

Third report on Portugal

Adopted on 30 June 2006

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Foreword

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 30 June 2006 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

Executive summary

Since the publication of ECRI's second report on Portugal on 4 November 2002, progress has been made in a number of the fields highlighted in that report. The administrative law provisions and those included in the Labour Code prohibiting racial discrimination have been strengthened. A victim support unit for immigrants and others who have suffered racial or ethnic discrimination (UAVIDRE) has been created. The High Commission for Immigration and Ethnic Minorities (ACIME) has been restructured and strengthened, and its budget has been considerably increased. This institution actively works to facilitate the integration of immigrants and to combat racism and racial discrimination. The authorities have taken measures to legalise immigrant workers without legal status present on Portuguese territory. The Foreigners and Borders Service (SEF) has been improved. Immigrants and Gypsies have benefited from general measures aimed at social inclusion.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. Gypsy communities still suffer from social exclusion and encounter difficulties in their dealings with the majority population, local authorities and law enforcement officials. Access to education, to public services, to housing and the opportunity to carry out an economic activity all remain problematic for these communities. A lack of awareness of the problem of racism has been noted on the part of the police, prosecutors and judges. The procedure for receiving complaints of racial discrimination contained in the Law 18/2004 suffers from major dysfunctions. There are allegations of direct and indirect racial discrimination in the fields of employment, housing, healthcare and access to goods and services, particularly affecting Black people and Gypsies. There are also allegations of discriminatory behaviour on the part of law enforcement officials. Regarding immigration, despite the efforts undertaken by the SEF to improve the situation, progress remains to be made both in managing the backlog and reception by the SEF and in implementing the procedure for granting a legal status to non-citizens living in Portugal. There are apparently still many immigrants without legal status in the country. These people are particularly vulnerable to exploitation by dishonest employers. Some immigrants still encounter integration difficulties. Racist stereotypes and racial prejudices persist within part of the population and are sometimes conveyed by the media, notably in the case of Gypsies, immigrants, Jews and visible minorities in Portugal.

In this report, ECRI recommends that the Portuguese authorities take further action in a number of areas. It recommends strengthening training on issues of racism and racial discrimination for actors in the justice system. It recommends improving the procedure for receiving complaints of racial discrimination under the Law 18/2004. ECRI recommends raising public awareness of the need to combat racism and intolerance and the benefits of a multicultural society. It asks the Portuguese authorities to continue their efforts aimed at taking measures in favour of the legalisation and integration of immigrants. It recommends additional measures to put an end to misconduct on the part of law enforcement officials towards minority groups. Finally, ECRI asks the Portuguese authorities to adopt a national strategy to combat the social exclusion of Gypsies, by improving their situation in such fields as housing, education and access to public services.

I. FOLLOW-UP TO ECRI'S SECOND REPORT ON PORTUGAL

International legal instruments

1. In its second report, ECRI encouraged the Portuguese authorities to ratify Protocol No. 12 to the European Convention on Human Rights (ECHR) as rapidly as possible, to sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level and the European Charter for Regional or Minority Languages.
2. Protocol No. 12 to the ECHR, which introduces a general prohibition of discrimination, has not yet been ratified. The authorities have indicated, however, that the relevant ministries are considering the possibility of ratifying this Protocol and that they hope to bring the process to a swift conclusion. ECRI has also been informed that the authorities are considering signing and ratifying the Convention on the Participation of Foreigners in Public Life at Local Level and the European Charter for Regional or Minority Languages and that consultations are being held with the ministries to this effect.
3. Since the publication of ECRI's second report on Portugal, the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, has been opened for signature and ratification. It came into force on 1 March 2006 for the states which have ratified it. Portugal signed the Protocol on 17 March 2003. It has not ratified it yet but consultations are under way with the ministries. Since the publication of ECRI's second report, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families came into force on 1 July 2003. ECRI has been informed by the Portuguese authorities that they are not planning to ratify this Convention, and indicate that this is in line with the common position taken by member states of the European Union.

Recommendations:

4. ECRI once again recommends that Portugal ratify Protocol No. 12 to the ECHR as swiftly as possible and sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level and the European Charter for Regional or Minority Languages at the earliest opportunity.
5. ECRI recommends that Portugal ratify the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Constitutional provisions and other basic provisions

6. ECRI notes with interest that, on a referral from the Provedor de Justiça, the Constitutional Court declared unconstitutional a Decree-Law under which applicants for teaching posts in nursery schools as well as in middle and upper schools must be Portuguese or EU nationals. The Constitutional Court held that this was a violation of Article 15 of the Constitution, which states that foreigners and stateless persons living in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens¹.

¹ Constitutional Court, Decision No. 345/02, 11 July 2002.

Criminal law provisions

7. In its second report, ECRI recommended that Portuguese authorities provide awareness raising and training activities concerning the application of Article 240 (racial discrimination) of the Criminal Code and the need to punish racially motivated crime and incitement to racial discrimination and violence.
8. Article 240-1 prohibits racist organisations and racist propaganda activities and participation in such organisations or activities. Article 240-2 a) prohibits racist violence while Article 240-2 b) makes it an offence to defame or insult a person on the grounds of their race, with the intention of inciting to racial or religious hatred.
9. To date, the provisions of Article 240 have been applied only twice. Article 240-2 b) was applied for the first time in 2001 against a member of Paredes Municipal Council, who was sentenced to 9 months' imprisonment for making racist remarks about Gypsies and Black people. Article 240 was applied a second time on 6 July 2005 by the Criminal Court of Lisbon. The individuals in question were being prosecuted for racist activities, including the distribution of racist material in one of the city's squares. They received prison sentences ranging from 6 to 18 months.
10. Article 132-2 e), under which racial hatred may be considered an aggravating circumstance in homicide cases, was applied in a ruling given on 21 December 2004 by the Court of Fundão. The court found that the murder in 2003 of a 33-year-old African had been racially motivated and sentenced the perpetrators to 22 years' imprisonment.
11. Generally speaking, Ministry of Justice statistics show that the police have recorded very few offences involving racial discrimination (Article 240 referred to above). Four cases were reported to the police in 2002; three in 2003 and four in 2004. The number of cases involving physical attacks of a racist nature (Articles 132 and 146 of the Criminal Code) is even lower. Account must also be taken, however, of the racism and racial discrimination cases referred to the CICDR, the Commission for Equality and Combating Racial Discrimination (see below: "Specialised bodies and other institutions").
12. The fact that there have been only a small number of cases involving racist offences is no doubt partly a reflection of the general situation in Portugal. ECRI notes, however, that it is the view of representatives of minority groups and NGOs that the police tend not to give sufficient emphasis to the racist nature of offences, in some cases because the victims themselves fail to draw their attention to it. There is also a view that the police sometimes refuse to consider the racist aspect of an offence even when the victim or witnesses insist that it was racially motivated. Prosecutors, for their part, are said to be insufficiently aware of the potentially racist aspect of certain offences and so fail to target their investigations accordingly. Given that Gypsies are particularly vulnerable to racism and tend to have rather strained relations with the police², it is also possible that some Gypsies are disinclined to go to them to report racist attacks.
13. In its second report, ECRI noted that, when a prosecution was brought for any of the above-mentioned racist or xenophobic offences, immigrant community associations, anti-racist and human rights organisations were entitled, under

² On the situation of the Gypsies in Portugal, see below: "The social exclusion of Gypsy communities living in Portugal".

Law No. 20/96, to join the proceedings as “assistants” without being requested to do so by the victim, except where he or she formally objected. According to information received by ECRI however, associations only rarely avail themselves of this opportunity. ECRI notes with interest, however, the setting up on 17 November 2004 of the UVIDRE (*Unidade de apoio à vítima imigrante e de discriminação racial ou étnica*), a victim support unit for immigrants and others who have suffered racial or ethnic discrimination. The new unit run by an NGO, the APAV, and funded by the office of the High Commission for Immigration and Ethnic Minorities (*Alto Comissariado para a Imigração e Minorias Étnicas*) is tasked with helping victims free of charge, by providing psychological, social and legal assistance through personalised, human counselling by qualified staff. A unit of this kind could make the general public and victims more aware of the problem of racial discrimination and racist acts in general and encourage victims to file complaints. Hopefully it will also manage to raise awareness among members of the justice system, in particular the police.

Recommendations:

14. ECRI recommends that the Portuguese authorities significantly reinforce their efforts in terms of training for the police, prosecutors, judges and future legal professionals as regards the application of the legislation on racist offences and in particular Article 240 of the Criminal Code.
15. ECRI recommends that the Portuguese authorities inform the public about the existence of criminal provisions for sanctioning racially motivated acts. It recommends that they continue taking steps to encourage victims to report such acts.
16. In its second report, ECRI recommended that the Portuguese authorities provide greater protection against racist crimes through a general criminal provision expressly stating that racist motivation would be regarded as an aggravating circumstance.
17. ECRI notes that no general provision of this kind has been introduced since the publication of its second report. The Portuguese authorities have, however, observed that provision already exists in the Criminal Code for courts to consider racist motivation as an aggravating circumstance in a number of cases. One example is the crime of homicide (see Article 132-2 e) of the Criminal Code, referred to above), another is the qualified offence against physical integrity (Article 146-2 of the Criminal Code). Article 71-2 c) of the Criminal Code provides in general that to determine the sanction, the court shall take all the circumstances into account and in particular the “aims and motivations of the infraction”, without any further explanation. Nevertheless, as a result, courts can take the racist motivation into account as an aggravating factor in sentencing. However, ECRI stresses that the “racist” motivation is not explicitly mentioned in Article 71-2 c) as an aggravating factor in sentencing.

