European Commission against Racism and Intolerance
Commission européenne contre le racisme et l'intolérance

CRI(2013)20

ECRI REPORT ON PORTUGAL

(fourth monitoring cycle)

Adopted on 21 March 2013

Published on 9 July 2013

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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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.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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 provide, if they consider it necessary, comments on 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 fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 6 December 2012 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.

SUMMARY

Since the publication of ECRI's third report on Portugal on 13 February 2007, progress has been made in a number of fields covered by that report.

Steps have been taken to combat racial discrimination[1] in the media and eliminate stereotypes in news reporting. Racist violence does not appear to be a significant problem.

A growing number of Roma socio-cultural mediators have been appointed, on a full-time professional basis, to town halls with the aim of improving Roma communities' access to services and promoting communication. A National Strategy for the Integration of Roma Communities has been developed although not yet formally approved.

Portugal continues to pursue a strong integration policy. A Second Plan for Immigrant Integration has been adopted for the years 2010 to 2013. Integration services are provided by three national and numerous local immigrant support centres around the country. Socio-cultural mediators provide a cultural and linguistic bridge between the State and immigrant communities or individuals; they are highly appreciated by the public. There are a number of possibilities for irregular immigrants to regularise their status.

The new law on asylum provides specifically for negative decisions on asylum to be challenged in the administrative courts with automatic suspensive effect. Asylum seekers have access to language courses upon arrival as well as to the employment and training service at the Refugee Reception Centre.

The different police services are respecting the recommendation issued by the Commission for Equality and Combating Racial Discrimination (CICDR) to avoid disclosing, in official and unofficial communications, the nationality, ethnicity, religion or status of anyone who is subject to a police action or inspection or is a suspect.

ECRI welcomes these positive developments in Portugal. However, despite the progress achieved, some issues continue to give rise to concern.

No provisions have been adopted expressly making racist motivation an aggravating circumstance for all offences. The racial discrimination complaints procedure continues to be lengthy and complicated; investigatory powers have not been granted to the High Commission for Immigration and Intercultural Dialogue (ACIDI) nor to CICDR; the principle of sharing the burden of proof is not applied.

There has been an increase in racist websites targeting in particular Roma and immigrants.

A large number of Roma continue to live in encampments consisting of barracks, shacks or tents. Many settlements are in areas isolated from the rest of the population; they often lack basic infrastructure such as access to drinking water, electricity or waste disposal facilities. Some Roma settlements have had walls built around them.

Asylum seekers who submit their applications for international protection at border points are kept in detention; if they appeal against a negative decision, they can, in practice, remain in detention for up to 60 days; no alternatives are possible.

[1] According to ECRI's General Policy Recommendation No. 7, racial discrimination is any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

Cases of police harassment, misconduct and abuses against Roma continue to be reported.

No statistical disaggregated equality data are collected for combating racial discrimination.

In this report, ECRI requests that the Portuguese authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.

A provision expressly making racist motivation an aggravating circumstance for all offences should be adopted. Steps should be taken to simplify and speed up procedures following the lodging of racial discrimination complaints with ACIDI; the authorities should consider ways in which the principle of sharing the burden of proof could be put into effect.*

The cybercrime department in the criminal police should step up its monitoring of the Internet to prevent it from being used to disseminate racist or xenophobic material and with a view to prosecuting the perpetrators of such acts.

Greater numbers of Roma mediators should be employed in the field of education. Action should be taken to rectify the housing situation leading to the decision on violations of the Revised European Social Charter. The authorities should eliminate all walls and other barriers segregating Roma communities.*

Effective investigations into alleged cases of racial discrimination or racially motivated misconduct by the police should be carried out and the perpetrators adequately punished.

The authorities should reduce the length of detention of asylum seekers at border points and provide for the possibility of alternatives to detention.

Steps should be taken to put in place a monitoring system to enable the collection of data which may indicate whether particular groups may be disadvantaged or discriminated against on the basis of "race", ethnicity, religion or membership of Roma or other vulnerable communities, and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and voluntary self-identification.*

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Existence and Application of Legal Provisions

International legal instruments

1. In its third report, ECRI once again recommended that Portugal ratify Protocol No. 12 to the European Convention on Human Rights (ECHR) 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. ECRI also recommended 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.

2. ECRI regrets that Protocol No. 12 to the ECHR, which was signed by Portugal on 4 November 2000, has still not been ratified, especially since no particular obstacles have been cited. There have been no changes concerning the Convention on the Participation of Foreigners in Public Life at Local Level and the authorities gave no indications as to any future developments. As for the European Charter for Regional or Minority Languages, ECRI has been informed that there is no intention to sign or ratify this instrument.

3. ECRI is pleased to note that Portugal ratified the Convention on Cybercrime and its Additional Protocol on 24 March 2010, both of which entered into force in Portugal on 1 July 2010. However, Portugal has still not signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The authorities maintain that any decision to ratify this instrument should be taken in coordination with the European Commission and the European Union (EU) Member States. They also assert that ratification would make little difference as Portuguese legislation is already in line with the convention.

4. ECRI recommends again that Portugal ratifies Protocol No. 12 to the ECHR and signs and ratifies the Convention on the Participation of Foreigners in Public Life at Local Level, the European Charter for Regional or Minority Languages and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Constitutional provisions

5. Article 13 of the Portuguese Constitution sets out the principle of equality. It states, in paragraph 2, that no one shall be privileged, favoured, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation. ECRI has been informed by some authorities that this Article is interpreted as excluding the possibility of establishing and implementing positive measures in favour of a disadvantaged group. Despite this, ECRI is aware that there are provisions in several laws which do promote positive action. For example, Article 27 of the Labour Code (Law No. 7/2009) provides that legislative measures benefiting certain disadvantaged groups, including those defined by reference to nationality or ethnic origin, among others, shall not be considered discriminatory. However, ECRI notes that so far this article has not been applied.

6. ECRI recalls its General Policy Recommendation No. 7 on national legislation to combat racism[1] and racial discrimination[2]. This states that the law should provide for the possibility of temporary special measures designed either to prevent or compensate for disadvantages suffered by persons on grounds such as "race", colour, language, religion, nationality or national or ethnic origin, or to facilitate their full participation in all fields of life. Furthermore, ECRI reminds the Portuguese authorities that Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin states, in Article 5 (positive action), that "with a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin". The Directive has been transposed into the Portuguese legal system by Law No. 18/2004, which, ECRI notes, does not contain a provision on positive action.

7. Consequently, ECRI considers that the authorities should review their interpretation of the concept of positive measures and adopt a more consistent approach, particularly since there is a relatively large population of Roma in Portugal who are extremely disadvantaged (see *Vulnerable/Target Groups – Roma*). In some cases, the application of positive measures might be the only way to improve the situation of some vulnerable groups. In ECRI's view such measures should not be too onerous as they should be discontinued once the intended objectives have been achieved.

8. ECRI strongly recommends that the authorities adopt, where necessary, special measures to prevent or compensate for disadvantages suffered by persons on grounds such as "race", colour, language, religion, nationality or national or ethnic origin, or to facilitate their full participation in all fields of life.

Criminal law provisions

9. In its third report, ECRI strongly encouraged the Portuguese authorities to adopt a provision expressly making racist motivation a general aggravating circumstance applying to any type of offence. ECRI also recommended that the authorities inform the public about the existence of criminal provisions for sanctioning racially motivated acts and continue taking steps to encourage victims to report such acts.

10. The Criminal Code has been amended several times, most recently in 2011. Article 240 covers "racial, religious or sexual discrimination". It is an offence (a) to establish organisations or engage in organised propaganda activities which incite or encourage discrimination, hatred or violence against a person or a group of persons on grounds of race, colour, ethnic origin or nationality, religion, sex or sexual orientation, or (b) to participate in such organisations or activities or assist them, including through financing. The punishment is six months to five years' imprisonment.

11. Furthermore, according to the same article, anyone who, in a public meeting, in writing intended for dissemination through any media or computer system, with the intention of inciting or encouraging racial, religious or sexual discrimination, (a) provokes acts of violence against a person or group of persons on grounds of their race, colour, ethnic origin or nationality, religion, gender or sexual

[1] According to ECRI's General Policy Recommendation No. 7, racism is the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons or the notion of superiority of a person or a group of persons.

[2] According to ECRI's General Policy Recommendation No. 7, racial discrimination is any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

orientation, (b) defames or insults a person or group of persons on the same grounds, including the denial of war crimes or crimes against peace and humanity, or (c) threatens a person or group of persons on the same grounds as above, can be punished with six months' to five years' imprisonment.

12. ECRI notes that language is not included as a ground in any of the above-mentioned provisions, as per its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

13. ECRI recommends that the authorities amend Article 240 of the Criminal Code to include language in the list of grounds.

14. Moreover, ECRI regrets that the Portuguese authorities have not adopted a provision expressly making racist motivation an aggravating circumstance for all offences. As noted in its third report, racist motivation is an aggravating circumstance only for the offences of homicide and assault causing bodily harm. While Article 71 of the Criminal Code provides that, to determine a sanction, courts shall take all the circumstances into account and in particular the "aims and motivations of the infraction", racist motivation is not explicitly mentioned. ECRI considers that this additional element to ensuring that sanctions are effective, proportionate and dissuasive is crucial in the fight against racism and racial discrimination. It refers again to its General Policy Recommendation No. 7 (in particular § 21).

15. ECRI strongly recommends that the authorities adopt a provision expressly making racist motivation an aggravating circumstance for all offences.

- *Application of criminal law provisions*

16. ECRI notes that the application of Article 240 remains extremely limited. According to data provided by the authorities, there were no investigations related to Article 240 in 2010 or 2011; in 2012, at the time of writing this report, two cases had been opened (see also *Racist Violence* below).

