



Right to Education

National Report – Portugal

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About ETHOS

ETHOS - Towards a European Theory Of Justice and fairness, is a European Commission Horizon 2020 research project that seeks to provide building blocks for the development of an empirically informed European theory of justice and fairness. The project seeks to do so by:

- a) refining and deepening the knowledge on the European foundations of justice - both historically based and contemporary envisaged;
- b) enhancing awareness of mechanisms that impede the realisation of justice ideals as they are lived in contemporary Europe;
- c) advancing the understanding of the process of drawing and re-drawing of the boundaries of justice (fault lines); and
- d) providing guidance to politicians, policy makers, advocacies and other stakeholders on how to design and implement policies to reserve inequalities and prevent injustice.

ETHOS does not merely understand justice as an abstract moral ideal, that is universal and worth striving for. Rather, it is understood as a re-enacted and re-constructed "lived" experience. The experience is embedded in firm legal, political, moral, social, economic and cultural institutions that are geared to giving members of society what is their due.

In the ETHOS project, justice is studied as an interdependent relationship between the ideal of justice, and its real manifestation – as set in the highly complex institutions of modern European societies. The relationship between the normative and practical, the formal and informal, is acknowledged and critically assessed through a multi-disciplinary approach.

To enhance the formulation of an empirically-based theory of justice and fairness, ETHOS will explore the normative (ideal) underpinnings of justice and its practical realisation in four heuristically defined domains of justice - social justice, economic justice, political justice, and civil and symbolic justice. These domains are revealed in several spheres:

- a) philosophical and political tradition,
- b) legal framework,
- c) daily (bureaucratic) practice,
- d) current public debates, and
- e) the accounts of the vulnerable populations in six European countries (the Netherlands, the UK, Hungary, Austria, Portugal and Turkey).

The question of drawing boundaries and redrawing the fault-lines of justice permeates the entire investigation.

Alongside Utrecht University in the Netherlands who coordinate the project, five further research institutions cooperate. They are based in Austria (European Training and Research Centre for Human Rights and Democracy), Hungary (Central European University), Portugal (Centre for Social Studies), Turkey (Boğaziçi University), and the UK (University of Bristol). The research project lasts from January 2017 to December 2019.

EXECUTIVE SUMMARY

This deliverable is part of the Work Package 3 “*Law as or against justice for all*”. The objective of WP3 is to investigate theoretically as well as empirically whether and how different conceptions of justice – as redistribution, recognition and representation – are institutionalised in overlapping European human rights regimes. In the case of this specific deliverable, the goal is to understand the legal rules and practices related to the right to education. The focus is on the rules regarding access to education by persons living with disabilities and ethnic and religious minorities.

The reports start with an analysis of the Portuguese legal framework, looking not only to the State obligation to grant the access to education but also the norms about eligibility, priority criteria’s and inclusive education. Special rules targeting persons with disabilities and ethnic and religious minorities are also analysed. The next part is an analysis of the impact of international and European law in the national rules. Lastly, the report tries to relate the concept of ‘justice as recognition’ and the ‘right to education’.

Portuguese legal framework protects access to education, being mandatory for all citizens under 18 years old. Regarding children with disabilities, the choice to enrol the child in special schools or regular schools it’s of the parent. Unfortunately, it’s rare that regular schools have all the conditions to properly receive a child with a disability. Problems both in accessibility, with buildings being inappropriate, and in the lack of human resources to accompany the children with special needs and to adapt pedagogical resources to their necessity. Similar to the research made for D3.4 (right to vote) and D3.5. (right to housing) we couldn’t find cases in court challenging the norms about education in Portugal. Yet, the Human Right Council, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC), the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of Persons with Disabilities, presented in the last years analysing the educational situation of Roma children, afrodescendant children and children with disabilities. All those organizations declared their concerns with the difficulties faced by those children and the dropout’s levels found in those groups.

Thinking the right to education as ‘right to recognition’ may be a difficult analogy to make. The cognitive functions developed through education are of major importance for children to understand who he is in the world and who are the others. For vulnerable groups, being included or excluded regular schooling defines if they are recognized or misrecognized in the society. On another hand, *if* recognized, those belonging to vulnerable groups may need special adjustment in the way education is provided. Recognizing the difference, in this case, is particularly important to achieve justice. In the case of Portugal, the problems in the access to education seems to be in the ‘law in practice’ and not in the ‘law in books’.

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LIST OF ABBREVIATIONS

ACIDI – Alto Comissariado para a Imigração e Diálogo Intercultural [High Commissioner for the Immigration and Intercultural Dialogue]

CERD – Committee on the Elimination of Racial Discrimination

CESCR – Committee on Economic, Social and Cultural Rights

CRC – Committee on the Rights of the Child

CRPD – Committee on the Rights of Persons with Disabilities

ECRI – European Commission against Racism and Intolerance

ECSR – European Committee of Social Rights

ECtHR – European Court of Human Rights

EU – European Union

SEN – Special Education Need

UPR – Universal Periodic Review

INTRODUCTION

The right to education is protected by several international instruments in the international law framework¹. One of the first international documents to address the right to education is the Universal Declaration of Human Rights (1948) that states that “Everyone has the right to education” (Article 26) and one of the latest is the United Nations Declaration on Human Rights Education and Training (2011) that provides that “Everyone has the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights and training” (Article 1). Between those two documents, there are many conventions protecting and addressing rights specific to certain vulnerable groups (i.e. women, ethnic minorities, persons with disabilities).

Education can be considered a means to achieve lasting peace and sustainable development. Also, it empowers individuals, lifts marginalised groups out of poverty, it’s an indispensable means of realising other rights and contributes to the full development of the human personality². State parties to conventions and treaties surrounding the right to education have the obligation to respect, protect and fulfil this right.