Recommendations:

18. ECRI strongly encourages the Portuguese authorities to adopt a provision expressly making racist motivation a general aggravating circumstance. This should apply to any type of offence, in accordance with paragraph 21 of ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

Civil and administrative law provisions

19. In its second report on Portugal, ECRI noted the adoption of Law No. 134/99 on the prohibition of discrimination in the exercise of rights on the grounds of race, colour, nationality or ethnic origin, regulated by Decree-Law 111/2000 of 4 July 2000. It expressed the hope that this law would be stringently applied as a means of effectively combating all acts of a discriminatory nature.
20. ECRI notes with interest that since the adoption of its second report, the legislation prohibiting racial discrimination has been further improved. Law No. 18/2004, which transposes Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, was adopted on 11 May 2004. This law covers the private and public sector in the following areas in particular: social protection, social services, benefits, education, access to goods and services and the provision of these goods and services, as well as contracts of employment. It defines direct and indirect discrimination. The law states that associations whose purpose is to combat racial discrimination may take part in court proceedings as representatives or assistants of the victim, with his or her consent. As regards the treatment of individual complaints about racial discrimination, the law has adopted the administrative procedure provided for in Law No. 134/99. On the implementation of this procedure, see below: "Specialised bodies and other institutions".
21. The Labour Code was revised in 2003 by Law N° 99/2003 mainly in order to transpose the above-mentioned Directive 2000/43/EC and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. Article 23 of the new Labour Code, which came into force on 1 December 2003, prohibits all forms of discrimination in the field of employment, including racial discrimination. On the subject of the burden of proof, Article 23-3 states that it is for the person alleging discrimination to justify his or her application to the Employment Tribunal by indicating in relation to which employee he or she feels discriminated against. It is for the employer to show that the difference in working conditions is not based on one of the grounds for discrimination specified in the Labour Code. As regards compensation, Article 26 states that persons discriminated against in the employment field are entitled to compensation for the material and moral damage suffered. ECRI does not know of any court cases in which these provisions concerning racial discrimination were applied.
22. Outside the employment sphere, ECRI notes that in order to obtain compensation, victims of racial discrimination must invoke Article 483 of the Civil Code (general civil liability in the case of illegal acts causing injury) in the civil courts. As concerns Article 70 of the Civil Code, this provision may be invoked in order to prevent an illegal infringement of the physical or moral integrity of an individual. As stated above, Law No. 18/2004 merely introduces an administrative procedure which punishes the discriminator and makes no specific provision for the victim. ECRI recalls that, in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, it asks that sanctions for discrimination cases include the payment of compensation for both material and moral damages³. It should further be possible to consider restoring rights which have been lost, eg re-admittance to housing in the case of someone who has been evicted on

³ See paragraph 12 of General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and its Explanatory Memorandum in paragraph 31.

discriminatory grounds. To date, ECRI is not aware of any cases where a victim of racial discrimination has been awarded damages by the civil courts.

Recommendations:

23. ECRI recommends that the Portuguese authorities ensure that victims of racial discrimination are effectively able to obtain adequate compensation, including restitution of any rights which may have been lost, without prejudice to the administrative sanctions procedure under Law No. 18/2004.
24. ECRI encourages the Portuguese authorities to adopt, in areas other than employment, provisions similar to those provided for in Article 23-3 of the Labour Code concerning the burden of proof and in Article 26 concerning the victim's right to compensation in racial discrimination cases. These other areas include notably housing, education, goods and services intended for the public and public places, health, social protection, exercise of economic activity and public services. ECRI draws attention to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination which provides guidelines in this respect.

Specialised bodies and other institutions

- *The High Commission for Immigration and Ethnic Minorities (ACIME)*

25. In its second report, ECRI referred to the work of the High Commissioner for Immigration and Ethnic Minorities and noted in particular the setting up of the Commission for Equality and Combating Racial Discrimination, of which the Commissioner is chair. ECRI recommended that the Commission be given all the necessary resources to enable it to operate effectively.
26. In November 2002, under Decree-Law No. 251/2002, the office of the High Commissioner for Immigration and Ethnic Minorities was reorganised to create a wider structure: the High Commission for Immigration and Ethnic Minorities - *Alto Comissariado para a imigração e minorias étnicas* (ACIME). It now consists of the High Commissioner, the Deputy High Commissioner, the Consultative Council for Immigration Affairs (COCAI - *Conselho Consultivo para os Assuntos da Imigração*) and the Commission for Equality and Combating Racial Discrimination (CICDR - *Comissão para a Igualdade e Contra a Discriminação Racial*). ACIME is based in Lisbon and has a permanent representation in Porto. Under Decree-Law No. 27/2005, ACIME is an "interministerial co-ordination service under the direct authority of the Prime Minister".
27. In February 2005, under Decree-Law No. 27/2005, ACIME was widened to include the National Immigrant Support Centre (CNAI) and the Local Immigrant Support Centres (CLAI). Their role is to receive and provide information and to deal with requests from immigrants⁴. Since its inception, ACIME's budget has tripled. It has amounted to around €4,750,000 per year since 2004. Its tasks are to improve immigrants' living conditions and help them become integrated into society and, at the same time, to eliminate racial discrimination and combat racism and xenophobia. It works with the other government agencies so as to provide a cross-sectoral approach to these issues and proposes measures to

⁴ See below: "immigration".

- help immigrants and ethnic minorities. It can also impose fines in cases of racial discrimination⁵.
28. Broadly speaking, ECRI is pleased to note that the High Commission has produced a great many initiatives to combat racism and racial discrimination. It is not possible to mention them all, but some appear in other sections of this report⁶. One example worth mentioning here is the publication by ACIME of “Combating racism – the legal system”, a regularly updated compilation of international and national legal provisions for combating racism and racial discrimination.
29. As noted by ECRI in its second report, the CICDR (Commission for Equality and Combating Racial Discrimination) was set up in 2000. Following a difficult start, mainly because of persistent blockages in the process of appointing its members, the situation seems to have gradually improved and the commission now meets on a regular basis. It advises the High Commissioner in administrative fines proceedings against discriminators⁷ and it also advises the government on applicable law in the field of racial discrimination. It promotes equality by organising awareness-raising activities, the seminar held in November 2004 on “citizenship and discrimination” being a good example. ECRI also notes with interest that the Commission comments publicly, and in writing, on current issues connected with action against racism and racial discrimination⁸.
30. ECRI draws attention to the remarkable contribution made to the fight against racism and racial discrimination by ACIME in general and by each of its constituent bodies in particular. ACIME plays a major role in the field of immigration and the integration of immigrants in Portugal as indicated below⁹. Many anti-racist NGOs and spokespersons for immigrants agree that ACIME has a good relationship with them and makes a genuine effort to help them. Some have expressed concern, however, that the efforts made are not always productive, not least because ACIME’s opinions and recommendations are not always heeded by the government.
31. ECRI notes that ACIME is under the direct authority of the Prime Minister. It therefore has the advantage of being in direct contact with the government authorities and in a position to closely follow their activities and to influence them. ACIME is not, however, an independent body; this can create problems in some of the functions assigned to it, in particular when it comes to imposing penalties in racial discrimination cases¹⁰. ECRI considers that ACIME’s work with Gypsies has not measured up to the expectations of the organisations concerned and has so far failed to resolve the integration problems experienced by these communities. Admittedly, ACIME’s activities are largely geared to the immigrant communities, although a number of initiatives, in particular those

⁵ On this point, see below: “Bodies involved in the racial discrimination complaints procedure under Law No. 18/2004”.

⁶ See in particular under “Immigration”. See also the ACIME activity report (2002/2005), available in English on the website: www.acime.gov.pt.

⁷ See below: “Bodies involved in the racial discrimination complaints procedure under Law No.18/2004”.

⁸ For examples, see below: “Media”.

⁹ See: “Immigration”.

¹⁰ On this point, see below: “Bodies involved in the racial discrimination complaints procedure under Law No. 18/2004”.

designed to combat racism and racial discrimination, benefit the Gypsy communities as well¹¹.

Recommendations:

32. In view of the key role played by ACIME in combating racism and racial discrimination and in supporting integration, ECRI recommends that the Portuguese authorities consolidate and consider reinforcing this institution. All the other Portuguese authorities should take special care to diligently consult ACIME and to co-operate with it fully, not least by heeding its opinions and recommendations in its areas of expertise.
33. ECRI recommends that the Portuguese authorities grant independence from the government to ACIME as a whole or at least to some of its components, so as to improve the effectiveness of some of its activities¹².

- Bodies involved in the racial discrimination complaints procedure under Law No. 18/2004

34. Law No. 18/2004 adopts the administrative complaints procedure laid down in Law No. 134/99 and introduced in 2000. This procedure involves the High Commissioner for Immigration and Ethnic Minorities (hereafter: High Commissioner), the general inspectorate competent in the matter and the Commission for Equality and Combating Racial Discrimination (the CICDR).
35. Under this procedure, the High Commissioner can impose fines and other ancillary sanctions (eg, ban on practising a profession or suspension of a licence, etc.) in cases of racial discrimination. The procedure involves an investigation by the general inspectorate competent *ratione materiae* (eg the general inspectorate of labour in cases involving discriminatory dismissal or the general inspectorate of internal administration if a complaint has been brought against a police officer). The general inspectorate sends its findings to the CICDR, which then gives an opinion. The High Commissioner decides whether or not to impose a penalty, based on the general inspectorate's final report and the opinion of the CICDR. The High Commissioner's decision is open to judicial appeal by the person being sanctioned. The procedure can apply to acts of racial discrimination in areas ranging from employment to access to goods and services, housing, etc. It can also be used in cases involving the publication of threatening, insulting or degrading statements about a group of persons on grounds of their ethnic origin. To initiate this administrative procedure, anyone can report a case of racial discrimination to the member of the government responsible for equality and ethnic minorities, to ACIME, to the CICDR or to the relevant general inspectorate.
36. According to numerous sources, this procedure, which has been in place since 2000 and is designed to punish racial discrimination through fines, has been a major disappointment. After six years (review carried out in March 2006), 190 cases have been recorded in total, two of which resulted in a fine. Sixty cases were still pending at the time. Admittedly, this may be due to the mediation role played by the CICDR and the High Commissioner, which sometimes allows cases to be resolved without going through the administrative procedure. There are however other, more worrying factors to be considered. Firstly, the public

¹¹ See Part II below: "The social exclusion of Gypsy communities living in Portugal".

¹² For further information on the issue of independence, see below: "Bodies involved in the racial discrimination complaints procedure under Law No. 18/2004".

and those involved in the justice system are not yet sufficiently aware of the existence of this procedure and of the CICDR, even though there has been some progress on this front over the years. It should be pointed out that the existing procedure seems to be very cumbersome and very long. Conflicts of competence between general inspectorates over who should handle a particular case are common and very time-consuming¹³. The entire procedure, from the date when the complaint is filed until the final decision, can take several years. Another problem which was mentioned is that the general inspectorates are not specifically trained to deal with racial discrimination cases. Such cases however, have special features which need to be taken into account.