17. The first prison sentences for a group of persons accused of racist offences under Article 240 were imposed following the trial of 36 members of a neo-Nazi group, 31 of whom were convicted, in October 2008, of racial discrimination, as well as causing bodily injury, illegal possession of weapons, assault, threats and kidnapping, all involving Africans and dark-skinned Portuguese. Seven of the defendants, including the leader of the Portuguese section of the Hammerskins, a neo-Nazi skinhead organization operating in the United States and in several European countries, were sentenced to prison for between two years and seven years and four months, 17 were given suspended sentences and seven received fines. The remaining five were acquitted. ECRI notes that this was the first time that racist crimes had been punished so decisively in Portugal.

18. ECRI has been informed that, as a result of the above-mentioned convictions and imprisonment of the leaders of the main neo-Nazi group, ultra-nationalist activity in the country has dropped to an almost negligible level. According to the authorities, this explains the fact that Article 240 is so seldom applied.

19. However, ECRI considers that the authorities should look more closely into the reasons why there is so little recorded racist crime in the country. It could well be, as the authorities claim, that Portuguese society is extremely tolerant in general. However, there could be certain obstacles, such as the unwillingness of victims of racist offences to go the police or, as some reports suggest, a lack of confidence in the criminal justice system. It may also be due to failings by the police to register the racist nature of offences. ECRI invites the authorities to examine these factors and take steps to remedy them where necessary.

20. Finally, ECRI notes the establishment on 1 January 2010 of the Commission for the Protection of Crime Victims (CPVC), which approves compensation in advance of the outcome of criminal proceedings – both financial and other forms of social support and therapy – to victims of violent crimes and of domestic violence. According to the authorities, there are records of providing support to non-Portuguese victims of violent crimes or victims of domestic violence from "multicultural couples".

- *Training of judges, prosecutors and police*

21. In its third report, ECRI recommended 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.

22. The authorities have stated that judges, prosecutors and police receive training in the application of criminal law, including Article 240 of the Criminal Code. They also receive comprehensive training in human rights and, in particular, the fight against racism and racial discrimination. As regards judges and prosecutors, human rights courses form part of the initial training at the Centre for Judicial Studies. Ongoing or continuous training for qualified judges and prosecutors is provided through seminars and conferences. For example, in May 2011, a conference was organised on the case law of the European Court of Human Rights and an international seminar was held together with the UNHCR in June 2011 on recognition of international protection to foreigners. ECRI was informed that, in 2012, training courses have focused on issues related to cybercrime.

23. As for the police, according to the authorities, one of the themes covered in the last two years was identifying and combating hate crime against people. In addition, specific training is provided to the Judiciary Police in order for them to understand human rights in the context of local police action.

24. ECRI welcomes these efforts and encourages the authorities to continue providing specific training for judges, prosecutors and police on the application of the criminal law provisions against racism and racial discrimination and in particular on how to recognise racist motivation.

Civil and administrative law provisions

25. In its third report, ECRI recommended 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. It also encouraged 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.

26. ECRI recalls that Law No. 18/2004 transposes Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. It has no provisions on compensation to victims of racial discrimination. Such victims have to turn to the civil courts to claim damages on the basis of the conclusions of the administrative procedure. However, the levels of compensation awarded by the courts are extremely low and this avenue is rarely pursued.

27. ECRI notes that Article 10 of Law No. 18/2004 sets out the administrative sanctions for racial discrimination. These include fines or "any other penalty that fits the case". Moreover, if the breach results from an omission, the imposition of a fine does not exempt the defendant from compliance if this is still possible. Article 11 establishes additional penalties which can be imposed for a maximum duration of two years, such as the closure of establishments and suspension of permits or licences.

28. Concerning the burden of proof, ECRI notes that Article 6 establishes the principle of sharing the burden of proof but at the same time limits its application. ECRI has made further observations on this in the subsection below (see § 33).

29. ECRI is aware of only one relevant legislative development in this field since its third report. Article 24 of the Labour Code (as amended by Law No. 7/2009) now prohibits discrimination on grounds of religion in addition to the other grounds previously listed. ECRI welcomes this improvement.

- *Application of civil and administrative law provisions*

30. In its third report, as concerns the bodies involved in the racial discrimination complaints procedure under Law No. 18/2004, ECRI strongly recommended that the authorities revise the administrative sanctions procedure for racial discrimination so as to render it significantly more effective, for example by limiting the number of bodies involved in the various phases or by reinforcing the Commission for Equality and Combating Racial Discrimination by giving it its own investigatory powers. It also strongly recommended that the 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. Finally, ECRI recommended that the 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 particular by making full use of the principle of sharing the burden of proof.

31. ECRI regrets that its recommendations concerning the bodies involved in racial discrimination complaints have not been implemented. The procedure remains as described in ECRI's third report: following the lodging of a racial discrimination complaint, the High Commission for Immigration and Intercultural Dialogue (ACIDI, see below) opens administrative proceedings; it then forwards the complaint to the relevant inspection body which investigates the complaint and reports back to ACIDI; the report is forwarded to the Commission for Equality and Combating Racial Discrimination (CICDR, see below) which gives an opinion on the matter; the final decision on whether or not racial discrimination has occurred is taken by ACIDI, as are decisions on the administrative sanctions to be imposed (usually a fine, but other measures can be ordered, as mentioned above). ECRI notes that it is possible to appeal against the final decision before a court.

32. Thus, there are still numerous stages and the proceedings are lengthy (often up to a year and a half). Moreover, since no investigatory powers have been granted either to ACIDI or to the CICDR, investigations continue to be carried out by the competent inspection body. For example, a case involving discrimination in employment will be examined by the Labour Inspection. Where the facts indicate the commission of a crime, the police carry out an investigation and inform the Public Prosecution Service. In this respect, ECRI notes that there is an important lacuna in the procedure; where the case relates to an area in which there is no competent inspection body, no investigation can be carried out.

33. As mentioned above, Law No. 18/2004 establishes the principle of sharing the burden of proof. However, it also states that this does not apply to either the

criminal procedure (as per Directive 2000/43/EC) or to "proceedings in which it is for the court or competent body to investigate the facts of the case" (an option given in Directive 2000/43/EC) following the receipt of a complaint. The competent bodies are the relevant general inspectorates; they are entirely responsible for obtaining the necessary evidence as, according to the authorities, neither the plaintiff nor the defendant need present any proof. Moreover, the authorities have informed ECRI that, since Law No. 18/2004 establishes regulatory offences, any sharing of the burden of proof is not appropriate. Despite the above considerations, ECRI regrets that a way has not been found for this important principle to have effect in Portugal, especially since the result is that the vast majority of cases are closed on account of lack of proof.

34. Finally, ECRI notes that the bodies responsible for providing assistance to victims and deciding whether or not discrimination has occurred (ACIDI and CICDR) are not fully independent (see below).

35. Data provided by ACIDI show that the level of reporting of racial discrimination is extremely low. In 2010, 89 racial discrimination complaints were lodged. In 2011, 111 such complaints were submitted. Of these, only two ended in final decisions involving the imposition of fines. According to many, the fact that the procedure is complicated, lengthy and rarely results in a positive outcome for the victim explains why so few cases of discrimination are reported. There is a widespread lack of faith in the system on the part of the public. Moreover, while the authorities are fully aware of the situation, there seems to be a lack of will to do anything about it. ECRI finds this deeply regrettable.

36. ECRI was informed that Law No. 18/2004, which governs the operation of the racial discrimination complaints procedure, is under revision. ECRI urges the authorities to take the opportunity to remedy the serious shortcomings in the legislation and practice and to make significant changes to simplify and speed up the procedures.

37. In ECRI's view it would help to raise awareness of the racial discrimination complaints procedure – and possibly also contribute to a more thorough and diligent examination of complaints - if the outcome in each case was published.

38. ECRI strongly recommends that the Portuguese authorities take steps to simplify and speed up procedures following the lodging of racial discrimination complaints with ACIDI. In this context, ECRI also recommends that the authorities consider ways in which the principle of sharing the burden of proof could be put into effect.

39. ECRI further recommends that the outcome of every racial discrimination complaint decided by ACIDI is published.

Specialised bodies and national strategies

- *Office of the High Commissioner for Immigration and Intercultural Dialogue (ACIDI)*[3] *and the Commission for Equality and Combating Racial Discrimination (CICDR)*

40. In its third report, ECRI recommended that the Portuguese authorities grant independence from the Government to the High Commission for Immigration and Ethnic Minorities (ACIME) as a whole or at least to some of its components, so as to improve the effectiveness of some of its activities. In view of the key role played by ACIME in combating racism and racial discrimination and in supporting integration, ECRI also recommended that the Portuguese authorities consolidate

[3] At the time of ECRI's third report, this body was called the High Commission for Immigration and Ethnic Minorities (ACIME).

and consider reinforcing this institution. All the other Portuguese authorities should take special care to consult ACIME diligently and to co-operate with it fully, not least by heeding its opinions and recommendations in its areas of expertise.

41. The Office of the High Commissioner for Immigration and Intercultural Dialogue (ACIDI) was created in 2007 as a result of the merger of the former High Commission for Immigration and Ethnic Minorities (ACIME), the technical support structure for the coordination of the Escolhas (Choices) Programme, the structure of the mission for dialogue with religions and the Entreculturas Secretariat. Through this restructure, a number of functions that were previously spread out among various bodies were brought together under one roof. The fundamental task of ACIDI is to promote the integration of immigrants and ethnic minorities in Portugal (see also the section below on *Vulnerable/Target Groups - Immigrants*). ACIDI is a public institute under the direct authority of the Prime Minister.