Right to Education in the Portuguese Context

The present report intends to review how the right to education in Portugal is guaranteed to persons living with disabilities, and to ethnic and linguistic minorities. The right to education can be considered as an example of recognitive justice, one of the three parts of the tripartite conceptualization of justice presented by Nancy Fraser³. Justice as recognition and the right to education may be the association more difficult to make, in comparison with the other rights analysed in the previous report (3.4. for the right to vote and justice as representation and 3.5. for the right to housing and justice as redistribution). Recognitive justice is mainly social, in the sense that it is only possible if members of a given society *recognize* each other. In this sense, education have a great importance. As explained in D3.3.⁴ at school “interpersonal recognition by peers is a necessary step in the development of children’s cognitive function, and this is of crucial normative significance”. In school, through education and the sociability associated with it, children learn more than only what is defined in the curriculum. They also learn the social and cultural aspects of society and also how to respect difference. When members of a vulnerable group (in the case of our research, persons with disabilities and ethnic minorities) are separated from the majority group they are disregarded and seen as ‘different’ from the others, which increase prejudice towards those who are aside. Also, absence of accommodation that enable the enjoyment of the right to education by vulnerable groups can be identified as a case of recognitive injustices, since it fails to recognize to accommodate the differences between people.⁵

¹http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_International_Instruments_Right_to_Education_2014.pdf

² <http://www.right-to-education.org/page/understanding-education-right>

³ Nancy Fraser and Axel Honneth, *Redistribution or Recognition? : A Political-Philosophical Exchange* (Verso 2003) 374–382.

⁴ Marie-Pierre Granger and others, ‘Justice in Europe Institutionalized : Legal Complexity and the Rights of Vulnerable Persons’ (2018) 22.

⁵ *ibid* 24.

The right to education is guaranteed in the Portuguese Constitution in Article 74. It is the duty of the State to ensure universal, compulsory and free basic education (Article 74 (2)(a)); promote and support disabled citizens' access to education and support special education when necessary (Article 74 (2)(g)). Following the Constitution, legislation was passed, and many policies were created, being the most important the Base Law of the Educational System, Law nº46/86. Under this law, all Portuguese citizens have the right to education and culture and, all have the right to freedom of choice. The law provides principles to be followed: a) the State cannot establish any philosophical, aesthetic, political, ideological or religious guidelines in respect to public education and culture; b) public schooling will not be confessional; c) private and cooperative schools can be created.

Regarding the right to education for persons living with disabilities, prior to 1979 there were few public solutions for the education of disabled children, being most of them educated by the private and cooperative sectors. However, both Law-Decree 538/79 and Law-Decree 301/84 contained an article excusing disabled children from mandatory education.⁶ This only changed in 1990 with the publication of Law-Decree nº35/90, that enforced compulsory education for all children, including children with disabilities, and required their integration into regular schools. The integration was made official by Law-Decree 319/91. Nonetheless, special educational schools were maintained by the private and the cooperative sector, being the parent's decision where to enrol their children (i.e. in regular or special schools). After 1997, there was a tentative of creating an inclusive system of education for all children, being the responsibility of the school and internal support service to address the individual needs of each student. Unfortunately, the laws established in the 1990's did not count with the structural problems in the Portuguese Educational System, added to the lack of financial and professional resources. Moreover, the financial crisis of 2008 and the austerity measures imposed on Portugal led to cuts in human resources resulting in the reduction in the of services provided to students.

Right to Education and non-recognition of ethnic minorities

When addressing the right to education for ethnic and linguistic minorities, as is the case with the right to housing, the non-recognition of ethnic minorities prevents the creation of laws and programs directly addressed towards those groups – even if the Roma are recognized as the only national minority. The reason for that was the interpretation that the creation of such laws and policies would violate the principle of equality enshrined in Article 13 of the Portuguese Constitution. Article 13 provides that no one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation. Thus, in accordance to this principle, Law nº134/99 prohibits discriminatory practices in the exercise of the right to education based on race, colour, nationality or ethnic origin. Therefore, there was no hard law that would guarantee the right to education for ethnic minorities, although it's also not hindered by the non-existence of those.

⁶ Fernando Gabriel Neves Fontes, 'Social Citizenship and Collective Action : The Case of the Portuguese Disabled People's Movement'
<<https://ethos.bl.uk/OrderDetails.do?jsessionid=4D687DC97CA1C28560C52F363D62AC14?uin=uk.bl.ethos.556019>>
accessed 19 November 2018.

The closest that we can find to educational policies toward minorities was the creation in 1991 of the “Coordinator Secretary of Multicultural Educative Programs” with the objective of coordinating, encouraging and promoting programs and actions aimed to educated for values of tolerance, dialogue and solidarity between different people, ethnicities and cultures. Moreover, the official website of General Direction of Education⁷ provides some information regarding the plan of the Ministry of Education for Intercultural Education and reference (1) the National Strategy for the Integration of the Roma Communities (also mentioned in the report on the right to housing), (2) a “Roma Atmo (Roma soul) pedagogical kit” that contains pamphlets about Roma cultures and some games; (3) the “Intercultural School Seal”, an award given to the school that develops projects to promote the recognition and valorisation of the diversity as an opportunity and source of learning for all; and (4) the promotion of training action given by the ACIDI (High Commissioner for the Immigration and Intercultural Dialogue) on intercultural education.

Evaluation of the Right to Education provided in Portugal

In their report of 2018, the ECRI⁸ expressed concern over the low number of children of migrant origin in Portuguese schools:

“Regarding education for children of migrant origin, while there has been substantial improvement in results, they continue to lag a considerable way behind Portuguese children. While one of the European Union’s 2020 objectives is to have at least 95% of 4-6 year-olds in pre-school education, in Portugal there were only 90% of 3-6 years-olds with both parents born abroad attending pre-school in 2012, compared to 93% for children with both parents born in Portugal”⁹

The ECRI stated that the Portuguese’s should take steps to increase the rate of school attendance of children of migrant origin in preschool education. Further, ECRI inquired about the implementation of the National Strategy for the Integration of Roma and stated that Portugal should “once the economic crisis has subsided, swiftly boost financial and human resources to improve the levels of school attendance and results among young Roma and ensure that all Roma children rigorously attend compulsory schooling.”¹⁰

The ECRI also encouraged the revision of the teaching of history, “particularly the history of the former colonies. This teaching should cover the role played by Portugal in the development and later in the abolition of slavery and in the discrimination and violence committed against indigenous peoples in the former colonies. In the report they asked for the “discovery of the New World” narrative to be called into question, demanding that the contribution of afro-descendants and Roma to Portuguese society should be included in the programs.¹¹ This particular demand caused some indignation by a part of the Portuguese society:

⁷ www.dge.mec.pt

⁸ European Commission against Racism and Intolerance (ECRI), ‘European Commission against Racism and Intolerance (ECRI), REPORT ON PORTUGAL (Fifth Monitoring Cycle)’ (2018) <www.coe.int/ecri> accessed 20 November 2018.