37. ECRI is concerned to learn that the main barrier to the successful conclusion of administrative procedures for racial discrimination is that the High Commissioner often closes cases for lack of sufficient evidence. According to the NGOs, the standard of proof required in racial discrimination cases is too high, especially in an area where it is extremely difficult for the victim to prove an allegation. In this regard, ECRI notes that Article 6 of Law No. 18/2004 introduces the principle of sharing the burden of proof, whereby anyone who considers that he or she has suffered discrimination must provide factual evidence from which it may be presumed that such discrimination has occurred. On being presented with such evidence, the other party must show that the differential treatment is not based on grounds related to ethnic origin. This rule does not apply to criminal proceedings or to all actions where establishing the facts is a matter for a court or any other authority competent under the law (Law 18/2004, Article 6-2). According to information gathered by ECRI, this principle, which is essential in civil and administrative law for effective action against racial discrimination, has not yet been applied in Portugal and it is difficult to ascertain in precisely what kind of proceedings it should be able to operate. (With regard to the burden of proof in the field of employment, see above)¹⁴.
38. Given the lack of effectiveness of the procedure as it stands at present, some thought could be given to changing it. One solution might be to reduce the number of bodies involved in the procedure, for example by assigning investigatory powers to the CICDR which could thus conduct its own inquiry into the alleged discrimination, in whatever field. The High Commissioner is the main actor in the current procedure (as chair of the CICDR with a casting vote in case of a tie and as the body which decides the penalty). The High Commissioner is not independent, however. As it explains in its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, ECRI believes that a specialised body to combat racism and racial discrimination must be able to operate in a way that is both genuinely and clearly independent if it is to provide victims with effective support. The principle of independence is particularly crucial for the body which rules on individual complaints about racism and/or racial discrimination, especially complaints against the authorities.

¹³ ECRI notes however, that there has been some progress in this area. Since 2005, a Decree-Law has made it clear that in the event of a conflict of competence, it is for the Ministry of the President's Office to settle this conflict, thereby helping to somewhat reduce the length of the procedure.

¹⁴ "Civil and administrative law provisions".

Recommendations:

39. ECRI strongly recommends that the Portuguese authorities revise the administrative sanctions procedure for racial discrimination provided for in Law No. 18/2004 so as to render it significantly more effective. In order to speed up the procedure, consideration should be given to limiting the number of bodies involved in the various phases. One possibility would be to reinforce the Commission for Equality and Combating Racial Discrimination by giving it its own investigatory powers.
40. ECRI strongly recommends that the Portuguese authorities take steps to safeguard the independence of the bodies responsible for providing individual assistance to victims of racial discrimination and deciding whether or not such discrimination has occurred. It therefore draws attention to its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which provides guidelines in this area.
41. ECRI recommends that the Portuguese authorities do everything in their power to ensure that the difficulty of proving allegations does not constitute an insurmountable barrier in racial discrimination cases. In this context, full use should be made of the principle of sharing the burden of proof, under the administrative procedure provided for in Law No. 18/2004, for example.

- Provedor de Justiça

42. Virtually all of the complaints from non-citizens received by the Provedor de Justiça (the Portuguese Ombudsman) concern delays in procedures conducted by the Foreigners and Borders Service (SEF). In recent years, the Provedor de Justiça has not received any complaints about acts of racial discrimination. The Provedor de Justiça plays a significant role in the integration of immigrants, not least by interceding with the government to request the amendment of legal measures which present problems from a human rights perspective. For example, following the intervention of the Provedor de Justiça, Decree-Law No. 41/2006 of 21 February 2006 was passed, bringing the rules on family benefits for foreigners legally present in the country into line with those applicable to Portuguese nationals, which used to be more favourable.
43. ECRI notes that a leaflet has been published for immigrants to explain what the office of the Provedor de Justiça is for and how it operates¹⁵. This move came about after it was observed that immigrants were not making sufficient use of this procedure, and that it was important to find some way of encouraging them to turn to the Provedor de Justiça whenever they had problems with the authorities¹⁶. ECRI notes that, according to the Provedor de Justiça, very few complaints are received from members of the Gypsy communities. It seems, however, that Gypsies do sometimes experience problems in their dealings with the authorities, in particular local ones¹⁷. It could be in their interest, therefore, to turn to the Provedor de Justiça.

¹⁵ Leaflet "O Provedor de Justiça na defesa do imigrante".

¹⁶ Immigrants, it seems, are increasingly aware of the possibility of applying to the Provedor de Justiça. Whereas there were fewer than 50 complaints against SEF in 2001, in 2005 the figure was around 400.

¹⁷ See below: "The social exclusion of Gypsy communities living in Portugal".

Recommendations:

44. ECRI encourages the Provedor de Justiça to continue doing everything in his power to improve the position of non-nationals in their dealings with the authorities and to focus on the need to combat racism and racial discrimination in this area.
45. ECRI recommends that the Portuguese authorities alert non-nationals and also members of the Gypsy communities to the existence of the Provedor de Justiça and encourage them to turn to him if they have problems with the authorities.

Access to public services

46. Studies on immigrants and ethnic minorities reveal cases where members of these groups have complained of racial discrimination in a number of situations. Discrimination of this kind has apparently occurred in matters relating to access to employment, wage inequality, access to shops and/or loans, access to housing, health care, etc. Some of these cases have been reported to ACIME¹⁸ but in many instances, it seems, the authorities take no action. The discrimination is said to be more specifically directed at Gypsies and Black people but it also affects all immigrants and persons of immigrant origin living in Portugal¹⁹.
47. In its second report, ECRI noted the introduction of socio-cultural mediators in several services such as schools, social security and health care institutions and services which come into direct contact with immigrants. Finding this idea very interesting, ECRI encouraged the authorities to ensure that the scheme operated in a satisfactory manner. On this subject, Decree-Law 27/2005 allows for the recruitment of sociocultural mediators in the Local Immigrants Support Centres (CLAI). ECRI regrets that the problems raised in the second report persist and have sometimes even worsened. The socio-cultural mediators are certainly receiving training, but the posts are rarely filled or if they are, they rapidly become vacant again owing to lack of professionalisation, poor career prospects, job insecurity and other disincentives. It appears, for example, that mediators are obliged to take on second jobs in order to support themselves and broaden their career prospects. This also has a negative effect, in that those whom the scheme is designed to help feel discouraged and frustrated when they see that the mediation service is not operating properly. Everyone agrees, however, that having a mediator is very helpful and that the concept should definitely not be discarded. According to a study, in 2003/2004, there were 160 socio-cultural mediators in total, roughly 75% of whom were members of an ethnic minority. A high proportion of mediators work in the CNAIs (national immigrant support centres). Some are employed in education and in the "Choices" ("*escolhas*") scheme, which seeks to promote the social integration of young people from disadvantaged backgrounds.

¹⁸ On this point, see above: "specialised bodies and other institutions".

¹⁹ For further details, see below: "Immigration" and "The social exclusion of Gypsy communities living in Portugal".

Recommendations:

48. ECRI recommends that the Portuguese authorities closely monitor the situation as regards direct and indirect racial discrimination in access to employment, public services, public places, housing, etc. It is important that any complaints made in this area be duly dealt with but also that in-depth surveys and studies be carried out to see whether there is any indirect discrimination that might undermine equality of opportunity for members of ethnic minorities.
49. ECRI recommends that the Portuguese authorities move swiftly to consolidate the socio-cultural mediators scheme in services such as education, access to health care, assistance with employment, etc. To this end, action should be taken to professionalise the post, so that mediators can do their job full-time, over a long period, and as part of a rewarding career plan.

Access to education

50. ECRI looks at the question of access to education for Gypsy children in the second part of this report. In this section, it wishes to deal with access to education for children from minority groups in general, in particular immigrants.
51. ECRI notes with interest the recent legislation providing for the introduction in schools of compulsory classes in Portuguese as a second language for children whose mother tongue is not Portuguese. It further welcomes the adoption of Decree-Law No. 67/2004 which guarantees the right of children whose foreign parents have no legal status in Portugal to enrol in schools under the same conditions as children of non-nationals who do have legal status. The same rule applies to access to health care. To this end, a database to be managed by ACIME and which Decree-Law No. 67/2004 expressly states is to be used only to ensure access to education and health care, has been set up. In this context, ECRI notes that granting independence to ACIME would help boost the confidence of families which have no legal status in Portugal, encouraging them to register their children in this database²⁰.
52. ECRI is concerned to learn, in the absence of detailed statistics on this point, that according to several studies, children from certain immigrant groups, in particular Africans, do less well at school than Portuguese pupils and are less likely to continue their education. One of the explanations given for this is the failure to cater for multiculturalism in schools. ECRI notes in this context that the "Entreculturas" secretariat was transferred from the Ministry of Education to ACIME in 2004. It continues its activities in order to ensure that the multicultural reality is duly taken into account and reflected in schools.

Recommendations:

53. ECRI recommends that the Portuguese authorities continue and intensify their efforts to ensure equal opportunities in terms of access to education for children from minority groups and in particular immigrant children.
54. ECRI recommends that the authorities closely monitor the situation of immigrant children so as to ensure that they do not suffer any disadvantage in access to education, particularly because of a failure to cater for multiculturalism in schools. The authorities could, for example, step up the activities of the

²⁰ On the subject of the independence of ACIME, see above: "specialised bodies and other institutions".

“Entreculturas” secretariat, and ensure that it has a real impact on the education system.

Reception and status of non-citizens

- *Immigration*

55. In its second report, ECRI focused on the legalisation procedure under Decree-Law No. 4/2001, for non-citizens with no legal status. It called on the Portuguese authorities to monitor closely the implementation of this procedure, and in particular to ensure that foreign employees had effective legal protection from their employers. ECRI also recommended that the Portuguese authorities do all they could to improve the services delivered by the Foreigners and Borders Service (SEF), amongst other things by providing it with all the necessary human and financial resources to enable it to carry out its responsibilities.
56. ECRI welcomes the major efforts exerted by the Portuguese authorities to deal with the constant increase since the 1990s in the number of immigrants in the country. These immigrants come primarily from Ukraine and Brazil, but there are also some from several east European and Portuguese-speaking African countries. There are today approximately 450,000 immigrants in Portugal, ie around 4-5% of the total population.
57. With regard to the SEF which has very significant powers in the immigration field, ECRI notes with satisfaction that considerable progress has been achieved in various fields since the publication of its second report. First of all, the SEF’s human and computer resources have been increased substantially and plans for future improvements have already been made. Staff have been given training on improving the reception of foreigners, including in the field of human rights. A multi-lingual telephone service makes it possible to obtain an appointment and information, thereby avoiding pointless travel and hours of waiting. Efforts made in conjunction with ACIME have led to much more human contacts between the service and its users. However, while the SEF has made up considerable time on its backlog, much still remains to be done, particularly in the regions of Lisbon and Setúbal. ECRI notes that immigrants’ representatives still complain of inappropriate reception by SEF employees and significant delays in the processing of cases²¹. Bureaucracy is apparently a general problem in Portugal, but this is especially marked in the procedures concerning immigrants, who are particularly vulnerable in the event of delays or problems with their cases.