42. One of the functions of ACIDI is to fight all forms of discrimination based on race, colour, nationality, ethnic origin or religious belief, through positive awareness campaigns, education and training actions, as well as through the administrative procedure regarding alleged breaches of the law described above. Within the structure of ACIDI is the Commission for Equality and Combating Racial Discrimination (CICDR). This body has no employees and no budget and depends entirely on ACIDI. However, in its work it is considered independent. It consists of 17 members from the Government and from NGOs. Its main task is to give opinions on racial discrimination complaints lodged with ACIDI, as mentioned above.

43. Taken together, ACIDI and the CICDR correspond generally to a specialised body for combating racism and racial discrimination, according to ECRI's General Policy Recommendations No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and No. 7 on national legislation to combat racism and racial discrimination; assistance is provided to victims, recommendations on legislative measures to prevent racial discrimination can be made, awareness-raising activities on issues of racism and racial discrimination are carried out and policies and practices to ensure equal treatment are promoted. However, as long as ACIDI is under the direct authority of the Prime Minister, its independence may be called into question. ECRI reiterates the importance of the principle of independence of the national specialised body. Since it rules on individual complaints concerning racial discrimination, often against the authorities, it must operate in a way which is clearly independent. Furthermore, ECRI notes that neither ACIDI nor the CICDR have investigation powers or the right to initiate, and participate in, court proceedings.

44. ECRI recommends again that full independence from the Government is granted to the High Commission for Immigration and Intercultural Dialogue (ACIDI).

45. ECRI also recommends that investigation powers are granted to ACIDI as well as the right to initiate, and participate in, court proceedings.

- *Provedor de Justiça (Ombudsman)*

46. In its third report, ECRI encouraged 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. It also recommended that the Portuguese authorities alert non-nationals and members of the Roma communities to the existence of the Provedor de Justiça and encourage them to turn to him if they have problems with the authorities.

47. According to the Provedor de Justiça, very few complaints are received each year relating to discrimination on racial or ethnic grounds; approximately ten in a total of around 6 500 complaints. The reason for this, ECRI was told, is that it is widely known that such types of complaint are dealt with by, and can be submitted directly to, ACIDI. A formal agreement has been established between the Provedor de Justiça and ACIDI whereby complaints received by the Provedor de Justiça concerning racial discrimination are forwarded to ACIDI. If a complaint involves a public body, the Provedor de Justiça could also examine it and issue a recommendation if appropriate.

48. As concerns Roma, according to information provided by the Provedor de Justiça, from 2002 to 2011 only eight complaints were recorded as originating from members of this community. This may be explained, to some extent, by the fact that Roma people have greater difficulties than others to formulate and submit written complaints (which can also be done by Internet). However, the low number of complaints from this particularly vulnerable group could indicate a lack of awareness or faith in the institution of the Provedor de Justiça.

49. ECRI encourages the authorities to undertake an awareness-raising campaign to make vulnerable groups aware of the existence and role of the Provedor de Justiça.

- *Second Plan for Immigrant Integration (PII)*

50. ECRI notes that, following the successful first Plan for Immigrant Integration, effective from 2007 to 2009, the Government adopted a Second Plan for Immigrant Integration (PII), running from 2010 to 2013. It comprises 90 objectives in 17 areas of intervention in various policy fields, including culture and language, employment, education, solidarity and social security, housing, health, and racism and discrimination. The overriding objective continues to be the full integration of immigrants. The Second Plan also comprises two new areas of intervention: the promotion of diversity and intercultural dialogue and meeting the challenges posed by elderly immigrants. It was compiled on the basis of contributions and proposals from all ministries as well as from civil society, in particular immigrant associations. More information can be found in the section on *Vulnerable/Target Groups – Immigrants*.

- *National Strategy for the Integration of Roma Communities*

51. A National Strategy for the Integration of Roma Communities has been developed but not yet formally approved. ECRI deals with this in the section on *Vulnerable/Target Groups – Roma*.

II. Discrimination in Various Fields

52. In its third report, ECRI recommended 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.

53. ECRI is not aware of any monitoring of or studies regarding discrimination against members of ethnic minorities. As explained in the section below on *Monitoring Racism and Racial Discrimination*, the collection of data based on ethnic origin is not permitted in Portugal.

54. ECRI deals with employment in the section on *Vulnerable/Target Groups – Immigrants* and with housing in the section on *Vulnerable/Target Groups - Roma*.

Education

55. In its third report, ECRI recommended 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 Entreculturas Secretariat and ensure that it has a real impact on the education system.

56. ECRI notes that education in Portugal is compulsory until the age of 18, when students complete the 12th grade. Nevertheless, according to the authorities, approximately 23% of pupils leave school early (this is an improvement from 2006 when the drop-out rate was 46%). ECRI notes that reports indicate that there is still a higher, though decreasing, rate of school drop-out and a proportionally lower success rate amongst pupils of immigrant origin as compared with the majority population. Failure in schools to cater for multiculturalism continues to be given as an explanation. ECRI has been informed that teachers themselves are not culturally diverse, do not have resources for addressing intercultural issues and are not prepared for working with children from different ethnic backgrounds. ECRI deals with the issue of multiculturalism in school and the Entreculturas Secretariat in the section on *Education and Awareness-raising*.

57. Despite the fact that the curriculum for both primary and secondary education includes Portuguese as a foreign language, ECRI notes that lack of sufficient support for learning the Portuguese language has been cited as another reason for school failure by children of immigrant backgrounds. ECRI invites the authorities to look into ways to increase support for pupils having to learn Portuguese as a second language.

58. The education of Roma children is dealt with in the section on *Vulnerable/Target Groups - Roma*.

59. Finally the section on *Vulnerable/Target Groups – Immigrants* describes the special measures designed to ensure that children of irregular migrants attend school.

III. Racism in Public Discourse

Climate of opinion

60. In its third report, ECRI encouraged the Portuguese authorities to pursue their efforts to foster a more balanced political debate on immigration and immigrants. It recommended that particular attention be paid to combating the tendency for the general public to equate immigration with crime and unemployment.

61. ECRI has heard from many sources that the general attitude towards immigrants in Portugal is positive. They are welcomed and important efforts have been made to integrate them (see *Vulnerable/Target Groups - Immigrants*). The current financial crisis in Portugal has caused many immigrants to return to their home countries where the economic situation is better. The fact that some immigrants are no longer seen as coming from poor, developing countries has also contributed to their improved image in the eyes of the majority population.

62. On the other hand, stereotypes about certain immigrants or ethnic groups are widespread. According to a study carried out by the Immigration Observatory, with the support of ACIDI, the majority population in Portugal has a positive opinion of Chinese and Ukrainians, because the former are believed to work hard and the latter learn Portuguese well. However, the study showed that many

people had negative attitudes towards Roma and considered them to be spongers while they associated Brazilians and Africans with criminality.

63. To their credit, the authorities have taken steps to try to counter such stereotypes by issuing recommendations to the media and the police concerning news reporting from official sources (see below and the section on *Conduct of Law Enforcement Officials*).

64. As regards Roma, ECRI notes that in July 2008, a judge at the Court of Felgueiras, at the time of sentencing five members of this community for offences involving confrontations with the police, accused the whole group of being "outlaws". She described them as "treacherous", of having "little hygiene" and of being "entirely subsidy-dependent on the State". ECRI regrets that such prejudiced statements were expressed openly by a person in a position of high moral authority. It reflects a widespread intolerance of Roma at all levels of society (see *Vulnerable/Target Groups – Roma*).

Racist discourse in politics

65. ECRI notes that there is one ultranationalist political party in Portugal that engages openly in racist and anti-immigration discourse, the National Renovator Party (PNR). Although it has gained some support in recent years, it has no seats in Parliament. The PNR has been accused of promoting discrimination based on "race", religion and sexual orientation and some of its propaganda is alleged to incite subtly to violence and hatred toward certain groups such as immigrants. The question of whether the party should be declared illegal has been discussed in Portugal. Several of its members have been convicted of racial discrimination and violent crimes after being linked to far-right groups such as the Portuguese Hammerskins (see *Existence and Application of Legal Provisions - Criminal law provisions* above). However, according to the authorities, this party is currently small enough to be of no concern.

66. ECRI recommends that the authorities monitor carefully the activities of the National Renovator Party. In the light of their findings, they should consider whether further action is required. ECRI refers in this connection to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in particular §§ 16, 17 and 18g.

Racist statements and publications, including in the media and on Internet

67. In its third report, ECRI encouraged 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 vulnerable groups, including immigrants and Roma. ECRI recommended that the Portuguese authorities hold discussions with the media and other relevant civil society players on the best way of achieving this objective.

68. ECRI is pleased to note that steps have been taken to combat racial discrimination in the media. Law No. 27/2007 of 30 July 2007 (television law) sets some limits on the general principle of freedom of programming, namely that television programme services shall not incite hatred on racial, religious or political grounds, or based on colour, ethnic or national origin, sex or sexual orientation. Liability for infringement can result in fines of between 75 000 and 375 000 euros and a suspension of the licence or authorisation for the programme service for a period of one to 10 days.

69. The Regulatory Entity for the Media (ERC) was set up in 2005 as the authority responsible for regulation and supervision of all media activities in Portugal. It is

an independent administrative entity which receives and decides upon complaints concerning conduct that violates legal or regulatory standards or rights, freedoms and guarantees applicable to the media. ERC has, on several occasions, issued recommendations to specific newspapers or broadcasters in cases where the principle of non-discrimination on racial, ethnic or religious grounds was breached. Its recommendations must be published and given due prominence by the media concerned.