⁹ *ibid* 28.

¹⁰ *ibid* 33.

¹¹ *ibid* 20.

(...) an embarrassment immediately arises when reading this news. Going through the textbooks in question, one finds that they actually deal with those contributions and the consequences of slavery. And they treat it in a balanced way. This was the evidence that led Professor Paulo Guinote to say about the members of ECRI: It seems to me that they should have seen the manuals in question. ... Therefore, a delegation constituted by no one knows who, came to Portugal to meet with whom we cannot know and the result was a report in which among others things concluded that History textbooks have to be corrected.

In the same report the ECRI provides some data about the education of ethnic minorities, stating once more, that is not in the existing laws that are problematic but the socioeconomically factors that are independent of the policies existing at the moment that are the causes for these discrepancies. For example, Portuguese-speaking afro-descendant's students are three times more likely to fail the first cycle of secondary education and twice as likely to fail the second and third cycles. Also, most of them (80%) are in the vocational streams that rarely lead to higher education. The ERCI identify a "structural discrimination" that lead to a disadvantage in the access to the labour market, lower incomes and the repetition of those problems in the next generation.¹²

On this topic the Commission encourages the Portuguese authorities to pay special attention to their integration and to significantly contribute to the 2015-2024 International decade for people of African descent.¹³

The ECRI report also presents some information about the educational situation of Roma communities, and the scenario is not better, although there were some improvements in the last years. A study conducted on a national scale and published in 2016 found that only 42% of Roma children (31% of girls and 51% of boys) were in pre-school education.¹⁴ Also, segregation is substantial with 11% of Roma schooled in classes of entirely Roma pupils. Most of them (90%) leave school at the age of 10-12 years without alternative arrangements for distance learning. The ECRI states that there were some improvements and indicates that the training and recruiting of Roma mediators helped to improve school attendance rates in many districts. The OPRE programme, developed by a Roma Association, allowed 30 young Roma, many women, to start university studies.¹⁵

Structure of this Report

This report as part of the WP3 "Justice as or Against Justice for All" concentrates its analysis on how the right to education is converted into legally binding norms in the Portuguese legal framework.¹⁶ We begin with the 'national legal framework', moving then to the 'impact of international/European law' and then finishing with the 'right to education, justice as recognition and vulnerability'.

¹² *ibid* 29.

¹³ *ibid*.

¹⁴ *ibid* 32.

¹⁵ *ibid* 31.

¹⁶ The report will not address the structural and practical problems in guaranting the right to education in Portugal.

PART I | NATIONAL LEGAL FRAMEWORK

As suggested in the introduction above, the Portuguese legal framework provides for the right to education at several levels. It is guaranteed in the Portuguese Constitution and also provided for in national law, policies and programs. In the next sessions, we will review in more detail the different national legal provisions that guarantee the right to education as well as some of the challenges to these provisions, programs and policies.

1.1. CONSTITUTIONAL PROTECTION

The Portuguese Constitution guarantees right to education and provides for several protections.¹⁷ In its Article 13 (1) it states that “All citizens possess the same social dignity and are equal before the law.” And it goes further to state that “No one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, *education*, economic situation, social circumstances or sexual orientation.” (Article 13, 2). The Constitution further states that it is the Assembly of the Republic (the legislative branch) that is the exclusively competent to legislate on the educational system (Article 164, i).

As transcribed below, the Portuguese Constitution addresses the right to education in nine other articles providing for the freedom to learn and to teach, state’s obligation to cooperate with the parents in relation to their children’s education, guarantees special protection to youth in education, guarantees the right to free public education, guarantees education to disabled citizens and emigrant children, provides for the democratic participation in education, access to university and graduate education as well as physical education. The relevant articles are listed below:

Article 43 (Freedom to learn and to teach)

1. The freedom to learn and to teach is guaranteed.
2. The state may not programme education and culture in accordance with any philosophical, aesthetic, political, ideological or religious directives.
3. Public education shall not be linked to a religious belief.
4. The right to create private and cooperative schools is guaranteed.

Article 67 (Family)

2. In order to protect the family, the state is particularly charged with:

...

- c) Cooperating with parents in relation to their children’s education;

Article 70 (Youth)

1. In order to ensure the effective fulfilment of their economic, social and cultural rights, young people shall enjoy special protection, particularly: a) In education, vocational training and culture; (...) d) In physical education and sport;

¹⁷ See the text of the Portuguese Constitution at <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>, accessed on September 2018.

Article 73 (Education, culture and science)

1. Everyone has the right to education and culture.
2. The state shall promote the democratisation of education and the other conditions needed for an education conducted at school and via other means of training to contribute to equal opportunities, the overcoming of economic, social and cultural inequalities, the development of the personality and the spirit of tolerance, mutual understanding, solidarity and responsibility, to social progress and to democratic participation in collective life.

Article 74 (Education)

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

Article 75 (Public, private and cooperative education)

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

Article 76 (University and access to higher education)

1. The regime governing access to university and the other higher education institutions shall guarantee equal opportunities in and the democratisation of the education system, and must have due regard to the country's needs for qualified staff and to raising its educational, cultural and scientific level.
2. As laid down by law and without prejudice to an adequate assessment of the quality of education, universities shall enjoy autonomy in drawing up their own by-laws and in scientific, pedagogical, administrative and financial matters.

Article 77 (Democratic participation in education)

1. Teachers and students have the right to take part in the democratic management of schools, as laid down by law.
2. The law shall regulate the forms in which associations of teachers, students and parents, communities and institutions of a scientific nature participate in the definition of the education policy.