Recommendations:

58. ECRI strongly recommends that the Portuguese authorities pursue and intensify their efforts to solve the remaining problems concerning delays in processing files and the reception of foreigners by the Foreigners and Borders Service, continuing to provide all the human and material resources required to limit bureaucracy and assist immigrants in the best possible way.
59. Decree-Law No. 34/2003 of 25 February 2003 (on arrangements for the entry, residence, exit and removal of non-citizens from Portuguese territory) introduced a genuine immigration policy based on the promotion of legal immigration, the fight against illegal immigration and the integration of immigrants into Portuguese society. This Decree-Law provides for an

²¹ On this point, see also above under “Provedor de Justiça”.

immigration system founded primarily on work permits. Except in cases such as family reunification, a non-citizen who is not an EU national must obtain a work contract from an employer in order to be able to settle in Portugal. Periodically, the government sets a quota of non-nationals per occupational category authorised to enter Portugal if they are in possession of a work contract.

60. Decree-Law No. 34/2003 offers a legal framework which has undeniable positive features. Nonetheless it was criticised when it was passed by among others, the Consultative Council for Immigration Affairs (COCAI) which had highlighted the broad discretionary power granted to the SEF and the perpetuation of the inequality as regards health insurance between legally resident non-citizens in the country and Portuguese citizens. The Decree-Law has also been criticised by NGOs and immigrants' representatives who view the system of quotas as too rigid and out of step with the need for foreign workers. Furthermore, it is unrealistic to believe that employers would be prepared to go abroad to recruit or that a non-citizen would be able to find work from his or her country of origin. Accordingly, very few people are taken on under Decree-Law No. 34/2003.
61. The immigration system set up by Decree-Law No. 34/2003 fails to provide an adequate response to the needs of the Portuguese labour market. For this reason, many employers continue to recruit and employ non-citizens illegally resident in the country, particularly in the hotel, building and farming sectors. The legalisation procedure under Decree-Law No. 4/2001 enabled some 183,000 individuals to obtain an annually renewable temporary residence permit. Decree-Law No. 34/2003 brought this procedure to an end. However, the door remained open for non-citizens to be given legal status if they had been working for more than three months prior to 12 March 2003, the date the Decree-Law came into effect, and had been paying their social security contributions and taxes. Those who fell into this category were able to apply for legal status in the 45 days following the entry into force of the Decree-Law. 53,000 people applied and a number of applications are still being considered by the SEF. A number of difficulties, however, came to light when workers discovered that the amounts deducted at source for social security contributions and taxes had not in fact been paid to the relevant authorities. Accordingly, they were unable to prove that they had paid. ECRI notes that in such cases, the authorities are attempting to find a solution enabling the employees whose interests had been harmed to legalise their situation all the same. Another legalisation procedure, limited to Brazilians under a reciprocal agreement with Brazil in 2003, should lead to the legalisation of 14,000 people who have applied and who satisfy the criteria laid down in the Agreement. Procedures of this type have been criticised by NGOs and immigrants' representatives insofar as they are restricted to a single nationality.
62. ECRI notes that, according to SEF estimates, despite all these legalisations, almost 200,000 non-citizens are without legal status in the country. It is generally held that the people in question are illegally employed in poorly-paid and low-skilled jobs. NGOs and ACIME believe that a solution must be found to enable those already in Portugal to obtain a work and residence permit, rather than going abroad to recruit a workforce that is already available in Portugal.
63. ECRI is deeply concerned about the continuing malpractices of employers towards employees without legal status. These employees are particularly vulnerable and the authorities rarely take action to penalise employers who engage in such malpractices. This is partly because the legalisation procedure

requires the co-operation of employers who, the authorities say, must be encouraged to declare those working for them, to pay retrospectively the contributions due to the social and tax authorities and to give a contract of employment, an indispensable part of the legalisation process. Nonetheless, ECRI is surprised to learn that employees without legal status have been able to pay taxes and social security contributions, with the authorities being fully aware of this, without it causing any problems for the employers. It also finds it unacceptable that employers have been able to take advantage of the situation by retaining the sums paid instead of paying them to the relevant bodies, with the employees being totally unaware of this. ECRI notes that the Decree-Law has strengthened the SEF's powers and the penalties applicable to employers who take on workers illegally. Several observers have commented that if Portugal wishes to eliminate the illegal employment of non-citizens, the government must take measures not only to encourage and facilitate the recruitment of non-citizens already in the country, but also to punish appropriately the most serious cases of abuse by dishonest employers.

Recommendations:

64. ECRI recommends that the Portuguese authorities pursue their efforts to grant work and residence permits to foreign workers in Portugal who are without legal status.
65. ECRI strongly recommends that the Portuguese authorities take all the necessary measures to ensure that immigrants, whether or not they are legally resident, are not subject to any malpractices from their employers. Employers must be liable to appropriate penalties for such abuses, particularly in the case of illegally employing immigrants. Legalisation measures should also be taken for employees who have been exploited.
66. In its second report, ECRI recommended that the Portuguese authorities raise public awareness of Portugal as a multicultural society, the need to combat stereotypes and prejudice affecting any of the groups of immigrants and ensure equal opportunities for all immigrants, whatever their origins.
67. ECRI notes with satisfaction that Portugal's recently introduced immigration policy is coupled with an integration policy. The latter has been reflected in a large number of measures for immigrants in fields such as education, employment, social rights, culture, etc. ACIME plays a key role in this area. It has been behind a large number of initiatives to facilitate the integration of immigrants and Portuguese society. For example, it has set up a national immigrants' information network (*Rede nacional de Informação ao Imigrante*) publishes a monthly newsletter (*Boletim Informativo - ACIME*), various brochures (including one in several languages, entitled "Immigration in Portugal – useful information"), has opened a telephone helpline (*SOS Imigrante*, accessible in three languages) and has maintained a fairly comprehensive website since October 2003 (www.acime.gov.pt).
68. A national immigrants support system (*Sistema nacional de Apoio ao Imigrante*) has been set up including national support centres (CNAI) in Lisbon and Porto and regional and local support centres (CLAI) in conjunction with other municipalities. These centres have become prime partners for a number of institutions such as the SEF, the Employment and Vocational Training Institute (IEFP), General Inspectorate of Labour (IGT), Social Security and the Ministry of Education. Socio-cultural mediators, often chosen from among immigrants or people of immigrant origin are to be found in these centres and are there to help

users in various languages. The centres are a means of bringing together in one location all the authorities that immigrants generally have to deal with, in order to guide them more effectively and cut down waiting time.

69. The “Portugal Welcome” scheme referred to in ECRI’s second report has been maintained and built on, and offers free Portuguese language and citizenship courses to new immigrants, on a purely voluntary basis. An Immigration Monitoring Centre (Observatório da Imigração), comprising an ACIME-appointed co-ordinator and an informal board of representatives of various university research centres, has also been set up. This Monitoring Centre has carried out a large number of studies on issues such as the representation of immigrants in the media, diversity in schools and a study on immigrants and crime, which destroyed the myth that immigration and crime were inextricably linked. The Consultative Council for Immigration Affairs (COCAI), in addition to commenting on immigration-related laws and policies, is also tasked with ensuring the participation and collaboration of associations representing immigrants, the social partners and social solidarity institutions in framing policies on social integration and the fight against exclusion. In the framework of the European Union’s programme *Equal*, measures have been taken in order to facilitate the recruitment of immigrants. Such measures include the creation of a training course on “citizenship and cultural diversity in the field of work”, for the employees of the Employment and Vocational Training Institute (IEFP). There are other initiatives taken both at national level, by civil society, and also by local authorities, such as the municipality of Lisbon which has a “Municipal council for immigrant communities and ethnic minorities”.
70. All these efforts are apparently bearing fruit. Immigrants are generally well-received and well perceived by Portuguese society. Nonetheless, there is still progress to be made as integration problems persist. The integration process is aimed more specifically at the very recently arrived immigrants, overlooking slightly those who arrived longer ago and for whom no special integration measures were available at the time. Immigrants of Brazilian and African origin sometimes feel left out of the integration process, or at least at a disadvantage in comparison with those from the countries of eastern Europe. ECRI had already highlighted in its second report that a number of factors could explain why immigrants from eastern Europe found fewer difficulties than those from the former Portuguese colonies, despite the additional language hurdle. It was also worried that other factors such as skin colour and religion might help explain why certain immigrants were accepted more easily than others. ECRI is very concerned to learn from several studies that the difference in treatment by Portuguese society between immigrants from eastern Europe and those from Africa and South America is in part related to racist prejudice and stereotypes based on skin colour, leading at times to acts of racial discrimination, particularly as regards employment and housing. This does not affect just new arrivals, but also the children of immigrants who arrived before the 1990s. It is difficult to say with any degree of accuracy the role played by racist prejudices and racial discrimination in the treatment of immigrants and people from immigrant backgrounds since no statistics based on ethnic origin have yet been compiled. However, surveys and testimonies indicate that this is an avenue to be explored in order to understand the social exclusion suffered by certain immigrants.