70. Furthermore, ECRI was informed by the authorities that in April 2006 the Commission for Equality and Combating Racial Discrimination (CICDR) issued a recommendation, which it reiterated in 2012, on references to nationality, ethnicity, religion or immigration status in news from official sources, including security forces, police and media. Regarding media, the CICDR requested them, while respecting their editorial independence, "to avoid the construction of news with reference to nationality, ethnicity, religion or documentary situation where this is not essential for explaining the news". It also called upon editors to consider the relative weight, in terms of media space, given to news concerning undocumented immigrants in Portugal and to the tone of such reports in the interests of proportionality and respect for human dignity. ECRI is pleased to note that, according to various reports, the recommendation is being implemented both by the media and by the police.

71. The CICDR further recommended information and training sessions for the main media companies and their agents. According to information provided by the authorities, these were carried out in cooperation with several NGOs and constituted an important awareness-raising initiative on the phenomena of racism and xenophobia and in building a healthy multi-ethnic and multi-cultural climate among the media. According to various reports, the media have in recent times made substantial efforts to eliminate stereotypes in news reporting. ECRI welcomes this and encourages both the Portuguese authorities and the media to continue in this direction.

72. In its third report, ECRI strongly urged the Portuguese authorities to monitor closely developments relating to extreme right and racist movements, including skinhead groups. To this end, it recommended that they reinforce their efforts to counter the dissemination of racist, xenophobic and antisemitic propaganda via the Internet.

73. ECRI notes that the Ministry of Justice monitors the activities of right-wing groups, such as the Portuguese Hammerskins. However, according to the authorities, the activities of such groups are very limited and their threat level is considered to be insignificant.

74. As for the Internet, ECRI notes that, according to NGO reports, there has been an increase in racist websites in recent years, targeting in particular Roma and immigrants. It has been informed that the criminal police has a cybercrime department which has the power to close down websites disseminating illegal content, including material of a racist or xenophobic nature. However, the authorities have indicated that there are practical difficulties in the investigation of Internet crimes across borders. ECRI encourages them to take full advantage of the international cooperation provisions of the Cybercrime Convention (which Portugal ratified in 2010) to deal with such problems effectively.

75. ECRI has heard about an Internet forum - clearly set up in Portugal - following the adoption of the Government's National Strategy for the Integration of Roma Communities and using the logo of the National Republican Guard (GNR). According to NGOs, the website disseminated extreme hate speech against Roma (including such statements as "kill Roma, castrate them so that they

cannot reproduce, send them away, put them in jail"). While the authorities informed ECRI that the GNR repudiates racial hate speech and condemns any form of misuse of its symbols and logos, ECRI is astonished that the GNR did not immediately issue a public statement denying any association with the website. Moreover, the criminal police took no action with a view to clos**ing** down the forum. Complaints made by NGOs to the Public Prosecutor were also ineffective and it appears that the site stayed up for several months.

76. ECRI deeply regrets the authorities' failure to take action against this forum, which may have given the impression to the public that there are no legal limits to what can be published or broadcast in Portugal and that there is impunity for hate speech. ECRI recalls that freedom of expression, as protected under Article 10 of the ECHR, is not an unconditional right; it can be restricted in certain circumstances, including for the protection of the reputation or rights of others. Moreover, ECRI considers that some of the statements transmitted via the forum could meet the criteria of advocating, promoting or inciting hatred, discrimination or violence based on race, colour, descent or national or ethnic origin, as defined in the Additional Protocol to the Convention on Cybercrime (which Portugal has ratified), as well as qualifying as incitement to discrimination, hatred or violence according to Article 240 of the Criminal Code.

77. ECRI recommends that the authorities take action to ensure that the cybercrime department steps up its monitoring of the Internet to prevent it from being used to disseminate racist or xenophobic comments and material, and with a view to prosecuting the perpetrators of such acts. It draws their attention to its General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet.

78. On the other hand, ECRI welcomes the CICDR's creation of a link for Internet users to present complaints against sites where racist or xenophobic information exists – *the Linha Alerta – internet segura.* It encourages the authorities to investigate all complaints received and to take action where necessary.

IV. Racist Violence

79. ECRI is pleased to note that racist violence does not appear to be a significant problem in Portugal. While many people believe that violence is on the increase in the country, it is generally associated with various forms of criminal activity, but not with any racist motivation. This may also explain the very limited application of the criminal law provisions against racial discrimination (Article 240 of the Criminal Code – see also the section above on *Criminal law provisions*).

80. On the other hand, ECRI has already noted under-reporting of racial discrimination in the civil and administrative law field due to the fact that complaints almost never result in a positive decision for the victim (see above). It considers that the same lack of confidence in the criminal justice system could apply in relation to racist violence. ECRI encourages the authorities to look into this possibility.

V. Vulnerable/Target Groups

Roma

81. Recent information indicates that the Roma community - estimated at 40 000 to 60 000 people, virtually all of whom have Portuguese nationality - continues to experience serious problems in relation to equal rights and integration and that a feeling of mutual mistrust between members of the Roma community and the majority population persists. Roma face many difficulties in the fields of employment, housing and education, and discrimination is experienced in every-

day life. However, ECRI notes that important initiatives have been taken to improve the situation of Roma in Portugal. These are described below.

- *National Strategy for the Integration of Roma Communities*

82. In its third report, ECRI strongly recommended that the Portuguese authorities adopt an all-encompassing national strategy to combat the social exclusion of Roma, containing short, medium and long-term measures. It encouraged them to consider adopting positive measures to prevent or offset the disadvantages suffered by members of Roma communities or to facilitate their full participation in all spheres of life.

83. ECRI notes that a National Strategy for the Integration of Roma Communities has been drafted but not yet formally approved. It aims to run until 2020 and consists of 39 priority actions with stated objectives and deadlines. ECRI is pleased to note that the Strategy is based on the principle that integration is a two-way process and that it involves the participation of local authorities, civil society and Roma people in all stages of design, monitoring and evaluation.

84. The first priority of the Strategy is the setting up of a Consultative Group for the Integration of Roma Communities, comprising representatives of Government departments or other public or private bodies (14 members) and representatives of the Roma communities (two members) – by 2013.

85. The Strategy recognises that the lack of data results in ignorance as to the actual number, geographical location and lifestyles of Portuguese Roma communities, data which are fundamental in devising appropriate measures for intervention in areas such as housing, education, health and employment. Therefore, a national survey of the socio-economic circumstances of Roma communities is the second priority, which cuts across the entire Strategy and which should be completed by 2014. ECRI welcomes the acknowledgement by the authorities of the need to gather information in order to design and implement policies adapted to the real circumstances of Roma communities. It hopes that Portugal's strong position against the collection of equality data, as mentioned in several parts of this report, will not hamper these efforts (see, in particular, *Monitoring Racism and Racial Discrimination*).

86. Among the other "key themes" of the Strategy are the following: justice and security, social security, gender equality, education for citizenship, mediation and discrimination. Regarding discrimination, the Strategy calls for the organisation of at least 24 training or awareness-raising actions aimed at different sectors of the population – Roma communities, professionals in various areas and decision-makers, amongst others – by 2020. ECRI notes, however, that the Strategy fails to address anti-Gypsyism as a specific form of racism which is expressed in a variety of ways, including, among others, by violence, hate speech, stigmatisation and the most blatant kind of discrimination.

87. Under the new European Framework for National Roma Integration Strategies, EU Member States were required to submit strategies on Roma inclusion to the European Commission by the end of December 2011. ECRI notes that Portugal's National Strategy has been duly submitted but that, since funding through the European Social Fund has not yet been decided, none of the actions outlined in the Strategy has been initiated so far.

- *Education*

88. In its third report, ECRI strongly recommended that the Portuguese authorities continue their efforts to address the problems relating to the reception of Roma children in certain schools and take all necessary measures to deal with any

hostile reactions from the parents of non-Roma children. ECRI also urged the authorities to reinforce their efforts, in conjunction with Roma communities, to encourage regular school attendance by Roma children and to tackle the problem of the high school drop-out rate, particularly among Roma girls. ECRI recommended that steps should be taken to make it easier for Roma to pursue higher education studies and that the authorities pursue and step up their efforts to promote Roma culture among teachers and pupils.

89. ECRI notes that the 2012 report of the European Union Agency for Fundamental Rights (FRA) and the United Nations Development Programme (UNDP) on the situation of Roma in 11 EU Member States found that in Portugal fewer than one out of 10 Roma is reported to have completed upper-secondary education. Furthermore, a 2009 study on the situation of Portuguese Roma revealed that 52.3% had no education at all, 36.9% were functionally illiterate and 9% were illiterate.

90. With these problems in mind, the National Strategy for the Integration of Roma Communities contains numerous actions aimed at improving access to education for Roma and reducing school drop-out. ECRI is pleased to note the following objectives, among others, to be achieved by 2020: 100% attendance in pre-school education by Roma children; the completion of compulsory education for 60% of Roma children; the completion of secondary education or occupational courses by 30% of young Roma adults; attendance in higher education by 3% of young Roma adults and the completion of higher education by 2% of young Roma adults. ECRI also notes that 150 individuals from Roma communities should be trained to work in schools by 2020. ECRI finds these goals commendable but will not be able to comment on their implementation until its next monitoring cycle.

91. ECRI notes that there continue to be instances of non-Roma parents objecting to the enrolment of Roma pupils in schools. In addition, ECRI has heard that there have been cases of pre-school establishments refusing to accept Roma children. This suggests that intolerance towards Roma exists in the general population and in the education environment. Conversely, ECRI notes also that access to education is sometimes hampered by patriarchal elements in Roma communities who oppose Roma girls' continuation of their studies and mixing with the rest of society.