Article 79 (Physical education and sport)

1. Everyone has the right to physical education and sport.
2. In cooperation with schools and sporting associations and groups, the state is charged with promoting, stimulating, guiding and supporting the practice and dissemination of physical education and sport, and preventing violence in sport.

Article 164 (Exclusive legislative competence)

The Assembly of the Republic has exclusive competence to legislate on the following matters: (...)

- i) The bases of the education system;

1.2. NATIONAL LEGAL FRAMEWORK

In addition to the Portuguese Constitution, the right to education is further regulated by national laws. The two most relevant are: Law nº46/86 and Law nº85/2009. Law nº46/86 provides for the organization of the Portuguese educational system, which is comprised of pre-school, school and out-of-school education. Article 4 clarifies each one of these levels:

2 - *Pre-school education*, in its formative aspect, is complementary and / or supplementary to the educational action of the family, with which it establishes close cooperation.

3 - *School education* comprises basic, secondary and higher education, integrates special modalities and includes leisure activities.

4 - *Out-of-school education* encompasses literacy and basic education activities, cultural and scientific upgrading, and initiation, retraining and professional development, and takes place within an open framework of multiple formal and non-formal initiatives.

Pre-school education is intended for children between the ages of 3 as the entry into primary education. "It is incumbent upon the State to ensure the existence of a pre-school education network"¹⁸. However, the attendance to pre-school education is optional, recognizing that the family plays an essential role in the pre-school education process.

As for basic education, article 6 states that it is "universal, compulsory and free and lasts for nine years"¹⁹ and that "Free tuition in basic education includes tuition, fees and any payments related

¹⁸ Lei nº 46/86 para 5(4).

¹⁹ *ibid* 6(1).

to enrollment, attendance and certification. Students may also have books and school supplies, as well as transportation, food and accommodation, when necessary.”²⁰

In addition to that, Law no. 85/2009, establishes the compulsory schooling system for children and young people who are of school age and determines the universality of pre-school education for children from the age of 5.²¹

1.3. SPECIFIC RULES TARGETING SELECTED GROUPS

The Portuguese Constitution in its article 74 requires the state to provide and support “disabled citizens’ access to education and support... special education when necessary.”²² Further, the Constitution also requires the state to ensure “that emigrants’ children are taught the Portuguese language and enjoy access to Portuguese culture” as well as that they “receive adequate support in order to enable them to effectively enjoy the right to education.”

At the national law level, there are more specific guarantees as it relates to the right to education of specific group. Law nº46/86 in its article 17 clarifies that special education “aims at the recovery and social-educational integration of individuals with specific educational needs due to physical and mental disabilities.”²³ Moreover, it “integrates activities directed to learners and actions directed at families, educators and communities.”²⁴ Law nº46/86 further details how the special education is to take place, particularly it mandates that it be “organized preferably according to different models of integration in regular educational establishments, taking into account the needs of specific care, and with the support of specialized educators.”²⁵ And states that “when it is proven necessary by the type and degree of the student's disability”, special education shall be carried out in specific institutions (Law nº46/86, Article 18, 2).

The curricula must be adapted to the type and degree of disability (Law nº46/86, Article 18, 4), and the state should aim at promoting special education of the disabled aiming at their professional integration. (Law nº46/86, Articles 3, 5, and 18).

Article 18 of Law nº46/86 provides that:

Article 18

6 - Special education initiatives may belong to the central, regional or local power or to other collective entities, such as parents 'and residents' associations, civic and denominational organizations, trade union and enterprise organizations and social solidarity institutions.

7 - The Ministry responsible for the coordination of educational policy is responsible for defining the general norms of special education, in particular its pedagogical and technical aspects, and to support and supervise their compliance and application.

²⁰ *ibid* 6(5).

²¹ Lei n.º 85 2009.

²² Constitution of the Portuguese Republic Seventh Revision [2005].

²³ Lei nº 46/86 (n 17).

²⁴ *ibid* 17(2).

²⁵ *ibid* 18(1).

The law also provides for the “support in the psychological development of the students and their educational and professional orientation, as well as the psychological and pedagogical support to the educational activities and to the system of relations of the school community, are realized by services of psychology the professional school guidance inserted in regional school structures.” (Law nº46/86, Article 26)

The criteria used in the context of pre-school and school education is a “positive discrimination criteria aimed at the social and educational compensation of economically disadvantaged students.” (Law nº46/86 Article 27, 1). The law states that “school social welfare services are translated into a diversified set of actions, in which meals, canteen services, transport, accommodation, manuals and school materials are shared, as well as the granting of scholarships.” (Law nº46/86, Article 27, 2)

As it relates to the design of school building, Law nº46/86 provides in its article 39 (4) that “in the design of buildings and in the choice of equipment, the special needs of the disabled must be taken into account.”

However, above all, the law mandates the state to “create a network of public schools and educational establishments that meet the needs of the entire population” and that such network should “contribute to the elimination of local and regional inequalities and asymmetries in order to ensure equal educational and educational opportunities for all children and young people.”²⁶

Decree no. 35/90 also requires compulsory free public education for nine years to all, including those with disabilities and Decree 3/2008, provides for the specialized support in pre-school education and primary and secondary education in the public, private and cooperative sectors in particular to deaf, blind and low vision students, as well as students with autism spectrum disorders and with multi-disability creating structured and teaching and support units for those students.

In 1991, the Portuguese Government created the Coordinating Secretariat of the Multicultural Educational Programs (Law nº63/91 de 18/2 DR. Nº60 I Série-B, de 13/3/91).²⁷ The objective of such a Secretariat was the “close articulation and communication between the multiple projects underway in the Ministry of Education with a focus on multicultural issues, including projects involving children of East Timorese, Cape Verdean and Roma and with children of Portuguese-speakers residing in other countries”.²⁸

Moreover, in 2013, in response to the European Union’s call “on the Member States to draw up national strategies for the integration of Roma communities to respond to situations of exclusion which are incompatible with social values or with the European economic model”, Portugal approved the National Strategy for the Integration of Roma Communities, Education Hub nº51/2013.²⁹ Among its 40 stated priorities, the most relevant to relating to education include:

Priority 18 - Improve the knowledge in the school of situation of Roma students and trainees

Priority 19 - Ensure Access to Pre-School Education

Priority 20 - Increase enrolment rates by ensuring that all Roma children complete compulsory schooling

²⁶ *ibid* 37 (1) and (2).