Recommendations:

71. ECRI recommends that the Portuguese authorities maintain and consolidate their efforts to promote the integration of immigrants in Portugal. It stresses that integration efforts should apply to all immigrants, irrespective of their ethnic and national origin and regardless of when they arrived in the country. The Portuguese authorities should also include Portuguese nationals of immigrant origin in the integration process.
72. ECRI notes that the Nationality Act was amended on 17 February 2006 (Organic Law N° 2/2006). Previously it provided that Portuguese nationality could be conferred exclusively on the basis of *jus sanguinis*. As a result of the amendment, the principle of acquisition of nationality through birth on Portuguese territory (*jus soli*) has been introduced insofar as a child born in Portugal, one of whose parents was also born in Portugal, may acquire Portuguese nationality. A child born to foreign parents, neither of whom was born in Portugal, may also acquire Portuguese nationality provided that at least one of the parents has been legally resident in Portugal for a minimum of five years. Lastly, there are facilitated naturalisation measures under which children of immigrants satisfying certain conditions may request Portuguese nationality at the age of 18. ACIME points out that this Act also introduces other improvements, including a reduction of bureaucracy and the transfer of competency for nationality affairs from the SEF to the Ministry of Justice. The new Act therefore makes it easier for children from immigrant backgrounds born in Portugal to acquire Portuguese nationality. However, NGOs and immigrants' representatives feel that the legislation does not go far enough insofar as it gives an automatic right to Portuguese nationality in reality only to "3rd generation immigrants", ie the children born in Portugal of foreign parents who were themselves born in Portugal.
73. Non-citizens' right to vote and stand as candidates in municipal elections is an area where Portugal could make further progress in terms of integration. Under the Portuguese Constitution, non-citizens from non-EU countries may vote and stand as candidates in local elections provided there is a reciprocal arrangement with their country of origin. The High Commissioner for Immigration and Ethnic Minorities recently said that there was no justification for the reciprocity condition in the case of non-citizens who had been living a number of years in Portugal. What is important for him is that non-citizens who have been resident in Portugal for a long time should be able to participate fully in local political life in order to facilitate integration, whatever their country of origin. ECRI recalls that such a possibility is provided for in the Convention on the Participation of Foreigners in Public Life at Local Level which it recommends that the Portuguese authorities ratify²².
74. ECRI points out that while integration can also be achieved through employment, the contribution made by immigrants to Portugal is not confined to purely economic considerations. NGOs and immigrants' representatives have said that immigrants are often viewed solely as economic entities and not as a source of cultural enrichment for the country. In this regard, many immigrants express their frustration at being employed in unskilled low-paid jobs even though they have much higher qualifications, sometimes of university standard. It is not unusual – especially but not exclusively for those from eastern Europe –

²² See above "International legal instruments".

for immigrants to see a former university professor from their country working as a cleaner in Porto or on a building site in Lisbon. One solution to this problem would be to facilitate recognition of qualifications obtained abroad. A pilot project along these lines has already been carried out for doctors and nurses, who were able to follow a re-qualification course enabling them to work in their own profession in Portugal, but much still remains to be done here.

75. Lastly, ECRI is concerned to learn that with the recent rise in unemployment in Portugal and the risk that it will increase still further, some sections of Portuguese society, occasionally encouraged by the media, see immigration as a threat to employment for Portuguese nationals. Such a trend sometimes paves the way for xenophobic statements and behaviour which must be kept in check as a matter of urgency in order to avoid any loss of control and to ensure that integration can take place without any clashes²³. ECRI points out that successful integration is a two-way process involving efforts on the part of not only immigrants themselves but also the Portuguese population which must be made aware of the human and enriching aspect of a multicultural society.

Recommendations:

76. ECRI recommends that the Portuguese authorities pursue their efforts to enable persons of immigrant origin to play a full part in the public and political life of the country, by providing for the possibility for non-citizens who have been living in Portugal for many years to acquire Portuguese nationality and vote and stand as candidates in local elections.
77. ECRI recommends that the Portuguese authorities make sure that integration measures seek to foster mutual respect between immigrants and the majority society, which must be made aware of the cultural enrichment resulting from immigration in Portugal.

- Refugees and asylum-seekers

78. In its second report, ECRI looked at the asylum application procedure. It recommended that the Portuguese authorities give suspensive effect to appeals against a refusal to grant asylum during the admissibility phase, to avoid the danger of an asylum seeker being deported even though the application might ultimately be accepted. ECRI regrets that the procedure has not been amended on this point and that the danger still exists. ECRI has been informed that the short timeframe within which an asylum application file must be submitted (seven days) can prove difficult, in view of the very high evidence requirement threshold. ECRI acknowledges however that asylum legislation is currently being revised.
79. The number of people seeking asylum in Portugal is not very high compared with other European Union countries. In 2004, there were just 84. In 2005 there were 102 in all, with an acceptance rate of 11%. The Portuguese Council for Refugees (CPR – *Conselho português para os refugiados*) is an NGO tasked by the state with ensuring the reception and integration of asylum seekers and refugees in Portugal. ECRI notes that this NGO runs a centre to house asylum seekers and that another facility will soon be opened. Asylum seekers and refugees benefit from a series of integration measures, primarily via the CPR. The latter feels that people are generally integrating well, despite the isolated incident in 2006 when a group of Portuguese youths are reported to

²³ On this point, see below, "Climate of opinion" and "Media".

have attacked young asylum seekers outside their accommodation facility, requiring the intervention of the law enforcement agencies. ECRI notes that a complaint of racial discrimination has been made against the law enforcement agencies for racist statements and excessive use of force. It would appear that the complaint is currently being investigated.

Recommendations:

80. In view of the current revision of the Asylum Act, ECRI reiterates its recommendation that the authorities give suspensive effect to appeals against a refusal to grant asylum in the admissibility phase, in order to avoid the danger of an asylum seeker being deported even though ultimately the application might be accepted. The authorities should also ensure that the time allowed for submitting an asylum application is not too short.
81. ECRI encourages the Portuguese authorities to pursue their efforts to facilitate the integration of asylum seekers and refugees. It recommends that the Portuguese authorities provide the Portuguese Council for Refugees with all the necessary means to enable it to perform its task in the best possible conditions.

Vulnerable groups

- Immigrants

82. This question is dealt with above. See: "Immigration".

- Gypsy communities

83. This question is dealt with below. See "Specific Issues: the social exclusion of Gypsy communities living in Portugal".

Media

84. NGOs agree that in the fight against racism and intolerance, the media have a prime role to play in Portugal because they have a considerable influence on public opinion. This is why ECRI is concerned to learn that certain media, in particular television, convey racist stereotypes and prejudices. It quotes as an example the incident that took place on Carcavelos beach on 10 June 2005. Some media showed pictures of Black youths running away and of armed police officers on the beach. The media reported the incident as an *arrastão*, ie bag-snatching involving 500 young people, primarily of immigrant origin, who had supposedly attacked people on the beach to rob them of their possessions. As it turned out, the police stated that there were at most 30 or 40 people causing a problem and that the youths shown running away were doing so with their own possessions and in panic in the general confusion. Reportedly, the police had received just one complaint for theft. The Commission for Equality and Combating Racial Discrimination (CICDR) made a public statement on 21 June 2005, condemning the attitude of the media involved and calling on them to correct the inaccurate information. Surveys showed that this incident led to a wave of hostility against immigrants not only in the media, but also among the general public.
85. The CICDR also took a public stand on 10 April 2006 regarding references in the media to nationality, ethnic origin, religion or legal status from official sources, in reaction to the excessive number of cases where such details were given, serving no other purpose than stigmatising certain groups and increasing prejudices.

86. ECRI notes, however, that studies have shown a positive trend in the media which are taking a greater interest in the culture and identity of minority groups. ECRI welcomes good practices such as the television programme “We” (NÓS in Portuguese) which has a 20-minute slot each day and a one hour slot each week. It has been broadcast since 2004 and is aimed at depicting a pluralist, multicultural and harmonious society. In addition, the annual “Immigration and Ethnic Minorities – Journalism for Tolerance” prize was initiated in 2002 for journalists from all the media in order to promote tolerance and integration, combat all forms of racism and discrimination and contribute to an understanding of cultural, religious and ethnic differences.

Recommendations:

87. ECRI encourages the Portuguese authorities to impress on the media, without encroaching on their editorial independence, that they must ensure that the way they present their information should not contribute to a climate of hostility and rejection towards members of all minority groups, including immigrants and Gypsies. ECRI recommends that the Portuguese authorities hold discussions with the media and other relevant civil society players on the best way of achieving this objective.

Climate of opinion

88. With regard to the climate of opinion in Portugal, ECRI is pleased to learn that racist, antisemitic and xenophobic acts and statements remain isolated occurrences²⁴. Generally speaking, racism and xenophobia do not seem to constitute a particularly acute problem in Portugal. Nonetheless, it regrets to hear from several sources, that there is a form of subtle racism in Portugal based on stereotypes and prejudice. Public opinion is occasionally prone to racist generalisations. For example, some people make an almost automatic link between Gypsies and drug trafficking, between Brazilian women and prostitution, between East Europeans and mafia organisations, and between North Africans and terrorism. Jews also sometimes suffer from prejudice in Portugal. For example, unwarranted generalisations are at times made between the Jewish community in Portugal and the events taking place in the Middle East. Lastly, immigrants are occasionally unjustly accused of contributing to a rise in both the crime rate and the unemployment rate by their very presence. From time to time, some of these sweeping statements are relayed in the press and exploited in political discourse. As is the case above with immigration, ECRI is concerned that the number of manifestations of racism seems to increase, often for economic and social reasons.
89. ECRI has been particularly concerned to learn that the extreme right is becoming more visible in Portugal. While it is still a marginal phenomenon, involving at most a few thousand sympathisers, the movement would appear to be making some headway in terms of its image. Portugal has some groups of skinheads, apparently becoming increasingly better organised, a National Front movement (*Frente nacional – FN*) and the political party PNR (*Partido Nacional Renovador – National Renewal Party*), which attracts at most a few thousand votes. In May 2006, for example, a public demonstration (“Stop the Invasion!”, referring to immigration) was organised in Vila de Rei by the PNR in which members of the FN participated. There is also an increase in racist websites in

²⁴ See, however, the particular situation of Gypsies, described below under “The social exclusion of Gypsy communities living in Portugal” and especially “Relations between Gypsy communities and local authorities”.

Portuguese. The main targets for racist movements are the Gypsies and visible minorities in Portugal. Civil Society and some NGOs have expressed their concern at this. More generally, they deplore the laxist attitude of the public authorities towards manifestations of racism and racial discrimination. They regret that the existing legal tools are only rarely applied, if at all.

Recommendations:

90. ECRI recommends that the Portuguese authorities continue their efforts to raise public awareness of human rights and the need to combat racism and intolerance. They should also attach greater importance to these issues in teaching and in the training of civil servants.
91. ECRI encourages the Portuguese authorities to pursue their efforts to foster a more balanced political debate on immigration and immigrants. It recommends that particular attention be paid to combating the tendency for the general public to equate immigration with crime and unemployment.
92. ECRI strongly urges the Portuguese authorities to monitor closely developments relating to extreme right and racist movements, including skinhead groups. To this end, it recommends that the Portuguese authorities reinforce their efforts to counter the dissemination of racist, xenophobic and antisemitic propaganda via the Internet.