92. ECRI is aware of a small number of Roma-only classes that have been established in certain municipalities. Sometimes such classes are located outside the school premises. This occurred, for example, in Viano do Castelo-Darque where a Roma-only class was established to facilitate the schooling of 12 Roma girls, aged between 11 and 18 years, who had dropped out. Many of the girls were reportedly prevented from going to school by their parents because of the presence of non-Roma boys in mixed classes. Most of the teachers were women and there was a specialised social assistant for the students. According to the education authorities, such a form of schooling is sometimes the only solution to facilitate attendance by Roma girls and provide them with some education. Moreover, ECRI has been informed that these classes have been requested by Roma themselves.

93. Although ECRI understands the reasons for such type of classes as an exceptional measure in very specific circumstances, it nevertheless stresses that, as a matter of principle, Roma children should be integrated into schools attended by pupils from the majority population. In ECRI's view, there are other ways to encourage Roma girls to go to school, give them confidence and alleviate the fears of their parents. For example, an investment in greater numbers of mediators from among the Roma community would ensure the

necessary liaison between the school, the pupils and the Roma parents (see below). Furthermore, measures to ensure that Roma parents understand the importance of education for their children should be promoted.

94. ECRI recommends that greater numbers of Roma mediators are employed in the field of education.

95. ECRI recommends that actions aimed at increasing Roma parents' awareness of the importance of education and of giving priority to their children's education are carried out.

96. Finally, as regards segregation in school, ECRI refers to the Grand Chamber judgment of the European Court of Human Rights in the case of Oršuš and Others v. Croatia[4], which provides guidance on the placement of children in Roma-only classes.

97. As concerns promoting Roma culture among teachers and pupils, although ACIDI has developed a training module on Roma issues through the Entreculturas Secretariat (see *Education and Awareness-raising*), ECRI has heard that there is very little dissemination of information about Roma culture in schools and no references to Roma in school textbooks. ECRI regrets this and refers to its General Policy Recommendation No. 13 on combating anti-gypsyism and discrimination against Roma, in particular § 4q, which recommends that school textbooks should contain information on Roma language, culture and history and present the benefits brought by Roma to society.

98. ECRI notes that the National Strategy, under the key theme of discrimination, gives priority to highlighting the value of Roma history and culture in order to promote better understanding and respect. ECRI hopes that this will be translated into the field of education (where the promotion of Roma culture among pupils is not specifically mentioned) as it considers education an important tool for combating racism and intolerance.

99. ECRI recommends that, taking inspiration from its General Policy Recommendations No. 3 on combating racism and intolerance against Roma/Gypsies and No. 13 on combating anti-gypsyism and discrimination against Roma, the Portuguese authorities ensure that school textbooks contain information on Roma language, culture and history and present the benefits brought by Roma to society. They should also introduce this information in the curricula of all schools and provide training programmes in this subject for teachers.

- *Housing*

100. In its third report, ECRI strongly recommended that the Portuguese authorities address the situation of Roma communities living in uncertain housing conditions and that they continue to take all the necessary steps to re-house them in decent accommodation. ECRI also firmly recommended that the authorities investigate the allegations of inappropriate conduct towards Roma with regard to housing, particularly arbitrary evictions, and that they take all the necessary measures to put an end to any such practices.

101. ECRI notes that the National Strategy for the Integration of Roma Communities acknowledges, in the housing chapter, that "in view of the principle that there is a universal right of access to housing programmes, on an equal footing by all communities and ethnicities, no specific responses have been created for Roma

[4] Oršuš and Others v. Croatia [GC], no. 15766/03, 16 March 2010.

communities". This is in line with the interpretation by certain authorities of Article 13 of the Constitution as excluding positive measures for disadvantaged groups, which has been commented upon in § 5 above. However, recognising that many Roma face great poverty, social exclusion and poor housing conditions, the Strategy provides for at least one survey on the conditions for accessing housing and the housing situation of Roma communities by 2020, as a precondition for effective intervention. In addition, it calls for the preparation of a specific programme to promote minimum hygiene and welfare conditions in 80% of encampments until families are re-housed. Promoting access by Roma to the rental and private property market is also one of the aims of the Strategy.

102. ECRI notes that housing is considered the greatest single problem facing the Roma population in Portugal. A large number of Roma continue to live in precarious conditions, often in encampments consisting of barracks, shacks or tents. Many settlements are situated in areas isolated from the rest of the population, a few kilometres away from cities with little or no public transportation and no public services or amenities nearby. Moreover, they often lack basic infrastructure such as access to drinking water, electricity or waste disposal facilities.

103. ECRI notes that, in June 2011, the European Committee of Social Rights found violations of Article E (non-discrimination) taken in conjunction with Article 31 § 1 (the right to adequate housing), Article 16 (the right of the family to social, legal and economic protection) and Article 30 (the right to protection against poverty and social exclusion) of the Revised European Social Charter in a complaint submitted by the European Roma Rights Centre against Portugal.[5]

104. The Committee found the above-mentioned violations for the following reasons, among others: Roma at one settlement had remained without access to water for over a week; the Government had not taken sufficient measures to ensure that Roma lived in housing conditions that met minimum standards; re-housing programmes for Roma had often resulted in the spatial and social segregation and had been tainted by discriminatory practices; failed re-housing projects had led to new housing developments for Roma in segregated settings, demonstrating the absence of political will to provide integrated, adequate housing; and the central authorities had shown inability and unwillingness to oversee and coordinate correctly the implementation of housing programmes at the local level, taking into consideration the specific situation of Roma.

105. ECRI notes that these violations have not yet been remedied. It understands that solving the housing difficulties of the country's Roma population is a costly matter and is particularly onerous in the current climate of austerity. Nevertheless, it insists that some actions should be possible in the short term which would significantly improve the lives of many people. For example, providing a minimum infrastructure of basic amenities to existing settlements while occupants are awaiting re-location to standard housing would be one such step. ECRI notes that this is fully in line with the overall objectives in the field of housing of the National Strategy for the Integration of Roma Communities.

106. ECRI recommends that the authorities take action to rectify the situation leading to the above-mentioned decision on violations of the Revised European Social Charter. As a first step, priority should be given to ensuring that all Roma settlements have access to water, electricity and sewage facilities. Re-housing programmes should focus on the integration of Roma with the general population and definitively put an end to their geographical segregation.

[5] European Committee of Social Rights, European Roma Rights Centre v. Portugal, Complaint No. 61/2010, decision on the merits of 30 June 2011.

107. Furthermore, ECRI has heard that there continue to be Roma settlements which are surrounded by walls. For example, a concrete wall of around 100 metres in length was built around the Pedreira district in Beja (which is three kilometres from the town, without public transport or access to other basic amenities) where some 400 Roma people live. ECRI notes that this has been referred to as "the wall of shame". Following numerous complaints, including from international human rights bodies, the local authorities intended to demolish the wall. However, considering that it served as a security barrier beside a main road, they decided to lower the height of the wall instead of removing it altogether.

108. ECRI considers that constructing walls, regardless of their height, around Roma living areas which visibly and physically separate Roma from other communities constitutes *de facto* segregation. It is appalled at this situation which goes against any attempt at integration and which, conversely, contributes to reinforcing the stereotype of Roma as dangerous and undesirable. In accordance with the principle of proportionality, if protection is required against a busy road, ECRI considers that other means are available, as are surely used throughout the country in similar circumstances. In ECRI's view, it is of the utmost urgency to remove all such walls or other barriers around Roma settlements if credibility is to be given to the Government's National Strategy for the Integration of Roma Communities.

109. ECRI urges the Portuguese authorities to eliminate all walls and other barriers segregating Roma communities.

110. Finally, as regards forced evictions, ECRI is pleased to note that no systematic expulsions of Roma have occurred in recent years. In addition, ECRI understands that the destruction of slums, which made many Roma homeless in the past, has also stopped.

- *Access to employment, goods and services*

111. In its third report, ECRI encouraged the Portuguese authorities to continue to take all the necessary measures to assist members of Roma communities in obtaining employment, accompanied by measures to prohibit and penalise any discriminatory conduct by employers who refuse to take on Roma on the ground of their ethnic origin.

112. ECRI notes that the recent FRA/UNDP Survey on the situation of Roma in 11 EU Member States[6] mentioned above found that in Portugal only about one out of 10 Roma aged 20 to 64 was in paid employment. Just over 50% of Roma respondents aged 16 and above looking for work in the past five years in Portugal said that they had experienced discrimination because of their Roma background.

113. ECRI notes that the National Strategy for the Integration of Roma Communities contains numerous measures to counter the precarious economic circumstances associated with difficulties in entering the labour market and patterns of poverty and social exclusion. Examples include creating spaces for dialogue with business associations; involving NGOs, Roma associations and Roma mediators; setting up a mentoring project in the labour market to promote inclusion and the demystification of negative portrayals of Roma communities; training 30 Roma mediators to act as facilitators in the labour market; and establish local partnerships for employment and vocational training.

[6] European Union Agency for Fundamental Rights (FRA) (2012) and UNDP (2012), The situation of Roma in 11 EU Member States, Survey results at a glance.

114. In its third report, ECRI strongly recommended that the Portuguese authorities take steps to combat racial discrimination against Roma 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.

115. ECRI has little information concerning the above. However, it is aware that an Algarve-based tourist company is currently being investigated for including a clause in its holiday home rental contracts stipulating that clients of Roma ethnicity must give a deposit of 5 000 euros on apartments and 10 000 euros on villas, while the fixed deposit for other clients is between 100 and 500 euros. A member of the Commission for Equality and Combating Racial Discrimination (CICDR), which is considering taking action, accused the company of "shameful and blatant racism". ECRI encourages the authorities to undertake a full investigation of this and other similar cases with a view to ensuring that racial discrimination is effectively punished when it does occur.