²⁷ Despacho Normativo no. 63/91 1991.

²⁸ *ibid* 5(a).

²⁹ Decreto-Lei n.º 51/2013 2013.

Priority 21 - Promote continuity of schooling at secondary level, encouraging higher education

Priority 22 - Prevent early school leaving

Priority 23 - Ensure access to lifelong learning

Priority 24 - To promote the formation of educational agents in the diversity of Roma culture, with the participation of elements of these communities as trainers and privileged interlocutors

Priority 25 - Promote work to end illiteracy

As such, these are some of the main specific rules targeting selected groups regarding the right to education in Portugal. This is not intended to be an exhaustive list, but an enumeration of some of the main instruments and laws available today in the country.

1.4. CONSTITUTIONAL CHALLENGES

Our research did not reveal any cases where legislation regulating access to free/public/subsidized primary education and inclusion/institutionalization/segregation had been challenged for incompatibility with national constitutional norms.

1.5. RELEVANT INSTITUTIONAL AND PROCEDURAL ASPECTS

Norms and principles of general or common international law are an integral part of the Portuguese law (Portuguese Constitution, Article 8 (1)). The norms come into force in Portuguese internal law once they have been officially published and remain so for as long as they are internationally binding on the Portuguese State (Article 8(2)).

PART II | IMPACT OF INTERNATIONAL/EUROPEAN LAW

2.1. CHALLENGES TO NATIONAL RULES BASED ON INTERNATIONAL INSTRUMENTS

At the level of the United Nations, the Human Rights Council and at least three monitoring bodies have evaluated and provided recommendations to Portugal regarding its laws and practices concerning the right to education. Below is a short summary of some of the findings and/or recommendations from each of those international bodies on the right to education in Portugal.

In 2014, the Universal Periodic Review Group on Portugal submitted its National report to the **Human Rights Council**. “The UPR Working Group reviewed the situation in Portugal in December 2009, at its 6th session. Portugal accepted 86 out of the 89 recommendations. Since then, Portugal has made a committed effort to thoroughly implement the recommendations that were accepted.” Amongst its efforts relating to the right to education the report included Portugal’s: (1) adoption of the National Strategy for the Integration of Roma Communities (2013–2020) comprised of 105 measures including

the areas of education, and housing³⁰; (2) creation of special early childhood education program “for 3 to 5 year-olds living in remote rural areas, whereby educators regularly visit these children and develop activities in accordance with the same curricular guidelines applicable to kindergartens.”³¹; and (3) establishment of the “National Strategy for Disability (...) promoting the inclusion of children with disabilities in the regular education system, ensuring the training of specialised staff and disseminating good practices.”³²

In 2012, the **Committee on the Elimination of Racial Discrimination (CERD)** provided its considerations on Portugal’s compliance with the Convention on the Elimination on Racial Discrimination. In particular, the CERD addressed discrimination against the Roma people. CERD noted Portugal’s launch in December 2011 of the Strategy for Inclusion of the Roma communities in compliance with European Union requirements and public awareness campaigns regarding non-discrimination against Roma communities. However, noted that discrimination against this community is still prevalent, in fact, it indicated that the “Roma are still the most discriminated against and most vulnerable people in Portugal”³³ including as it relates to education. As such, CERD urged Portugal

to promote the economic, social and cultural rights of the Ciganos and Roma, while respecting their culture in accordance with the principle of equality and ensuring that all actions and policies affecting them are designed, implemented, monitored and evaluated with the full participation of Ciganos, Roma and their organizations, bearing in mind the Committee’s general recommendation No. 27 (2000) on discrimination against Roma. The Committee requests that the State party provide information on the implementation and impact of the Strategy for Inclusion of the Roma communities. In implementing this Strategy, the State party should ensure that concrete measures are taken to improve the living conditions of these communities by improving their access to adequate housing, *education*, health services, employment and public services.³⁴

In 2013, the **Committee on the Rights of the Child (CRC)** requested that Portugal provide “data on the budgetary cuts undertaken as part of the austerity measures, in particular in the area of ... education ... that affect children.”³⁵ Further, the CRC requested the country to provide information regarding the measures taken to ensure that “children of immigrants and ethnic minorities, including Roma and people of African descent, do not suffer discrimination in access to ... education.”³⁶ Moreover, the CRC requested that the country provide information “on the measures taken to implement inclusive education for children with disabilities”³⁷

³⁰ UPR Working Group - Portugal, ‘Human Rights Council Working Group on the Universal Periodic Review Nineteenth Session 28 National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21* Portugal’ (2014) para 23.

³¹ *ibid* 48.

³² *ibid* 74.

³³ Committee on the Elimination of Racial Discrimination, ‘Consideration of Reports Submitted by States Parties under Article 9 of the Convention’ (2012) para 19.

³⁴ *ibid*.

³⁵ Committee on the Rights of the Child, ‘List of Issues in Relation to the Combined Third and Fourth Periodic Reports of Portugal (CRC/C/PRT/3-4)’ (2013) para 2.

³⁶ *ibid* 3.

³⁷ *ibid* 5.

