

# WHERE HAS MY SALARY GONE? - F CASTELO BRANCO

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**The 2011 Portuguese budget includes a controversial pay cut to civil servants' salaries of at least 5% to those earning more than €1,500 per month. Only time will tell if these measures will have the desired impact on the recovery of the domestic economic situation but such a blanket cut, some argue, is discriminatory – by not applying to private sector wages, possibly not even State-owned companies – and is contrary to the Portuguese Constitution. This is not a new argument.**

**The Constitutional Court in 1989 and 1992 rejected the State budget for these years which sought to reduce teachers' salaries and set a maximum limit for the Prime Minister's salary. Regardless of the legal validity, such measures will certainly not improve industrial relations or the Government's record on compliance with the Constitution.**

The Portuguese budget for 2011 was approved at the end of November and, among its cost cutting measures, it includes a pay cut to salaries of civil servants.

Excuse me for my honesty, but in these times and contrary to mainstream opinion, I think that being

a civil servant or having similar working conditions is no longer a privilege. In fact, you can even say it's unlucky or discriminatory!

Please bear with me. According to the 2011 budget, all public sector employees, including those working for public companies, publicly owned companies (more than 50% interest) and the regional and local administration will see their salaries cut on average by 5%. This reduction is applicable to all monthly salaries greater than €1,500 and will be made progressively higher, potentially even reaching 10% of a civil servant's global monthly salary.

There is no doubt that we are not just talking of the base salary and that this cut is to be made to "the global salary and other employee indirect income not regarding the nature of their working relation".

For example, night shift allowance, work shift allowance, extraordinary income, and exemption from working hours allowance, among others, are covered by this cut.

Only time will tell if these measures will have the desired impact on the recovery of the domestic economic situation, but we can comment on its immediate constitutional impact.

In my view, this measure is clearly in breach of our Constitution, not only formally (for example violating article 56(2) (a)), by disregarding the right of unions participating in the drafting of labour law), but mainly in material terms.

In this respect, there is a clear violation of article 59(1) (a) of the Constitution, which establishes that "all workers, irrespective of their age, sex, race, birth, religion, political or ideological views, have the right to a working remuneration according to the quantity, nature and quality and the principle of equal pay for equal work as a way to guarantee a sustained existence."

This is not a new argument. Already in 1989 and 1992, the Constitutional Court rejected the budget for these years which established a reduction of teachers' salaries and set a maximum limit for the Prime Minister's salary, which is used to calculate some civil servants' salaries – who had experienced indirect wage reductions.

This measure also violates the Right to Equality (article 13), another basic right of employees contained in our Constitution.

The budget for 2011 unilaterally determines the reduction of all civil servants' wages and does not touch private sector employees' salaries, thereby discriminating against employees and not providing any exceptional grounds for such discrimination.

Using the argument of flexibility of the measure, the Portuguese Finance Minister recently opened the possibility that some state owned companies may not be covered by this measure.

As a result, there are many Portuguese legal commentators currently raising questions about the constitutional validity of this budget, as well as obviously the most active and representative trade unions that are likely to shortly bring legal claims against the government.

We will see if these measures will improve Portuguese public finances, but we can say that they will not improve industrial relations and the Government's record on compliance with the Constitution.

Alexandra Almeida Mota is a labour and employment specialist at FCB&A in Lisbon. She can be reached via [aam@fcb-legal.com](mailto:aam@fcb-legal.com).