- *Relations with local authorities*

116. In its third report, ECRI strongly encouraged the Portuguese authorities, at both national and local level, to provide the means to promote intercultural dialogue between Roma communities and the majority population.

117. ECRI notes that the Office for the Support of Roma Communities (GACI) was created in 2007 by the High Commission for Immigration and Intercultural Dialogue (ACIDI). This Office, which regrettably does not include a single member of the Roma community, has structured its work around three main areas – strengthening intercultural dialogue, promoting education, culture and citizenship and supporting empowerment – and has developed a series of activities aimed at the advancement and social integration of Roma. Against this background, the Municipal Mediators Pilot Project was launched in April 2009. This involved the appointment of Roma socio-cultural mediators, on a full-time professional basis, in 10 Portuguese town halls with the aim, inter alia, of improving Roma communities' access to services such as town hall facilities and hospitals and to promote integration and communication between the Roma community and others.

118. ACIDI is responsible for recruiting and training the mediators, although they are funded partly through the European Union and by the local authorities. They receive training in relevant legislation and institutional standards, mediation, the Portuguese language and communication. Currently there are Roma mediators employed in 20 municipalities. The aim is to have such mediators in at least 50 municipalities by 2020, according to the National Strategy for the Integration of Roma Communities.

119. Despite this goal, ECRI is concerned to learn that a number of municipalities are not renewing the contracts of Roma socio-cultural mediators after the initial three-year period, due to financial constraints. In view of the universally acclaimed good work that is done by Roma mediators in bridging the communication gap between Roma communities and local and other authorities, ECRI deeply regrets this situation and is concerned that it will inevitably lead to a deterioration in these relations.

120. ECRI urges the authorities to place a high priority on continuing and reinforcing the employment of Roma socio-cultural mediators and ensure that there are sufficient numbers of such mediators in all municipalities where there is a high concentration of Roma.

- *Relations with law enforcement agencies*

121. In its third report, ECRI urged the Portuguese authorities to ensure that allegations of ill-treatment committed by law enforcement officers against Roma 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 Roma communities in the justice system to encourage them to report instances of ill-treatment or discrimination by a law enforcement officer.

122. ECRI regrets that cases of police harassment, misconduct and abuses against Roma continue to be reported. NGOs claim that more than half of Roma people have felt discriminated against or badly treated by the police.

123. ECRI notes that in September 2012 there were allegations of serious violence committed by National Republican Guard (GNR) officers at a Roma camp near Vila Verde. A mainstream daily newspaper[7] reported that during the raid, around 30 Roma sustained injuries. Six persons aged between 17 and 38 claimed to have been abused with tasers and "waterboarding" and a metal rod was allegedly pushed down one person's throat. In addition, the victims claim that they were humiliated by being made to count in English and sing Gypsy songs. According to social workers at the scene, the GNR acted "with unusual brutality" and "extreme violence". It appears that the victims, the social workers and an NGO all submitted complaints. At the time of writing this report, a criminal investigation had been opened by the Deputy Prosecutor of Vila Verde and investigations were being conducted by the General Inspectorate of Internal Administration (IGAI) and ACIDI with a view to both administrative and disciplinary sanctions.

124. ECRI frequently stresses the positive role the police must play in combating racism and racial discrimination and promoting human rights. Therefore, it is deeply concerned by reports of the above-mentioned incident which, although extreme, is of a kind that is said not to be uncommon. ECRI is concerned that it could point to a culture of racial prejudice against Roma by some members of the police, especially taken in conjunction with the Internet forum incident described above (see § 75). In order to restore Roma people's confidence in the justice system, a thorough investigation needs to be carried out into the specific events in question with a view to punishing any police officers who engaged in the alleged abuse, but also an enquiry into any possible institutionalisation of racism or racial discrimination in the police.

125. ECRI reiterates its recommendation that effective investigations into alleged cases of racial discrimination or racially-motivated misconduct by the police are carried out and that the perpetrators of these acts are adequately punished. It refers in this context to its General Policy Recommendation No. 11 on combating racial discrimination in policing.

126. ECRI also invites the authorities to conduct an enquiry into any possible institutionalisation of racism or racial discrimination in the police.

127. ECRI notes that the National Strategy for the Integration of Roma Communities contains a chapter on justice and security. One of the objectives is to develop a close, sustainable relationship with citizens and local communities and to reinforce police-public relations. ECRI refers to its comments in § 183 in the section on *Conduct of Law Enforcement Officials*.

[7] *Público*, 27 September 2012, page 38.

Immigrants

128. In 2010, 4.3% of the resident population in Portugal was composed of immigrants (approximately 457 000 people). ECRI notes that there has been no increase in these figures since its third report. The largest immigrant community is Brazilian (25.5%), followed by Ukrainian (11.55%), Cape Verdean (10.8%), Romanian (7.1%) and Angolan (5.9%).

129. In its third report, ECRI strongly recommended 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. It also recommended that the Portuguese authorities pursue their efforts to grant work and residence permits to foreign workers in Portugal who are without legal status and that they 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 and legalisation measures should be taken for employees who have been exploited.

130. A new framework was established in July 2007 by Law No. 23/2007 on the entry, residence, exit and removal of foreigners, commonly known as the "Foreigners' Law". It provides for the granting of temporary or permanent residence permits for exercising a professional activity to third-country nationals who have a work contract and who are registered in the social security system. The law also provides for the granting of long-term residence status to third-country nationals who have resided legally and continuously in Portugal for five years and who have a basic knowledge of Portuguese. Those granted this status enjoy the same rights as Portuguese citizens in the fields of employment, education, healthcare, social security and welfare.

131. ECRI greatly welcomes the fact that there are a number of possibilities in Portugal for irregular immigrants to regularise their status. It was informed that from 2007 to 2012, approximately 7 500 irregular immigrants availed themselves of these possibilities. While the last extraordinary regularisation occurred in 2001, now, according to the authorities, this takes place in accordance with the law and on a case by case basis. For example, according to Article 88 of Law No. 23/2007, as an exceptional measure, a person who does not hold a valid residence permit but who has a work contract, is registered in the social security system and has fulfilled all his/her obligations to this department, can be granted a residence permit.

132. In addition, ECRI notes that, according to Article 122 of Law No. 23/2007, attending preschool, primary school or secondary or professional education is a ground for the regularisation of the situation of minors born in Portugal. The European Union Agency for Fundamental Rights' 2011 Comparative Report on Fundamental Rights of Migrants in an Irregular Situation in the European Union highlights the go-to-school programme (*Programa vai à escola*) launched by the Foreigners and Borders Service (SEF), involving national immigration authorities and schools, designed to regularise migrant children who were born in Portugal and attend State schools but who do not reside legally in the country. Residence permits for both the children and their parents are granted or renewed directly at school, on the same day, avoiding bureaucracy. ECRI commends this programme which both promotes education for all immigrant children and regularises their and their parents' legal status.

133. ECRI notes that migrants in an irregular situation who are unable to regularise their status and who do not have sufficient means may benefit from the Voluntary

Return Programme, set up in cooperation with the International Organization for Migration. The programme puts into practice an effective, dignified and humane policy of voluntary return for foreign citizens to their countries of origin or to third countries willing to receive them.

134. As for delays in processing files, ECRI is pleased to note that in general the situation has improved, in large part thanks to the significant efforts made by SEF to deal with backlogs, the adoption of new technologies in customer services, as well as the establishment of National and Local Immigrant Support Centres (see below).

135. As regards illegally employing immigrants, ECRI notes that Article 198 of Law No. 23/2007 establishes penalties for employers hiring foreign citizens who are not authorised to exercise a working activity. Fines can be imposed for each foreign worker, starting from 2 000 euros up to a maximum of 90 000 euros.

136. Furthermore, ECRI has been informed that, following very recent amendments to the above-mentioned legislation, introduced by Law No. 29/2012 (Articles 183-185), which entered into force on 8 October 2012, the hiring of irregular immigrants has been criminalised and can be punished with a prison term of one to five years. ECRI hopes that these new provisions will have a dissuasive effect on unscrupulous employers and help to eliminate the problems highlighted in its previous report.

137. In its third report, ECRI recommended that the Portuguese authorities maintain and consolidate their efforts to promote the integration of immigrants in Portugal, stressing that integration efforts should apply to all immigrants, irrespective of their ethnic and national origin and regardless of when they arrived in the country. ECRI recommended that the Portuguese authorities consolidate the socio-cultural mediators' scheme in services such as education, access to health care and assistance with employment and to take action 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. ECRI also recommended that the 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.

138. ECRI notes with satisfaction that Portugal continues to pursue a strong integration policy. As observed above, the Government has adopted its Second Plan for Immigrant Integration for the period 2010 to 2013, consisting of 90 objectives with indicators and goals, related, inter alia, to welcoming, culture and language, employment, education, housing, justice, access to citizenship and promoting immigrant associations. According to the authorities, about 60% of the objectives have already been implemented. One area where difficulties have been encountered (even in relation to the first Plan) is housing, mainly due to the financial crisis and lack of funds for building social housing.

139. In addition, a large number of integration initiatives have been developed, with the High Commission for Immigration and Intercultural Dialogue (ACIDI) playing a key role, as described in detail in ECRI's third report. Examples include the SOS Imigrante telephone line which functions in 13 languages, the translation telephone service operating in 60 languages, the Portuguese Association for Victim Support (APAV) and the Immigration Observatory which, in partnership with universities, publishes studies and materials on human rights, immigration and racism.