In 2014, the CRC adopted its “Concluding observations on the combined third and fourth periodic report of Portugal”. In its conclusions, the CRC welcomed Portugal’s legal measures to define the support for preschool, basic and secondary education (Decree Law No. 3/2008 as amended by Decree Law No. 21/2008).³⁸ Moreover, the CRC noted that adoption of various other child-related legislative measures including “the prohibition of all forms of corporal punishment of children; civil sponsorship; social protection of maternity, paternity and adoption; special education needs for children with disabilities; and procedures for granting asylum, subsidiary protection or refugee status, including for unaccompanied children.”³⁹

In regard to measures intended to address discrimination, the CRC particularly noted Portugal’s creation of the National Strategy for Integration of the Roma Communities for the period of 2013-2020. The CRC expressed however, its concern over the fact that the Roma people and people of African descent continue to face discrimination in access to education.⁴⁰ In this regard, the CRC recommended Portugal to ensure that all children enjoy equal rights under the Convention without discrimination. As such the CRC recommended Portugal to

Intensify efforts to ensure the effective elimination of any form of discrimination against children of immigrants, foreigners and ethnic and racial minorities, including the Roma minority and people of African descent, as well as lesbian, gay, bisexual and transgender adolescents through, among other things, awareness-raising campaigns and intercultural dialogue, especially at the community level and in schools.⁴¹

The CRC repeatedly expressed its concerns over the economic measures/austerity measures taken by the country that have had an impact on the most vulnerable people in the society. In fact, the CRC stated that is primarily concerned with the “situation of children in families affected by the current economic crisis, who are in need of affirmative social measures, in particular single-parent families, families with two or more children, families with children with disabilities and families living in persistent poverty.”⁴² As such, the CRC recommended Portugal to

strengthen the system of family benefits and child allowances, and other services, such as counselling services and accessible early childhood education and care, to support families affected by the current economic crisis, single-parent families, families with two or more children, families with children with disabilities and families living in persistent poverty, in line with the European Commission policy paper on early childhood education and care.⁴³

Regarding children with disabilities, the CRC was satisfied with several measures taken by the State pertaining to children with disabilities, specifically addressing discrimination, access to education and promotion of social inclusion. In particular, the CRC noted with satisfaction the adoption of Decree Law Nos. 38/2004 and 3/2008 that created a new regime supporting students with special needs

³⁸ Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Report of Portugal’ (2014) para 3(d).

³⁹ *ibid* 9.

⁴⁰ *ibid* 25.

⁴¹ *ibid* 26(a).

⁴² *ibid* 39.

⁴³ *ibid* 40.

education, and the National Strategy for Disability (2011-2013).⁴⁴ However, the CRC once again expressed its concerns over the negative impact that the austerity measures have had on the implementation of such National Strategy. Further, the CRC stated that “(b) Children with disabilities are not effectively integrated into all areas of social life”⁴⁵ and noted that “(c) children in institutions are allegedly subjected to ill-treatment.”⁴⁶ Lastly, the CRC noted that “(d) there are delays in processing applications for special education subsidies for children with disabilities, who are disproportionately at risk of poverty.”⁴⁷ As a result, the CRC provided the following recommendations:

- (a) Adopt a human rights-based approach to disability and continue to strengthen its efforts to promote and protect the rights of children with disabilities, including by allocating the necessary resources for the effective implementation of the National Strategy for Disability;
- (b) Take all the necessary measures to ensure that children with disabilities are fully integrated into all areas of social life, including recreational and cultural activities;
- (c) Ensure that schools and care facilities are adequately staffed and funded, and that children with disabilities are treated with dignity and respect, and benefit from effective protection;
- (d) Address the alleged delays in the assessment of requests for the special education subsidy and in the processing of payments, review legislation to clarify aspects that have been hindering the process of granting the allowances, and ensure a fair and transparent review procedure in cases of initial rejection;
- (e) Ensure that training is provided for professionals working with children with disabilities, such as teachers, social workers and health, medical, therapeutic and care personnel.⁴⁸

When addressing compulsory education, the CRC also expressed satisfaction over the country’s introduction of mandatory education up to 18 years of age and welcomed the policies to increase enrolment of children in preschool education, the number of children completing secondary education and the number of students enrolled in tertiary education, and the enrolment levels of children from low-income families.⁴⁹ Moreover, the CRC was also pleased with the information that in Portugal undocumented children have access to education and that “citizenship and civic education, including human rights, forms part of the national curriculum at all school levels.”⁵⁰ Despite these positive statements, the CRC once again expressed concerns over the financial situation that is severely affecting access to education in Portugal where resources are being cut, programs are being discontinued and students are dropping out of school.⁵¹ Lastly, the CRC also expressed concerns “at the persistence of traditional gender stereotypes in the education system”.⁵² Based on these findings, the CRC recommended that Portugal:

⁴⁴ *ibid* 45.

⁴⁵ *ibid* 45(b).

⁴⁶ *ibid* 45(c).

⁴⁷ *ibid* 45.

⁴⁸ *ibid* 46 (a) to (e).

⁴⁹ *ibid* 59.

⁵⁰ *ibid*.

⁵¹ *ibid*.

⁵² *ibid*.

- (a) Refrain from further budgetary cuts in the education sector, and ensure that schools are provided with adequate human, technical and financial resources to provide high-quality education for all children;
- (b) Provide greater access to preschool education for all children by expanding the public services and increasing support to the Programme for Support with Extending the Preschool Education Network (...);
- (c) Strengthen efforts to reduce the premature dropout rate and take the necessary measures to ensure that children complete their schooling (...);
- (d) Expand vocational education and training for children who have left school (...);
- (e) Strengthen the national plan of action for human rights education, as recommended in the framework of the World Programme for Human Rights Education (...); and mainstream gender equality policies in the education sector, ensuring that gender issues and sensitivity training are made an integral, substantive and mandatory component of all teacher training at all levels.⁵³

In 2017, Portugal filed its report for the fifth and sixth periodic review periods addressing some of the issues raised by the CRC.⁵⁴ The CRC has not conducted its new periodic review of the country, however it is interesting to point out some of Portugal's responses to issues raised by the CRC in 2014, including noting that in 2015 the law on promotion and protection of children and youth was amended⁵⁵ and the National Commission for the Protection of Children and Young People at Risk⁵⁶ was restructured into the National Commission for the Promotion of the Rights and Protection of Children and Youngsters.⁵⁷ Regarding budget cuts, Portugal explained that they "took place as a result of the sovereign debt crises (...)" and that

The adoption of measures to fight against child poverty aiming at eliminating situations of social exclusion that affect children, led to the availability of financial support directly to children, or their families, namely, the increase of the family allowance from 20% to 35% for single-parent families; pre-natal family allowance; minimum guaranteed income (...).⁵⁸

The country also indicated that it had created several programs in order to address issues of discrimination against children of immigrants, foreign, ethnic and racial minorities and listed.⁵⁹ Moreover, regarding children with disabilities, Portugal stated that it pursues "an inclusive education policy and only 2% of the school population with special education needs attends segregated special

⁵³ *ibid* 60.