Conduct of law enforcement officials

93. In its second report, ECRI recommended that the Portuguese authorities punish any misconduct by the law enforcement agencies towards members of immigrant and Gypsy communities and make public the penalty imposed. It also encouraged the Portuguese authorities to consider taking steps to increase the number of immigrants and members of ethnic minorities in the police force.
94. ECRI is concerned that there continue to be complaints about racist and discriminatory conduct by the law enforcement agencies. Some of these complaints are submitted to the competent authorities, in particular the Commission for Equality and Combating Racial Discrimination (CICDR). For example, ECRI notes that in 2003, of the nine applications submitted to the CICDR relating to verbal or physical racist violence, seven involved members of the law enforcement agencies. In some cases, these complaints result in penalties but the majority are simply filed away for lack of evidence. More often, according to NGOs, those concerned, especially members of the Gypsy community, do not make a complaint.
95. ECRI notes that courses in human rights are provided for law enforcement officers and prison staff. There is also a professional ethics module in the training given to the National Republican Guard (GNR) and the police (PSP – Public Security Police) in connection with immigrants and ethnic minorities, which contains information on racism and racial discrimination.

Recommendations:

96. ECRI strongly encourages the Portuguese authorities to allocate all the necessary resources to law enforcement officers to enable them to operate under appropriate conditions, with strict respect for the human rights and dignity of the people they arrest. This presupposes improving training in human rights and raising awareness of racism and racial discrimination issues. More emphasis should also be placed on training in cultural diversity.

97. The Portuguese authorities could also consider increasing the number of members of minority groups employed in the police, for example by appointing socio-cultural mediators responsible for improving relations between the law enforcement agencies and minority groups.
98. ECRI strongly recommends that additional steps be taken to bring an end to all police misconduct, including racist remarks and ill treatment towards members of minority groups.

Monitoring the situation

99. ECRI notes that in order to monitor the situation of minority groups in various areas of life such as education, housing and employment, the Portuguese authorities collect data broken down primarily by nationality. The Portuguese authorities have indicated that the gathering of data broken down by ethnic origin was subject to specific data protection provisions. Nonetheless, ECRI points out that Gypsies are Portuguese nationals of a different ethnic origin from the majority who, it would appear, are faced with discrimination and suffer from social exclusion. It is important for them, and also for certain Portuguese nationals of immigrant origin, that studies be undertaken to ascertain whether there is any direct or indirect discrimination against minority groups based on ethnic origin, and if so to find the best way of dealing with such discrimination.
100. The National Data Protection Commission (CNDP) is responsible for ensuring compliance with legislation which prohibits, in principle, the gathering of sensitive data, including information on "racial or ethnic origin" (Article 7 of Law No. 67/98 of 26 October 1998), although exceptions are possible. The CNDP has taken action on several occasions to prohibit the holding of certain files based on ethnic origin which did not have a legitimate aim. ECRI notes that when there is a legitimate aim, such as combating discrimination, when the people concerned give their explicit, free and informed consent and provided that the data remains anonymous, there should be no problem. Studies of this type would make it easier to choose effective measures to rectify the problems identified.

Recommendations:

101. ECRI recommends that the Portuguese authorities consider the ways and means of introducing a coherent and complete data gathering system in order to assess the situation of the various minority groups living in Portugal and determine the extent of instances of racism and racial discrimination. Such a system should comply with national legislation and European regulations and recommendations on data protection and private life. The Portuguese authorities should ensure that any data collected is done so with total regard for the anonymity and dignity of the persons questioned and in compliance with the principle of informed consent. Furthermore, the system for gathering data on racism and racial discrimination should take the gender dimension into account, in particular from the standpoint of possible double or multiple discrimination.

II. SPECIFIC ISSUES

The social exclusion of Gypsy communities living in Portugal

102. In its second report ECRI recommended that the Portuguese authorities adopt several measures to improve the situation of Gypsies in Portugal. In particular, it recommended that steps should be taken to combat the racist prejudice and stereotypes and the racial discrimination experienced by Gypsies and that action should be taken to counter all forms of ill-treatment committed by the police against members of the Gypsy community. ECRI further stressed that it was important to ensure that local authority decisions did not result in discrimination against Gypsies; this could be achieved by encouraging their active involvement in policy-making processes. It also called on the authorities to improve the housing conditions of Gypsy families and to encourage access to education for the children of these families.
103. ECRI is very concerned that the situation of Gypsies in Portugal has not improved overall since the publication of its previous report. There are at least between 40,000 et 50,000 Gypsies according to some estimates, and the majority have to contend with numerous difficulties, resulting in the marginalisation and social exclusion of Gypsy communities in Portugal. Anti-racism associations and representatives of Gypsy communities agree that these communities continue to suffer from racism and discrimination in Portugal. Studies and surveys substantiate these claims. For this reason, ECRI would like to review some of the problems that persist.

- ***Discrimination against Gypsies in access to housing***

104. ECRI deplores the fact that a large number of Gypsies still live in difficult, if not very difficult conditions, despite the progress made in this area in recent years. However, ECRI is pleased to learn that the Rehousing Programme (PER) set up by the national authorities has enabled many Gypsy families to leave the shanty towns where they lived in Lisbon and Porto and move to decent housing. Nevertheless, ECRI deplores the fact that some Gypsy communities live in the most basic of encampments on the outskirts of towns, sometimes without any access to essential services such as water and electricity. It is particularly concerned about the allegations that some local authorities have deliberately cut off access for Gypsy communities to water in order to intimidate and humiliate them into leaving, instead of attempting to find reasonable and humane solutions. There are other allegations of arbitrary evictions and demolition of Gypsy housing without any alternative accommodation being offered. The vast majority of Gypsies in Portugal are sedentary. It is therefore essential to find lasting solutions for those currently living in the most basic of encampments and avoid their having constantly to move from one place to another under the pressure of local residents and authorities.

Recommendations:

105. ECRI strongly recommends that the Portuguese authorities address the situation of Gypsy communities living in uncertain housing conditions and that they continue to take all the necessary steps to rehouse them in decent accommodation.
106. ECRI firmly recommends that the Portuguese authorities investigate the allegations of inappropriate conduct towards Gypsies with regard to housing, particularly arbitrary evictions, and that they take all the necessary measures to put an end to any such practices.

- ***Discrimination against Gypsies in access to employment, goods and services***

107. The majority of the members of Gypsy communities earn a living through itinerant trading, selling goods at fairs and markets. ECRI finds it regrettable that these people encounter difficulties in exercising their profession. These difficulties are in part purely economic insofar as consumers are increasingly turning away from this type of trade, which is subject to strong competition. ECRI notes, however, from some reports that Gypsy sellers also have to cope with inflexible and inappropriate regulations, hostility from the localities where they want to set up their stands and excessive surveillance and disproportionate action by the law enforcement agencies. ECRI notes with interest that ACIME has set up a working group to look at the question of itinerant trading as the most widespread means of subsistence among the Gypsy communities.
108. ECRI notes that in view of the economic difficulties encountered with regard to itinerant trading, alternative solutions must be found to enable Gypsies to find employment and meet their needs. Initiatives by NGOs and the Employment and Vocational Training Institute (IEFP) have been taken to try and train Gypsies, particularly young members of the community, for employment. ECRI is concerned to learn however, that according to some NGOs these initiatives have not been as successful as anticipated because of the racist prejudices that persist among certain employers, which means that Gypsies suffer racial discrimination in recruitment. This often ends up discouraging young Gypsy job-seekers.
109. Elsewhere, ECRI notes allegations that Gypsies are prevented, because of their ethnic origin, from entering public places such as shopping centres, restaurants and cafes. It would appear that they also encounter difficulties because of their ethnic origin in obtaining bank loans or other services.

Recommendations:

110. ECRI encourages the Portuguese authorities to continue to take all the necessary measures to assist members of Gypsy communities in obtaining employment. It is imperative that such a policy to facilitate employment for Gypsies be accompanied by measures to prohibit and penalise any discriminatory conduct by employers who refuse to take on Gypsies on the grounds of their ethnic origin.
111. ECRI strongly recommends that the Portuguese authorities take steps to combat racial discrimination against Gypsies with regard to access to public places and access to goods and services, ensuring in particular that any

discriminatory act in these areas is duly punished.

- **Access to education for Gypsy children**

112. ECRI is concerned to learn that the school drop-out rate among Gypsy children is very high, as shown by the figures provided by the Portuguese authorities. There are very few Gypsy children who pursue their studies beyond the first cycle. According to non-government sources, there are currently fewer than ten Gypsy students in higher education. Gypsy girls are particularly likely to leave school at a very early age for cultural reasons. The aforementioned housing difficulties facing certain Gypsies have an impact on their ability to attend school under appropriate conditions.
113. ECRI is especially concerned to learn that Gypsy children are occasionally faced with hostile reactions from parents of non-Gypsy children who do not wish Gypsy children to join their own children's classes. For example, ECRI notes the incident widely reported in the press of the transfer of ten or so Gypsy children from a school in Teivas to a school in Rebordinho at the start of the 2003 school year. The children were transferred apparently in response to pressure from non-Gypsy parents in the first school. Placards were put up in the new school stating "No to Gypsies". Nonetheless, the school officials reported the incident to the police and, according to ACIME, the authorities did everything to ensure that the Gypsy children could attend their new school under acceptable conditions. ECRI also notes that according to NGOs and Gypsy representatives Gypsy culture is not yet sufficiently taught and promoted, especially in schools attended by Gypsies.
114. Some initiatives have been taken to encourage school attendance by Gypsy children. One example is the creation of posts of socio-cultural mediators who act as a liaison point between families and schools²⁵. Some initiatives taken by ACIME's "Entreculturas" secretariat are designed to raise the awareness of non-Gypsy teachers and pupils to Gypsy culture. The Portuguese authorities have said that the school attendance rate of Gypsy children has recently risen since the creation of these mediator posts. A minority of Gypsy children whose parents have a nomadic or semi-nomadic lifestyle continue to benefit from the school network set up some time ago, which enables them to attend school throughout the year wherever they may be in Portugal.

