Act No. 20/98 of 12 May 1998 (Appendix XIX-1) laid down regulations concerning the employment of foreign nationals from outside the EU in Portugal and repealed Legislative Decree No. 97/77 of 17 March 1977 in its entirety as well as Section VI, Chapter II of Legislative Decree No. 491/85 of 26 November 1985 on employment offences.

Article 2 of the Act sets out the regulations governing the principle of equal rights for foreign nationals domiciled or resident temporarily in Portugal, as provided for in Article 15 of the Constitution of the Portuguese Republic, in the context of their occupational activity and with regard to the same working conditions, as set out in the employment regulations laid down by law or collective agreements, as Portuguese workers.

The Act also provides that employment contracts drawn up between foreign nationals and employers having their business in Portugal must comply with a number of specific formalities. The contracts must be in written form, be signed by both parties and include the following information:

- the identities of the parties, the employer's sector of activity and a reference to the employee's long or short-term residence permit;
- the place of work and the employer's head office or private address;
- the occupational category or the tasks to be performed;
- the amount of wages and the frequency and form of payment;
- the normal number of working hours per day and per week;
- the date of signature of the contract and the date on which it takes effect.

The contract must be drawn up in triplicate and a document must be attached certifying that the employee is lawfully present and that his situation complies with the legal provisions on entry into the country and long or short-term residence.

Fixed-term contracts must also clearly state the facts and circumstances which prove that they comply with the legislation in force.

Before a foreign worker begins work, the employer must lodge a copy of the employment contract with the competent delegation of the Institute for the Development and Inspection of Conditions of Employment (IDICT) and inform it of the dates on which the contract begins and ends.

According to the Act, infringements of the rules governing the employment of foreign nationals constitute offences punishable by fines ranging from:

- PTE 100 000 to PTE 500 000 per employee concerned for offences under Article 3 (written contracts) or Article 4, paragraph 1 (the requirement to lodge contracts before work begins);
- PTE 30 000 to PTE 150 000 per employee concerned for offences under Article 4, paragraph 2 (giving a copy of the contract to the employee), Article 4, paragraph 4 (statement that a contract has terminated), Article 5, paragraph 1 (notification that a contract has been drawn up) and Article 6 (inclusion on the company payroll).

Failure to respect these provisions may, depending on the seriousness of the offence, incur the additional penalty of deprivation of the right to take part in tender procedures and to receive subsidies or other benefits granted by the authorities or financial aid from Community funds.

If the present system is compared with the previous legislation, it can be seen that foreign workers employed in Portugal now enjoy greater protection and that the conditions have been simplified. For example:

- the rule that 90% of employees in firms employing more than five people must be Portuguese has been abolished (cf. Legislative Decree No. 97/77 of 17 March 1977, now repealed);
- the legal formalities have been simplified, since the obligation on companies to register contracts, which involved payment of a tax, has been replaced by simpler, cost-free formalities, notably lodging contracts in advance or simple written notification that a contract has been drawn up;
- the rules on penalties have been changed, the level of fines has been raised and an additional penalty has been introduced for the most serious cases.

B

Cf. the replies below to the questions asked by the Committee of Independent Experts.

C

National legislation guarantees non-discrimination between foreign and Portuguese workers as regards conditions of employment.

Article 3 of Act No. 20/98 states that any employment contract entered into with a foreign worker must be in writing and state the principal conditions of employment. In accordance with Article 4, employers must lodge a copy of any contract drawn up for a foreign worker with the appropriate IDICT delegation or sub-delegation in advance.

If, after thirty days, the employer has not received a reply informing him that the contract has been approved or refused by the IDICT, the contract is tacitly deemed to have been approved.

The obligation to lodge an employment contract before it takes effect is a legal formality aimed at enabling the IDICT to check, as a preventive measure, that clauses in contracts drawn up for foreign nationals comply with the legal rules guaranteeing these workers the same rights as Portuguese workers with respect to conditions of employment.

If the employment contract meets the legal requirements but discrimination against the foreign worker exists *de facto*, the worker concerned or any another person acting on his behalf, including workers' or trade union representatives, may lodge a complaint with the labour inspectorate. The inspectorate will then take action as the supervisory authority and make an official report on the alleged offence, which may lead to a fine being imposed.

A foreign worker may also bring proceedings against an employer who fails to respect a fundamental right guaranteed by the constitution or ordinary legislation.

The processing of statistical data on infringements of the regulations on foreign workers has only been possible since the beginning of 1998.

In 1998, 93 official reports were drawn up on infringements of the legislation on foreign workers employed in Portugal.