140. Integration services for immigrants are provided by three National Immigrant Support Centres (CNAI) in Lisbon, Porto and Faro and 86 Local Immigrant Support Centres (CLAII) around the country. Each of these functions as a "one-

stop-shop"; in a single building immigrants are provided with various Government services; they are also provided with support in different areas by socio-cultural mediators. For example, the Lisbon CNAI has representatives of six Government agencies under its roof: the Ministry of Internal Administration (Foreigners and Borders Service - SEF), the Ministry of Economy and Employment, the Ministry of Solidarity and Social Security, the Ministry of Education and Science, the Ministry of Health and the Ministry of Justice. At the same time, immigrants can receive, inter alia, legal advice, housing support and access to Portuguese language lessons. All new arrivals in the country as well as long-term immigrants and those born in Portugal are welcomed, as are immigrants in a legal or irregular situation. ECRI considers the holistic approach to immigration services aimed at meeting the concrete needs of immigrants in one place most impressive.

141. ECRI is pleased to note that these centres record the number of users of the services provided, broken down according to nationality. The CLAII of Setúbal (with a population of 120 000 inhabitants), for example, has observed that 3 801 persons have used its services over the five-year period since it opened in 2007. These comprised 35 different nationalities, the majority of whom were Brazilians and Angolans. In 2011, the Lisbon CNAI responded to more than 3 000 cases, almost all of which, according to the authorities, were resolved positively.

142. ECRI notes that the socio-cultural mediators' scheme, established in 2001, continues to function as an important element of the one-stop-shop. Socio-cultural mediators, who are almost always from immigrant communities themselves, facilitate integration by helping immigrants access the services of the CNAI or the CLAII and by providing a cultural and linguistic bridge between the State and immigrant communities or individuals. Mediators need to be well informed in various fields of immigration and integration issues. Initial training is provided by ACIDI but on-the-job and continuous training is the responsibility of the CNAI or the CLAII. According to the authorities, an evaluation study was carried out which showed that mediators were highly appreciated by the public.

143. In addition, ECRI notes that a pilot project was launched for the years 2009 to 2011 placing 28 intercultural mediators in various public agencies providing, among others, health care, social security, housing, employment and education, as well as in municipal services and in the Public Security Police, with the aim of enhancing intercultural dialogue and combating stereotypes and prejudice. According to the authorities, an estimated 14,000 people benefited from this programme and a new phase was programmed to start in March 2012 with 20 mediators.

144. ECRI commends the above efforts and notes that they have resulted in Portugal's ranking in second place (with 79 points) in the Migrant Integration Policy Index (MIPEX) 2010. In addition, the United Nations Human Development Report of 2009 places Portugal at the top of the ranking in immigrant integration policy. ECRI encourages the authorities to continue their efforts at welcoming and integrating immigrants.

145. In its third report, ECRI recommended 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.

146. As for acquiring Portuguese citizenship, the rules remain the same. A foreigner aged 18 or over may be naturalised after six years of legal residence. There is a requirement to have sufficient knowledge of the Portuguese language (level A2:

elementary, according to the Common European Framework of Reference for Languages). Moreover, an oral test can be given in the case of illiteracy. ECRI has not heard about any particular difficulties in the naturalisation process and it appears that the vast majority of immigrants apply for Portuguese citizenship at the earliest opportunity.

147. Regarding electoral rights, based on reciprocity, nationals of the following States have voting rights at local level: the EU, Brazil, Cape Verde, Norway, Uruguay, Venezuela, Chile, Argentina and Iceland. Nationals of EU countries, Brazil and Cape Verde can also stand as candidates in local elections. ECRI notes, therefore, that many immigrants - nationals of countries having no reciprocal agreement with Portugal - still cannot vote or stand for election at local level. According to the authorities, since, as stated above, most immigrants eventually obtain Portuguese nationality, they also gain full electoral rights.

148. In ECRI's view, a country which has large numbers of foreign residents who participate actively in the life and prosperity of the local community should allow them to contribute to the local decision-making process on matters which affect them. It invites the authorities to consider a more flexible approach in this matter to improve the political integration of non-citizens at local level. The European Convention on the Participation of Foreigners in Public Life at Local Level provides, in Article 6, for electoral rights to be granted to foreigners after lawful and habitual residence for five years preceding the elections. ECRI has recommended that Portugal ratify this instrument (see § 4).

149. ECRI recommends that the authorities amend the law to allow foreigners who have been lawful and habitual residents in Portugal for five years to vote and stand as candidates in local authority elections.

Refugees and asylum seekers

150. Portugal receives a small number of asylum applications annually, although that number has increased significantly recently; in 2010, there were 160 and in 2011 the figure rose to 275, representing a 71.8% increase. The trend seems to be continuing, with 251 applications lodged from January to September of 2012. This increase has been a heavy burden on the whole asylum system with a marked impact on the length of procedures and overcrowding at the reception facility, which are discussed below. At the same time, ECRI notes that an important achievement in the last few years has been the increase in the rate of admission of asylum seekers to the asylum procedure and of refugee status recognition. In 2006, the admissibility rate was 6.8%, while in 2010 it rose to 43%, and 58.5% in 2011. Of those admitted to the asylum procedure in 2011, international protection was afforded to 70 asylum seekers (23.6%), with 30 (9.8%) recognised as refugees and 40 (13.8%) granted subsidiary protection.

151. In its third report, in view of the revision of the Asylum Act, ECRI reiterated 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. ECRI also recommended the authorities to ensure that the time allowed for submitting an asylum application was not too short.

152. A new law on asylum, Law No. 27/2008, enacted on 30 June 2008, establishes the conditions and procedures for granting asylum or subsidiary protection, transposing the two Directives 2004/83/EC ("Qualification Directive") and 2005/85/EC ("Asylum Procedures Directive") of the Council of the European Union. ECRI notes that the new law is generally considered to be in line with international standards.

153. The first phase of the asylum procedure determines whether an application is admissible. During this stage, asylum seekers are entitled to accommodation at the Refugee Reception Centre, where they also receive social assistance and legal advice (see below). The Foreigners and Borders Service (SEF) draws up a written report following which the Director of SEF must take a decision on admissibility within 20 days. If no decision is taken within this timeframe, the application is deemed to be admissible. ECRI is pleased to note that the law now provides specifically for negative admissibility decisions to be challenged in the administrative courts within eight days with automatic suspensive effect.

154. A person admitted to the asylum procedure is granted a temporary residence permit for four months which is renewable. This provides, inter alia, access to the national health service and to the labour market.

155. The second phase, concerning eligibility for international protection, involves the determination on the merits. This phase should last a maximum of 180 days according to the law. The Minister of Internal Administration decides whether to grant or refuse refugee status or subsidiary protection. Again, negative decisions may be challenged in the administrative courts within 15 days, with automatic suspensive effect.

156. ECRI is pleased to note that access to legal advice is provided free of charge at all stages of the asylum procedure through the Portuguese Refugee Council (CPR), a non-governmental organisation responsible for the reception of and assistance to asylum seekers. In addition, legal aid is provided free of charge for all appeals. The right to an interpreter is granted whenever necessary.

157. However, despite the above positive developments, ECRI notes a number of issues of concern. Firstly, there is a "special scheme" established in Law No. 27/2008 for asylum claims submitted at border points, which account for around half of all asylum claims. During these procedures, asylum seekers (with the exception of unaccompanied or separated minors and families with minors, who are granted access to the national territory) are detained in the international area of the port or airport. Substantially shorter time-limits apply; the decision on admissibility must be taken within five days; a negative decision may be challenged before the administrative courts within 72 hours, with suspensive effect; and a judicial decision must be pronounced within 72 hours. However, ECRI has been informed that, in practice, these decisions take longer than the period established in the law, during which time the asylum seekers concerned remain in detention; if no decision is taken within 60 days, permission to enter the territory is granted. The conditions of detention appear to be generally acceptable but the facilities are overcrowded.

158. In this connection, ECRI reminds the Portuguese authorities that, in view of the hardship it entails and consistent with international refugee and human rights law and standards, detention of asylum seekers should normally be avoided and be a measure of last resort. Seeking asylum is not an unlawful act and detention can only be ordered where it pursues a legitimate purpose and has been judged to be both necessary and proportionate in each individual case. ECRI refers in particular to the UNHCR's Detention Guidelines (published in 2012), according to which it is permissible to detain asylum seekers for a limited period for the purpose of recording, within the context of a preliminary interview, the elements of their claim to international protection.

159. In this context, ECRI recalls the judgment of the European Court of Human Rights in the case of Saadi v. the United Kingdom[8]. The Court stated that

[8] Saadi v. the United Kingdom, no. 13229/03, 29 January 2008.

detention should only be imposed as a genuine part of the process to determine whether an individual should be granted immigration clearance and/or asylum and that it should not otherwise be arbitrary, for example on account of its length (the applicant was detained for seven days, which the Court found not to be excessive).

160. Furthermore, ECRI refers to Resolution 1707 (2010) of the Parliamentary Assembly of the Council of Europe on detention of asylum seekers and irregular migrants in Europe which calls for States to consider alternatives to detention. It recommends that States clarify the framework for the implementation of alternatives to detention and incorporate into national law and practice a proper legal institutional framework to ensure that alternatives are considered first.

161. ECRI considers that the manner in which a country treats asylum seekers is an indication of how welcoming it is vis-à-vis non-nationals. While ECRI recognises the efforts made by the authorities to speed up the procedures in the case of asylum applications submitted at border points, and thus reduce time spent in detention, it is concerned that some asylum seekers remain in detention at border points for relatively long periods of time and that there is no provision for alternatives whatsoever. Moreover, ECRI is concerned that the confined and overcrowded facilities at ports and airports are not conducive to a fair and proper examination of claims.

162. ECRI recommends that the authorities reduce in practice the length of detention of asylum seekers at border points and provide for the possibility of alternatives to detention. They should seek guidance from the UNHCR's Detention Guidelines, in particular Guideline 4.3 and Annex A, as well as from Resolution 1707 (2010) of the Parliamentary Assembly of the Council of Europe on detention of asylum seekers and irregular migrants in Europe.