Recommendations:

115. ECRI urges the Portuguese authorities to reinforce their efforts, in conjunction with Gypsy communities, to encourage regular school attendance by Gypsy children and to tackle the problem of the high school drop-out rate, particularly among Gypsy girls. In particular, ECRI recommends that the Portuguese authorities take steps to make it easier for Gypsy students to pursue higher education studies.
116. ECRI strongly recommends that the Portuguese authorities continue their efforts to address the problems relating to the reception of Gypsy children in certain schools and that they take all necessary measures to deal with any hostile reactions from the parents of non-Gypsy children.
117. ECRI recommends that the Portuguese authorities pursue and step up their efforts to promote Gypsy culture among teachers and pupils.

²⁵ See above "Access to public services".

- ***Relations between Gypsy communities and local authorities***

118. ECRI notes that according to anti-racist associations and representatives of Gypsy communities, there continue to be instances of racist remarks made by members of the local population or local authority representatives. While ECRI notes with satisfaction that a local elected representative was given a criminal conviction for uttering racist remarks against Gypsies²⁶, such remarks do not always appear to be prosecuted. ECRI underlines, however, that certain local authorities are attempting to improve relations between Gypsies and the majority population. For example, the Portuguese authorities have indicated that the municipality of Lisbon has opened the “Cultural Centre of Ameixoeira” (*Casa de Cultura da Ameixoeira*) which is available for Gypsies to carry out cultural activities. This Centre is also open to non-Gypsies, thus giving an opportunity to learn about the Gypsy culture.

Recommendations:

119. ECRI recommends that the Portuguese authorities punish appropriately any racist statements or conduct by members of the local population or local authority representatives and make it perfectly clear that such attitudes will not be tolerated.
120. ECRI strongly encourages the Portuguese authorities, at both national and local level, to provide the means to promote intercultural dialogue between Gypsy communities and the majority population.

- ***Relations between Gypsy communities and the law enforcement agencies***

121. ECRI already described in its second report the generally tense relations between members of the Gypsy communities and the law enforcement agencies. It regrets to learn that these relations have apparently not improved since then. ECRI notes that there are allegations that the law enforcement agencies continue to discriminate against Gypsies, particularly when the latter attempt to engage in itinerant trading. There have been reports of arbitrary police raids on entire Gypsy camps. There have also been reports of racist violence, with Gypsy representatives explaining that the victims do not report such matters to the police as they have never heard of any cases where a police officer has been punished for such behaviour against Gypsies. ECRI notes that ACIME sometimes acts as a mediator in cases where Gypsies have reported discriminatory conduct on the part of the police.

Recommendations:

122. ECRI urges the Portuguese authorities to ensure that allegations of ill-treatment committed by law enforcement officers against Gypsies are thoroughly investigated and that legal action is taken against those responsible. The authorities should also do everything in their power to restore the confidence of members of Gypsy communities in the justice system to encourage them to report instances of ill-treatment or discrimination by a law enforcement officer²⁷.

²⁶ See above “Criminal law provisions”.

²⁷ See also the recommendations made above under “Conduct of law enforcement officials”.

- ***The need for a national strategy to combat the social exclusion of Gypsy communities***

123. The social exclusion suffered by the Gypsy communities is a result, amongst other things of mutual indifference, if not reciprocal mistrust, between the majority society and Gypsy communities. The result is that Gypsy communities tend to turn inwards and play virtually no part in the public and political life of the country. Clearly a change of attitude on both sides is part of the elements necessary to ensure the success of measures aimed at improving the situation in this area. ECRI is fully aware that changing attitudes is a long-term process, which is why it would like to raise at this point the need to have a national strategy for the integration of Gypsy communities.
124. In this respect, ECRI welcomes the efforts of the national authorities, and in particular ACIME, and certain local bodies that have taken initiatives relating specifically to Gypsies. For example, ACIME has set up a working group for equality and integration of Gypsies and recently published a series of studies on Gypsies in Portugal. The Ministry of Labour and Solidarity takes part, in the framework of the European Union programme *Equal*, in a transnational project on the “promotion of more active policies for the social inclusion of Roma and Travellers communities”. The National Action Plan in favour of the Inclusion 2003-2005 contained specific measures for the inclusion of Gypsies. They also benefit from other more general measures to tackle unemployment and social exclusion, as they fall into the category of potential recipients. One such measure is the creation of a social integration income (RSI). ECRI also notes that there are Gypsy and non-Gypsy associations which attempt to build bridges between the majority society or Gypsy communities and are actively looking for solutions to the main problems encountered by Gypsies.
125. Nonetheless, ECRI is particularly concerned to learn that these associations consider the measures taken to date to be very inadequate. ECRI has noted weariness and discouragement on the part of activists in this field who see no progress being made. It is particularly demotivating for them to see that the numerous acts of racism and racial discrimination to which Gypsies continue to be subjected are not dealt with sufficiently earnestly and effectively by the Portuguese authorities. ECRI is surprised by the difference between official discourse it has heard from the authorities and reality in the field, as described by NGOs. ECRI regrets that in general the Portuguese authorities are apparently not sufficiently aware of the problems, do not acknowledge their existence or seriousness, or may even play them down. It believes that the first step towards a solution is to acknowledge the problem. There appears to have been some improvement in the authorities’ interest in the Gypsy issue in the 1990s, but it was not sustained. Several experts in this field have said that there are enough studies and analyses around today to give an overview of the issue. In their view, it is now time for the government to show the political will to act and to take practical and effective measures.
126. ECRI deplores the fact that there is no all-encompassing short, medium or long-term national strategy to combat the social exclusion of Gypsies in Portugal. The latter are Portuguese citizens, enjoying the same rights as all other Portuguese citizens. This should in principle make it easier for them to integrate. Paradoxically, this is not necessarily the case insofar as this status means that Gypsies are not eligible for the very positive initiatives taken by ACIME and specifically intended for immigrants (such as the national and local immigrant support centres). Representatives of the Gypsy communities have stressed that while they have a good relationship with ACIME, they sometimes

have the impression that the specific circumstances of Gypsies are not sufficiently taken into account in all the assistance and integration measures taken by that institution²⁸.

127. Gypsies are an ethnic minority in Portugal, known to be disadvantaged in several spheres of life. ECRI underlines that some positive action initiatives have already been taken, such as the recruitment of Gypsies as socio-cultural mediators in schools. Nonetheless, ECRI believes that the Portuguese government could supplement these initiatives through a more comprehensive approach to positive action. According to ECRI's General Policy Recommendation No. 7, the prohibition of racial discrimination does not prevent the maintenance or adoption of temporary special measures designed either to prevent or compensate for disadvantages suffered by persons designated by, for example, their ethnic origin or to facilitate their full participation in all fields of life²⁹. Portuguese law itself provides for the possibility of such measures in a great number of spheres³⁰.

Recommendations:

128. ECRI strongly recommends that the Portuguese authorities adopt an all-encompassing national strategy to combat the social exclusion of Gypsies, containing short, medium and long-term measures. In this regard, it encourages the Portuguese authorities to consider adopting positive measures to prevent or offset the disadvantages suffered by members of Gypsy communities or to facilitate their full participation in all spheres of life.

²⁸ See also above "Specialised bodies and other institutions".

²⁹ See paragraph 5 of ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, and paragraph 14 of its Explanatory Memorandum.

³⁰ Article 3-2 of Law No. 134/99 mentioned above ("Civil and Administrative Law Provisions"), which deals with discrimination, amongst other things, on the grounds of race or ethnic origin, provides that the law does not prohibit legislative or other provisions which benefit certain disadvantaged groups in order to guarantee the exercise, under conditions of equality, of the rights of the persons in question. Article 25 of the Labour Code, entitled "Positive Action Measures" states that "legislative measures of a specifically defined temporary nature, benefiting certain disadvantaged groups, including groups defined by reference to (...) ethnic origin, enacted with the aim of guaranteeing the exercise, in conditions of equality, of the rights provided for in this Code and of correcting a situation of factual inequality persisting in social life, shall not be considered discriminatory".

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APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Portugal

ECRI wishes to point out that the analysis contained in its third report on Portugal, is dated 30 June 2006, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Portugal was subject to a confidential dialogue with the Portuguese authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Portuguese authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

Third Report on Portugal - European Commission against Racism and Intolerance (ECRI)

View Points made by the Portuguese authorities to be reproduced in an appendix to the third Report on Portugal

Observations made by the Office of the High Commissioner For Immigration and Ethnic Minorities (ACIME)

(Paragraph 24) - The suggestion that the inversion of the burden of proof predicted in the article 23-3 of the Labour Code should be adopted in other areas than employment is already foreseen in relation to anti-discrimination legislation according to article 6º from Law no.18/2004.

On the other hand, the recommendation to adopt the victims right to compensation in racial discriminations cases is also foreseen in the Law, immediately under paragraphs 1 and 2 of article 10 of Law 18/2004 of 11th May, as well as of the general terms of Portuguese Law, namely the general rules of civil responsibility and of the personality rights, articles 70º and 483º contained in the Portuguese Civil Code. However, a procedural initiative by the offended must always take place, in the sense of demanding the aggressor before the courts for the reparation of the damage.

In this respect, these recommendations are already implemented in the Portuguese legal system.

(Paragraph 36) There were a total of 183 alleged cases of racial discrimination recorded.

(Paragraph 94) In 2003, 22 complaints have been submitted to CICDR and only 4 were against authority agents.

Observations made by the Department for the European and International Affairs(Ministry of Labour and Solidarity)

SPECIFIC ISSUES

- The Social exclusion of Gypsy communities living in Portugal

a) Despite of the recognised difficulties in fighting social exclusion in Gypsy Communities, some progress has been registered namely trough the participation of the Ministry for Labour and Social Solidarity (MTSS) and of the European Anti Poverty Network (EAPN) - Portugal in the transnational project "*Promotion of more active policies for the social inclusion of the Roma and Traveller Minorities*" financed by the European Commission within the Programme of Action Fighting Social Exclusion.

Among the results of this project it should be highlight the "Manual of Sensitization for the working up of Social Inclusion Policies for Gypsy Communities ", which has been spread by the MTSS and the elaboration of an indicator's collection for measuring the progress of the social situation of Gypsy Communities.