Replies to the questions asked by the Committee of Independent Experts

The Committee of Independent Experts, considering that the situation regarding the residence requirements for the allocation of subsidised housing and the rule that at least 90% of employees in companies employing more than five people must be Portuguese nationals had not changed, renewed its negative conclusion on this provision of the Charter.

As regards the allocation by municipalities of social housing to foreign nationals under Regulatory Decree No. 50/77, it should be pointed out that proposals to modify the current law on housing, among them that the provision in question should be repealed, are to be debated by the Council of Ministers in the near future.

Furthermore, as stated in section A, all the provisions of Legislative Decree No. 97/77, which included the rule that 90% of employees in companies employing more than five people should be Portuguese nationals, were repealed by Act No. 20/98 of 12 May 1998.

The Committee of Independent Experts asked to be informed of the level of fines generally imposed for not respecting the principles of non-discrimination in the employment conditions of foreign workers and how non-national workers who complain of discriminatory treatment are protected against retaliatory action on the part of employers.

The answers to these questions are to be found in the updated information given in section A.

Paragraph 5

Updating of the information provided in the third report

There are no changes to report.

Paragraph 6

Updating of the information given in the third report

A and B

Legislative Decree No. 244/98 of 8 August 1998 (Appendix XIX-2) regulates the conditions under which foreigners may enter, reside in, leave or be deported from Portugal. This new law repealed Legislative Decree No. 59/93 of 3 March 1993 and those parts of Regulatory Decree No. 43/93 of 15 December 1993 which were incompatible with the new legislation. It should not be long before the regulatory decree for this legislative decree is adopted.

Articles 56 and 57 of Legislative Decree No. 277/98 recognise the right of members of a foreign resident's family who are living with him or previously lived with him in another country, or are dependent on him, to join him in Portugal.

The following members are regarded as members of the resident's family for the purposes of the right to family reunification:

- the resident's spouse;
- the couple's, or one of the spouse's, dependent children under 21 years of age or suffering from a disability;
- adopted children;
- the dependent parents or grandparents of the resident or his or her spouse;
- the resident's brothers or sisters on condition that they are minors and dependent on him.

Foreign residents wishing to exercise the right to family reunification must submit an application to the Aliens and Frontiers Department and show that they have adequate housing and sufficient financial means for their family's needs.

As regards housing, it should also be pointed out that several building/renovation programmes already described in reply to the questions on Article 16 are now under way.

C

The new legislation, like the previous legislation, does not permit a member of a foreign resident's family who fulfils the conditions for family reunification to be refused entry into Portugal by reason of that person's physical or mental condition.

Attention should also be drawn to the publication of Act No. 15/98 of 26 March 1998, which establishes new legal rules on asylum and refugees and strengthens the guarantees inherent in the fundamental principles applicable in this matter.

This Act empowers the Office of the United Nations High Commissioner for Refugees and the Portuguese Council for Refugees to give help and advice to refugees and empowers the National Commissioner for Refugees to examine requests for asylum or refugee status through an independent and impartial body, usually a judge.

As regards family reunification, the benefits of the right of asylum are extended to the spouse and to under-age, adopted or disabled children if the applicant so requests. These family members may be granted a special residence permit without having to show that they fulfil the conditions required of foreigners under the general regime to obtain the right of residence in Portugal.

Paragraph 7

Updating of the information provided in the third report

There are no changes to report.

Replies to the questions asked by the Committee of Independent Experts

*The Committee of Independent Experts considered that national legislation did not comply with this provision of the Charter because only foreigners who have lived in Portugal for more than one year are eligible for legal aid and because the payment of a *cautio judicatum solvi* is required of nationals of other states parties to the Charter with whom Portugal has not concluded reciprocal agreements.*

Regarding the condition that nationals of other contracting parties (and other foreign nationals) must have been resident in Portugal for one year in order to benefit from legal aid, it is pointed out that the Ministry of Justice has studied the situation, and the solution proposed is that the government should present a request for legislative authorisation to the Assembly of the Republic in order to take the appropriate legislative measure. This is expected to happen during the next legislative period, making it possible to bring the relevant part of the legislation into line with the provisions of the Charter.

There is no mention in the Portuguese legal system of an obligation to pay a *cautio judicatum solvi*; foreign nationals and Portuguese citizens are treated on a wholly equal basis.

The negative conclusion of the Committee of Independent Experts is thus the result of an *a contrario* interpretation of Article 17 of the Hague Convention on Civil Procedure and is therefore unjustified.

Paragraph 8

Updating of the information provided in the third report

A and B

Legislative Decree No. 244/98 of 8 August 1998 introduced new rules governing the conditions under which foreigners may enter, reside in, leave and be deported from Portugal.