⁵⁴ Portugal, 'Fifth and Sixth Periodic Report of Portugal Due in 2017 under Article 44 of the Convention of the Rights of the Child' (2017).

⁵⁵ Available at:

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2426&tabela=leis&ficha=1&pagina=1&so_miolo=

⁵⁶ Available at:

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2429&tabela=leis&so_miolo=

⁵⁷ Portugal (n 53) 3.

⁵⁸ *ibid* 6.

⁵⁹ *ibid* 12.

schools.” Further, it stated that “Children with Special Education Needs (SEN) have priority in the enrolment in public pre-school primary and secondary education.”⁶⁰

The **Economic, Social and Cultural Rights Committee (CESCR)** in its Periodic Report of Portugal in 2014, acknowledged the progress made by Portugal “in decreasing the early school leaving (dropout) rate from 43.6 per cent in 2000 to 18.9 per cent in 2013,” but expressed its concerns regarding the still high rates. CESCR recommended Portugal to

take all necessary measures to reduce further the early school leaving (dropout) rate, including by (a) addressing the factors that lead to early school leaving, in particular socioeconomic factors that put at risk the most disadvantaged and marginalized children; (b) raising awareness of the importance of education and training as a tool towards reducing the future risk of unemployment, poverty and social exclusion; and (c) providing comprehensive support for children at risk of leaving school early and adequate opportunities for education and training tailored to their specific needs.⁶¹

CESCR further recommended that Portugal

redouble its efforts to address the insufficient level of education of Roma and take urgent measures to increase attendance rates of Roma students and their retention in school by, inter alia, providing sufficient financial support to cover education-related expenses and raising awareness of the importance of education among Roma families.⁶²

Moreover, in 2016 the **Committee on the Rights of Persons with Disabilities (CRPD)** in its initial concluding observations of Portugal noted its concern over the negative effects of the austerity measures taken by Portugal notes that country’s “strategies on disability and on children do not take the needs of children with disabilities into consideration.”⁶³ In this regard, CRPD recommended Portugal to

take the necessary measures, including through the use of European structural and investment funds and other appropriate funds, to minimize the impact of austerity measures on children with disabilities, enhancing the support provided to their families and taking the steps necessary to ensure that they receive a high-quality, inclusive education.⁶⁴

Moreover, CRPD noted that Portugal’s “‘model schools’ for deaf, blind, deaf-blind and visually impaired students, as well as for students with autism,” are a “form of segregation and discrimination.”⁶⁵ In conclusion, CRPD recommended Portugal to,

⁶⁰ *ibid* 30.

⁶¹ Committee on Economic Social and Cultural Rights, ‘Concluding Observations on the Fourth Periodic Report of Portugal’ (2014) para 17.

⁶² *ibid* 18.

⁶³ Committee on the Rights of Persons with Disabilities, ‘Concluding Observations on the Initial Report of Portugal’ (2016) para 19.

⁶⁴ *ibid* 20.

⁶⁵ *ibid* 44.

in close consultation with organizations representing persons with disabilities, review its legislation on education to bring it into line with the Convention and take measures to provide additional resources and materials to facilitate access to and enjoyment of inclusive education of high quality for all students with disabilities, providing public schools with the resources they need to ensure the inclusion of all students with disabilities in ordinary classrooms.”⁶⁶

Lastly, CRPD recommended Portugal “ensure equal access to all levels of education and vocational training, as well as to build and upgrade education facilities to make them disability-sensitive and safe.”⁶⁷

Hence, as seen above, some of the recommendations of these international monitoring bodies were implemented by Portugal in order to ensure and guarantee the right to education. In some cases, it is still early to see how Portugal will adapt its laws and practices to ensure compliance. However, it is possible to say that in many cases, the international monitoring bodies had a direct impact on Portugal’s guarantee of the right to education.

2.2. CHALLENGES TO NATIONAL RULES BASED ON EUROPEAN (COUNCIL OF EUROPE INSTRUMENTS)?

When turning to European law, our research showed that have not been cases concerning on access to free primary and secondary education and inclusive/institutionalized/segregated education taken to/decided upon by European bodies. Specifically, there have been no cases before the European Court on Human Rights concerning access to free primary and secondary education and inclusive/institutionalized/segregated education taken to/decided upon by the ECtHR *vis-à-vis* Portugal.⁶⁸ Moreover, there also have not been any cases regarding the right to access to education before the European Committee of Social Rights (ECSR) (the body that monitors compliance with the Charter). However, it is important to point out that this year (2018) the ECSR submitted its “Monitoring the implementation of the Charter Report” and cited as examples of Portugal’s progress achieved in the implementation of the right to education under the Charter: (1) “Prohibition of the employment of minors subject to compulsory education (Constitutional Act No. 1/97); the minimum age for employment has been fixed as 16 and light work has been defined (Act No. 58/99); illegal employment of young persons is regarded as a very serious offence and sanctions have been stepped up (Acts Nos. 113, 114, 116 and 118/1999)”;⁶⁹ and (2) the adoption of “Law 46/2006 explicitly prohibiting direct and indirect discrimination on the basis of disability *inter alia* with respect to education and training.”⁷⁰

⁶⁶ *ibid* 45.

⁶⁷ *ibid* 46.

⁶⁸ European Court on Human Rights, ‘Violations by Article and by State - 1959-2017’ (2017) <https://www.echr.coe.int/Documents/Stats_violation_1959_2017_ENG.pdf> accessed 11 October 2018.

⁶⁹ European Committee of Social Rights, ‘Monitoring the Implementation of the European Social Charter in Portugal’ (2018) 9.

⁷⁰ *ibid* 10.

2.3. CHALLENGES TO NATIONAL RULES BASED ON EU LAW

Upon review of the jurisprudence of the European Court of Justice, there have been no cases brought against Portugal in the past five years by the EU Commission regarding or relating to a violation of EU law by Portugal on access to free primary and secondary education and inclusive/institutionalized/segregated education.⁷¹ In regard to domestic cases using European law to challenge national rules concerning access to free primary and secondary education and inclusive/institutionalized/segregated education, our research did not reveal any cases.