It should be also referred that in the Portuguese National Action Plan for Inclusion (PNAI) 2003/2005 the Gypsy Communities are one of the transversal target groups

contemplated in most of the social inclusion measures. Parallely were created some specific instruments specifically directed to the Gypsy Communities (Annex III of the PNAI), namely:

- ✓ Romany Gypsy Accompaniment Group, promoted by the ACIME and created with the objective of implementing a cooperation and coordination Platform for the shelter of Romany Gypsies and information programmes to avoid child beggars. Considering the evaluation report of the PNAI 2003/2005 the target of this Group was completely accomplished;

- Discrimination against Gypsies in access to employment, goods and services

a) In what concerns measures for fighting racism and intolerance, the General Inspectorate of Labour (IGT) points out the following:

- The annual activities plan for the years 2004, 2005 and 2006 were elaborated taking into account two objectives: promotion of decent work and decreasing labour death and severe sinisters, trough four principles and fundamental labour rights - creating better opportunities for men and women, ensuring their job and remuneration; ensure the universality of social protection; reinforce tripartism and social dialogue. In its control, the IGT takes into account the most vulnerable groups - women, minors, immigrants and temporary workers, once they are the easiest targets for discrimination.

On the other hand, the IGT develops an activity of information trough a personalized service at each regional service, which is addressed to workers, employers and social partners.

The IGT is also represented at the CNAI, where is one of the services responsible for the information. Between 17/03 to 31/ 12 2004 it attended 13 397 persons in Lisbon and 2 690 in Porto.

- The Law 20/98 from 12/05 - regulation of dependent work for foreigner citizens was replaced by Law 99/2003 from 27/98 (Labour Code) and its regulation, guaranteeing equal treatment between legal foreigner workers and national workers.

The contract established with a foreigner worker for an activity developed in Portuguese territory has to be done by writing and has to obey to the formalities previewed in article 158°. These contracts must be communicated to the IGT.

The IGT control actions, next to enterprises, related with identification and regularisation of immigrants faced a significant increase, specially in what concerns the construction sector, as we can verify at the map:

Regularisation Process of Foreigner Workers/2005		
Age	Immigrants with a registered Process	
	Total	%
-15 a 24	6 114	25,6
25 a 34	9 831	41,2
35 a 54	7 767	32,5
55 a 64	156	0,7
65	18	0,1
Total	23 886	100

b) The Portuguese Institute for Employment and Vocational Training (IEFP) of the Ministry for Labour and Social Solidarity, within the EQUAL Project “*Migrations and Development*” is developing a training referential “*Citizenship and Cultural Diversity in the Professional Exercise*””

This training referential will be tested in a first group of technicians of the public services in 2006, and in 2007 to all of the technicians of the local public services of the IEFP.

Observations made by the Office of Documentation and Comparative Law of the Attorney General’s Office (ODCL)

The ODCL has the honour to propose a slight change to the paragraph 22 of the draft report of ECRI on Portugal. In paragraph 22, in the phrase “*As concerns Article 70 of the Civil Code, this provision may be invoked in order to prevent an illegal infringement of the physical or moral integrity of an individual.*”; the ODCL suggests:

“As concerns Article 70 of the Civil Code, this provision may be invoked in order to **stop** or to prevent an illegal infringement of the physical or moral integrity of an individual”.

Observations made by the Ministry of Justice

Regarding the ECRI recommendations (18) that considers that the Portuguese criminal law still fails on foreseeing a generic aggravating circumstance for the crimes committed under racist motivation, we should say that the Portuguese Criminal Code already comprises such provisions. Actually, according to article 71 of the Criminal Code, to determine the penalty’s proportion, the judge should consider all the circumstances, that are not part of the crime, which may testify in favour or against the perpetrator. Straight to this point, article 71 n.2 of the Criminal Code determines that, among others factors, the judge must consider :”*c) the feelings revealed in the crime commission and the aim and motive that mined* “.

This means that in any crime if a racist or xenophobic motive exists that should be evaluated by the judge and should be taken in account in order to determine the penalty’s proportion. So, we consider that the Criminal Code in force already has a *provision making racist motivation a general aggravation circumstance, applicable to any type of offence*”

Commentary to the arrangements on immigration stated in the 3° Portugal Report

I Recommendations respecting the Foreigners Legal Regime

Concerning immigration, after sending the project of the analysed Report, we should enhance the bill approved in the Ministry Council of August 10 (cf. <http://www.pcm.gov.pt/Portal/PT>), setting the legal regime for entry, permanence and exit of foreigners from the national territory. This bill aims to establishing a legal regime enabling the promotion of legal immigration channels thus preventing illegal immigration.

Concerning admission and residence of foreigners in national territory the following is proposed:

- The creation of a single type of visa allowing its holder to entry Portugal for residence settling, issued according to specific purposes (professional activity, family reassembling, study): the visa for residence authorisation. This measure, as it replaces the existing 6 types of long lasting visas (4 types of working visa, residence visa and study visa) for a single type of visa, allows the rationalisation and cutting the red tape in procedures.

- The visa granting regime for residence permit for working purposes (admission of immigrant workers), which will replace the existing regime of granting the working visa, is suitable for jobs available which were not taken both by national citizens or European Union citizens and the supply of foreign manpower with suitable professional training. - Specially, it allows the legal entry not only of those foreigners holding a working contract and suitable qualifications, but also applicants to jobs which were not taken by national and community workers since the employer states its interest in hiring.

- Creation of a legal regime for temporary immigration through a temporary staying visa, suitable for the exercising of a seasonal activity.

- Creation of a faster regime for admitting scientists and highly qualified foreigners who want to exercise their activity in Portugal, whether in a temporary way or settling in the country.

- As to residence of immigrants in national territory we aim at replacing the four existing visa types for working, visa for studying, visa for extension of permanence with working permit, visa of temporary staying with permit to exercise professional activity as employee, and the permanence permit for a single type of document enabling the settling of residence in Portugal: the residence permit.

- The enlargement of the beneficiaries for the right of foreigners to family reassembling who, today, aren't entitled to (specially the holders of working visas and holders of permanence permits). Also the reassembling of the immigrant with his/her partner is allowed.

- The statute of long duration resident is created and given to all those residing legally for 5 years which implies, besides an expressive set of rights, the right to move within the European space and to settle residence.

- With the end of the permanence permit, the renewal of the existing titles changed into residence permit; the same happens with the titles granted under the Luso-Brazilian Agreement (extraordinary regularisation processes established by the former Government).

- The granting of residence permit without the need for a visa is extended to:

Children born in Portugal who lived illegally in the country and attending primary school, as well as their parents if effectively exercising their parenthood; Foreigners as offspring of legal immigrants who came of age and living in the country since they were 18 years old; Foreigners who have lost their Portuguese nationality and stayed illegally in the country for the last 15 years; Victims of human trafficking who have lived in the country under that state; Foreign students who want to stay in Portugal; Scientists and highly trained professional admitted with temporary visas and who want to continue their activities in Portugal.

- As to removal/expulsion of foreigner from national territory we point out:

- The laying down of generic legal limitations related to expulsion which namely come from the jurisprudence of the European Court of Human Rights (ECHR), being now inexpulsable all foreigners who were born and live in Portugal, or live in the country since tender years, have minor children of Portuguese nationality in ward, or foreign nationality over who have parenthood powers.

- As to administrative removal (immigrants in an illegal status) and judicial expulsion (without any connection to criminal procedures), the possibility of application of preventive arrest is excluded, favouring the detention in temporary detention centres or electronic surveillance as a coercive measure of rendering removal effective.

- The fight against illegal immigration is strengthened through the aggravation of the penal framework for the crime of assistance to illegal immigration and the revision of applicable fines to employers of illegal immigrants. It is also foreseen the contingency of granting residence permit to victims of human trafficking crimes.

II Recommendations regarding service and approach of SEF to foreign citizens

The strengthening of relations between Serviço de Estrangeiros e Fronteiras and citizens looking for its support has been one of the major concerns of the Service whose general purpose is the introduction of improvements in the areas regarding service to public, from the renovation of facilities, from a call centre to the present wage on the improvement of reception and direction of foreigners.

The Contac Centre of SEF was created to improve service to public. SEF wants to refresh one of the main service areas: information to public available in sever languages (Portuguese, English, French, Russian, Ukrainian, Moldavian and Creole), simplifying the relationship between citizens and SEF. From January to November, the Contact Centre took up 155.910 calls.

In order to improve service quality, SEF signed five Cooperation Protocols to place 28 Socio-cultural Intermediaries form Immigrants Associations and NGOs at the Central and Regional Services of SEF.

Cooperation Protocols were signed in order to use socio-cultural intermediaries for reception service, screening, support, appointment arrangements, information and redirecting of foreign citizens at the Central Services, namely in the Contact Centre, and at the regional services of SEF.

In the documental area SEF considers as priority the improvement of conditions in service to public. In this sense, the improvement of the access to services is felt as a need, according to the new citizen-minded organisation culture, materialised in the presence of intermediaries who contribute for an evolution in dialogue and proximity.

Lastly, SEF opened different communication channels in order to optimise communication both internally as externally, through the Intranet and the Internet sites.

As to the external communication and within the new Web Site, a new line of contents was made, including several audio-visual web sites grouped around immigration themes in order to improve information and, in an interactive way, to draw near SEF and the citizens. In this communication technology we can find many of the work SEF developed during this year.

III Recommendations regarding Asylum

The process of transposition of Directives to which the States are bound to, regarding asylum, is in progress, namely the Directive regarding the procedures on granting and withdrawing refugee status and condition to be fulfilled in order to be granted refugee status and which will imply a few changes to the present Asylum Law.

Although we cannot assure (because changes to law are not yet concluded) that ECRI's, remarks will be included in the new Law, namely the suspending effect of the appeal during the phase of admissibility and the extent of the period for an application to asylum, we can assure that the principles underlying the Directives will be fully transposed.

Portugal has transposed this year the Directive n ° 2003/9/CE from the Council, of January 27., laying down the minimum norms in terms of hosting asylum applicants, thus resulting in the Law n° 20/2006 of June 23.

The entry into force of the mentioned Law - Law n° 20/2006 - serves as complement to the arrangements of the Asylum Law regarding hosting, and rules with more detail the hosting material conditions, namely facilities, meals and social support subsidies.

For instance, the new Law foresees the collaboration of NGOs with the State, aiming at measures to integration/hosting of asylum applicants, referring what are the measures for support, e.g., juridical support, support in organising information and voluntary work, support in the hosting process, etc.