The rules applying to EU nationals have remained unchanged.

In accordance with the legislative decree, both temporary and permanent residence permits may be issued. Temporary residence permits are valid for two years from the date of issue and may be renewed for subsequent two-year periods. Permanent residence permits, as the name suggests, are issued for unlimited periods, but the document itself must be renewed every five years.

Articles 99 *et seq.* of the legislative decree govern the expulsion of foreign nationals from Portugal and list the possible reasons for such expulsion as follows:

- illegal entry or residence in Portugal;
- risk to national security, law and order or accepted moral standards;
- presence or activities in the country which pose a threat to the interests or dignity of the Portuguese state and its citizens;
- wrongful interference with the exercise of political participation rights reserved for Portuguese citizens;
- perpetration of offences which, had they been known to the Portuguese authorities, would have justified refusal of permission to enter the country.

The regime applied to refugees is the one most favourable to them either in legislation or in the international agreements to which Portugal is signatory.

Expulsion may result from an ancillary penalty or from a separate measure ordered by a judicial authority or a competent administrative authority.

In cases where the nature of an ancillary penalty is reviewed, the foreign national has entered or is residing in Portugal legally, or holds a valid residence permit or is seeking or has been granted asylum, the decision on expulsion is taken by the judicial authorities.

The ancillary penalty of expulsion may also be applied when sentence has been passed on a foreign national for an infringement of the Criminal Code in the following cases:

- the foreign national concerned is not a resident and has been sentenced to more than six months' imprisonment;
- the foreign national has been resident in the country for less than four years and has been sentenced to more than one year's imprisonment for a criminal offence;

- the foreign national has been resident in the country for more than four years and less than ten years and has been sentenced to more than three years' imprisonment.

The ancillary penalty of expulsion may also be applied to a foreign national who has been resident in Portugal for more than ten years if his conduct constitutes a sufficiently serious threat to law and order or national security.

Expulsion as a principal penalty may be ordered by the competent criminal courts and district courts of first instance.

The procedure leading to application of the principal penalty of expulsion is initiated at the request of the Aliens and Frontiers Department, which request is made whenever an offence which could constitute grounds for expulsion comes to the department's notice.

The request to initiate the expulsion procedure must identify the foreign national, state what evidence exists for the request and indicate whether or not the person concerned is a resident.

Once the request has been received by the court, the judge fixes a date for the hearing, which must be held within five days, and notifies the person concerned, the witnesses and the representative of the Aliens and Frontiers Department.

The person concerned must be present at the hearing and the notification sent to him must make it clear that he has the right to contest the facts at the hearing, call witnesses and produce any evidence at his disposal.

Judgment may be postponed at the request of the person concerned in order to prepare his defence, or if he does not attend the hearing.

When judgment has been given, the decision to expel the foreign national must clearly state the grounds for that decision, the expellee's legal obligations, the fact that he is prohibited from entering Portuguese territory and the duration of that prohibition.

Foreign nationals who have entered or are residing in Portugal illegally may be expelled by the administrative authority. Any foreigner illegally present in the country may be arrested by the police and handed over to the Aliens and Frontiers Department together with the police report explaining the situation. This report must be submitted to a judge within forty-eight hours in order for detention to be confirmed and the measures required by law to be taken.

If the judge decides that the person concerned should be held on remand, he or she informs the Aliens and Frontiers Department so that it can investigate the case with a view to expulsion. If detention on remand is not ordered, it is for this department to initiate proceedings and summon the foreigner. The person concerned is always interviewed in the course of the investigation.

Once the investigation has been completed, a report is drawn up and submitted to the competent authority, usually the Director of the Aliens and Frontiers Department, which will then decide on the matter. The High Commissioner for Immigration and Ethnic Minorities and the foreigner concerned are informed of the expulsion decision. The decision must mention the factors listed above, constituting grounds for the judicial expulsion order, and mention the right of appeal and the period allowed for it.

Any decision to expel a foreign national may be appealed against, whether that decision has been taken by a judicial or an administrative authority.

In the case of a judicial decision, the appeal must be lodged with a court of appeal. In the case of an administrative decision, the appeal must be lodged with the Administrative Court of Lisbon.

In both cases, expulsion is stayed pending appeal. The appellant may however ask the court to find temporary accommodation for him in a centre or to allow him to report regularly to the Aliens and Frontiers Department or the police, pending the outcome of the appeal.

Paragraph 9

Updating of the information provided in the third report

There are no changes to report.

Paragraph 10

Updating of the information provided in the third report

See the information in respect of the previous paragraphs.