PART III | RIGHT TO EDUCATION, JUSTICE AS RECOGNITION AND VULNERABILITY

3.1. RIGHT TO EDUCATION AND JUSTICE AS RECOGNITION

Even though, “[t]he link between the right to education for vulnerable groups and an evaluation of European recognitive justice is more inconspicuous than that between the right to vote and representative justice”⁷², there are ways that we can see how the Portuguese legal framework has engaged with the concept of justice as recognition.

Using the ETHOS’ project goal to “look at the right to education ... through the prism of recognitive justice”,⁷³ it is possible to identify ways in which the Portuguese framework approaches the right to education as justice as recognition. For example, by taking ETHOS first approach to justice as recognition, that is looking “at the inclusion or exclusion of vulnerable minorities from mainstream, publicly funded, mandatory (primary and secondary) education,”⁷⁴ we can see that the Portuguese legal system has attempted to apply this approach. Specifically, we can identify examples of how the Portuguese Constitution has attempted to include vulnerable minorities by that requiring, for instance, the state to ensure that immigrants’ children “receive adequate support in order to enable them to effectively enjoy the right to education”, and the state to provide and support “disabled citizens’ access to education and support... special education when necessary.” Moreover, there are different laws that provide for special education “aims[ing] at the recovery and social-educational integration of individuals with specific educational needs due to physical and mental disabilities” (Law nº46/86, Art. 17) and at “integrat[ing] activities directed to learners and actions directed at families, educators and communities” (Law nº46/86, Art. 17, 2). More recently, Portugal has created programs seeking to ensure the inclusion of some vulnerable groups, such as the National Strategy for the Integration of Roma Communities that is focused on the integration of the Roma Community focusing on access to pre-school education, promotion of schooling at secondary level, preventing early school leaving among others. Moreover, as seen above, several of the international and European monitoring bodies in their evaluations of the Portugal’s compliance with international obligations regarding access to

⁷¹ European Court of Justice, ‘European Court of Justice Case Law - List of Results’

<<http://curia.europa.eu/juris/liste.jsf?oqp=&for=&mat=or&lgrc=en&jge=&td=%3BALL&jur=C%2CT%2CF&page=4&dates=%2524type%253Dpro%2524mode%253D5Y%2524from%253D2013.11.13%2524to%253D2018.11.13&pcs=Oor&lg=&parties=portugal%2B&pro=&nat=or&cit=none%252CC%252CCJ%25>> accessed 13 November 2018.

⁷² Granger and others (n 4) 22.

⁷³ *ibid* 23.

⁷⁴ *ibid*.

education have systematically indicated the need for better integration mechanisms. As such, we can see that indeed, there is a link between the right to education for vulnerable groups and an evaluation of Portuguese recognitive justice.

3.2. RIGHT TO EDUCATION AND VULNERABILITY

The concept of vulnerable people is present in Portugal in the context of social housing. Like the European Court of Human Rights, Portugal legislation has considered vulnerable people “the Roma, people with disabilities, asylum seekers and women victims of domestic violence.”⁷⁵ As seen above, the Portuguese legislation from its Constitution to national legislation and policies, address several of these groups. Some examples include the National Strategy for the Integration of Roma Communities that, as indicated in its title, is tailored to the Roma Communities, laws providing ensuring access to education to people with disabilities, and the guarantees in the Portuguese Constitution regarding access to education to the children of immigrants. As such, it is indeed possible to see that vulnerability does have a role in the framing of the right to education in the Portuguese legal framework.

BIBLIOGRAPHY

- Committee on Economic Social and Cultural Rights, ‘Concluding Observations on the Fourth Periodic Report of Portugal’ (2014)
- Committee on the Elimination of Racial Discrimination, ‘Consideration of Reports Submitted by States Parties under Article 9 of the Convention’ (2012)
- Committee on the Rights of Persons with Disabilities, ‘Concluding Observations on the Initial Report of Portugal’ (2016)
- Committee on the Rights of the Child, ‘List of Issues in Relation to the Combined Third and Fourth Periodic Reports of Portugal (CRC/C/PRT/3-4)’ (2013)
- , ‘Concluding Observations on the Combined Third and Fourth Periodic Report of Portugal’ (2014)
- European Commission against Racism and Intolerance (ECRI), ‘European Commission against Racism and Intolerance (ECRI), REPORT ON PORTUGAL (Fifth Monitoring Cycle)’ (2018)
- European Committee of Social Rights, ‘Monitoring the Implementation of the European Social Charter in Portugal’ (2018)
- European Court of Justice, ‘European Court of Justice Case Law - List of Results’ <<http://curia.europa.eu/juris/liste.jsf?oqp=&for=&mat=or&lgrec=en&jge=&td=%3BALL&jur=C%2CT%2CF&page=4&dates=%2524type%253Dpro%2524mode%253D5Y%2524from%253D2013.11.13%2524to%253D2018.11.13&pcs=Oor&lg=&parties=portugal%2B&pro=&nat=or&cit=none%252CC%252CCJ%25>> accessed 13 November 2018
- European Court on Human Rights, ‘Violations by Article and by State - 1959-2017’ (2017)
- Fraser N and Honneth A, *Redistribution or Recognition? : A Political-Philosophical Exchange* (Verso 2003)

⁷⁵ *ibid* 26.

Granger M and others, 'Justice in Europe Institutionalized : Legal Complexity and the Rights of Vulnerable Persons' (2018)

Neves Fontes FG, 'Social Citizenship and Collective Action : The Case of the Portuguese Disabled People's Movement'

Portugal, 'Fifth and Sixth Periodic Report of Portugal Due in 2017 under Article 44 of the Convention of the Rights of the Child' (2017)

UPR Working Group - Portugal, 'Human Rights Council Working Group on the Universal Periodic Review Nineteenth Session 28 National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21* Portugal' (2014)

LEGISLATION

Constitution of the Portuguese Republic Seventh Revision [2005]

Decreto-Lei n.º 51/2013 2013

Despacho Normativo no. 63/91 1991

Lei n.º 85 2009

Lei n.º 46/86