163. Secondly, the Refugee Reception Centre (the only one in the country), which is run by the Portuguese Refugee Council (CPR), is intended to accommodate asylum seekers during the admissibility phase only, during which there is no entitlement to work. ECRI notes that the facility has an official capacity of 42 persons but that it has been constantly and seriously overcrowded for some time. As observed above, the law states that decisions on admissibility must be given within 20 days of presentation of a written report by SEF. However, the authorities often take several months to complete the report and the 20-day period does not start to run until it has been presented. Due to these delays, asylum seekers often remain in the Refugee Reception Centre for longer periods of time than was intended.

164. Furthermore, once asylum seekers are admitted to the asylum procedure, they should be granted welfare and housing assistance so that they can move out of the Refugee Reception Centre. However, ECRI is concerned to note that, apparently due to the severe financial crisis in Portugal, the Social Security Institute suspended the payment of these social allowances to newly admitted applicants in October 2011. As a result, asylum seekers had no choice but to remain in the Refugee Reception Centre following positive admissibility decisions and they were housed with in-coming asylum seekers whose admissibility decisions were pending. The numbers grew; in October 2011, there were 115 persons accommodated at the centre - almost three times more than the official capacity. ECRI notes with interest that there was a Facebook appeal from members of the public to support the asylum seekers with donations, to which there was a good response. However, the situation became so dire that, on 27 August 2012, asylum seekers at the centre took action to call attention to their plight by kidnapping CPR staff and barricading themselves inside. The police had to intervene and arrests were made.

165. ECRI notes that following this crisis point, and thanks to the intervention of the High Commissioner for Refugees, an agreement was reached with the social security services in September 2012 to the effect that they would resume, with immediate effect, their obligations to provide welfare and housing assistance to those persons admitted to the asylum procedure. Thus the Refugee Reception Centre should be able to return to accommodating only those awaiting the admissibility decision.

166. ECRI encourages the authorities to ensure that social security and housing assistance is provided to all persons who have been admitted to the asylum procedure, in accordance with the law.

167. In its third report, ECRI encouraged the Portuguese authorities to pursue their efforts to facilitate the integration of asylum seekers and refugees and provide the Portuguese Council for Refugees with all the necessary means to enable it to perform its task in the best possible conditions.

168. ECRI is pleased to note that the Portuguese Government supports financially and in other ways the work carried out by the Portuguese Council for Refugees (CPR) for the benefit of asylum seekers and refugees. Moreover, the new asylum law gives a specific role to the CPR; it should be notified every time a new asylum application is received and it has the opportunity to interview asylum seekers and submit an opinion on the claim. It is also responsible for providing legal advice and running the Refugee Reception Centre and its activities.

169. ECRI welcomes the provision of language training for all asylum seekers upon arrival and notes that an employment and training service is run by the CPR at the Refugee Reception Centre, which is open to both asylum seekers and refugees. Training courses and workshops are provided in partnership with the Employment and Vocational Training National Institute, as well as voluntary work and trainee opportunities in private companies under social responsibility programmes. ECRI has been informed that these efforts have helped to reduce asylum seekers' and refugees' exposure to racism and xenophobia in the recruitment process and job interviews and that the results have been quite positive.

170. Finally, ECRI would like to point out a new development: a special reception centre for unaccompanied or separated children has been founded and was due to start operating in October 2012, under the responsibility of the CPR.

Muslim communities

171. There are estimated to be between 40 000 and 60 000 Muslims in the country, mostly coming from former African colonies such as Mozambique and Guinea Bissau. There are 40 mosques in the country and three cemeteries where Muslims can be buried in full respect of Islamic burial rules. ECRI is pleased to note that, according to Muslims themselves, there is full freedom of religion in Portugal and no discrimination on religious grounds.

Jewish communities

172. The Jewish Community in Portugal is estimated at around 3 000 persons. ECRI is not aware of any reports of antisemitic acts or incidents in recent years.

VI. Conduct of Law Enforcement Officials

173. In its third report, ECRI strongly encouraged 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.

174. ECRI has dealt with training above (see *Existence and Application of Legal Provisions – Criminal law provisions - Training of judges, prosecutors and police*). In addition, it is pleased to note that in the course of "proximity policing", the National Republican Guard (GNR) pays special attention to developing relations of trust with ECRI's groups of concern. It has developed the Project of Investigation and Support to Especially Vulnerable Victims (IAVE), which aims to integrate police with the communities they serve and ensure psychosocial support to victims. Similarly the Public Security Police (PSP) has been working with ACIDI to gain a better knowledge and understanding of the different minority groups in the country and through its Integrated Programme of Proximity Policing has carried out 35 "intercultural dialogue" activities promoting equality, tolerance and acceptance of minority communities.

175. In its third report, ECRI strongly recommended that additional steps be taken to bring an end to all police misconduct, including racist remarks and ill-treatment towards members of vulnerable groups.

176. According to NGO reports, racist violence committed by the police has increased over the last five years. Some serious incidents have included shootings of Africans and Roma. ECRI refers to the section on *Vulnerable/Target Groups – Roma - Relations with law enforcement agencies*, which deals with police misconduct in relation to the Roma community, and to its recommendation in § 125.

177. ECRI notes that there are several distinct law enforcement agencies in Portugal. The Public Security Police (PSP), the National Republican Guard (GNR) and the police of the Foreigners and Borders Service (SEF) are under the authority of the Ministry of Internal Administration. Complaints against any of these will be dealt with by the General Inspectorate of Internal Administration (IGAI). On the other hand, the Criminal Police (also called Judiciary Police) is under the competence of the Ministry of Justice and complaints will be investigated by the General Inspectorate of Justice Services (IGSJ). The authorities have informed ECRI that the inspection bodies have wide prerogatives, powers and competences and enjoy full technical autonomy and independence in their work. In ECRI's view, it would help to create more confidence in the handling of complaints about the police and ultimately in the police services themselves if IGAI and IGSJ were removed from having any direct links with the respective ministries. ECRI notes that there are also internal disciplinary and inspection units for each branch of police.

178. However, according to data provided by the authorities, from 2006 until 2012, a total of 31 complaints were submitted against police officers concerning racist or racially discriminatory acts under Law No. 18/2004 (see above): 9 against members of GNR, 18 against members of PSP, 3 against members of SEF and one against a member of a fire department. Following investigations conducted by IGAI, 15 cases were recommended for criminal or disciplinary proceedings. In only one case, in 2007, did ACIDI find a breach and impose a fine on the perpetrator. ECRI is astonished at these extremely low figures. In its view, they suggest that the current complaints system is not functional and needs to be revised in order for faith in the complaints procedure, as well as in the police, to be restored (see also § 35).

179. Moreover, ECRI notes that the police authorities themselves had no information as to how many of the cases recommended for criminal proceedings by IGAI

against PSP, GNR or SEF police actually went to prosecution or resulted in convictions. ECRI is concerned that the lack of data collection on complaints and outcomes is indicative of a general unwillingness to face and respond to the phenomena of racism and racial discrimination in the police. ECRI has heard from NGOs that in cases where police have been prosecuted in connection with racist violence, they are rarely convicted. It appears that the argument of self-defence is usually enough to ensure that police are acquitted.

180. ECRI recommends that the police authorities actively monitor the progress and outcome of all criminal prosecutions against members of the police and that the Ministries of Internal Administration and Justice as well as the police authorities take steps to reassure the public, and especially immigrants and members of the Roma community, that complaints about police misconduct, including racism and racial discrimination, will be vigorously and independently investigated and that police officers found guilty of such conduct will be punished.

181. In its third report, ECRI recommended that the authorities consider increasing the number of members of vulnerable groups employed in the police, for example by appointing socio-cultural mediators responsible for improving relations between the law enforcement agencies and vulnerable groups.

182. The police authorities have informed ECRI that they cannot implement this recommendation based on their interpretation of the principle of equality set out in the Constitution (see §§ 5-8) as not allowing any kind of positive measures which would facilitate the integration of members of ethnic minorities or vulnerable groups into security forces and law enforcement agencies. Therefore, while there are annual calls for recruitment to the various police services open to all Portuguese citizens who meet the necessary requirements and pass the selection tests, there is no specific recruitment programme aimed at members of vulnerable groups. Moreover, since there is no collection of equality data, it is impossible to know how many members of vulnerable groups (if any) are currently employed in the various police services.

183. In ECRI's view, it is important to ensure that the composition of the police reflects the diversity of the population. It is also important to equip the police with the skills, including language skills, to increase their effectiveness by enhancing communication with and gaining the trust of vulnerable groups. Therefore, ECRI invites the authorities to consider ways to increase the recruitment of members of vulnerable groups to the police.

184. As for the appointment of socio-cultural mediators in the police, ECRI recalls the pilot project mentioned above which placed 28 such mediators in 25 public services, including in the PSP, with the aim of enhancing intercultural dialogue and combating racial stereotypes and prejudices. In ECRI's view, the authorities should consider employing socio-cultural mediators – particularly from the Roma community - in all branches of the police, as it considers that this could contribute significantly to improving relations between law enforcement agencies and vulnerable groups.

185. ECRI recommends that the authorities appoint socio-cultural mediators, particularly from the Roma community, to all the different police agencies with the aim of improving relations between law enforcement officials and vulnerable groups.

186. Finally, ECRI would like to point out an example of best practice in policing. As mentioned above, the Commission for Equality and Combating Racial Discrimination (CICDR) issued a recommendation on references to nationality, ethnicity, religion or immigration status in news from official sources, including security forces, police and media. According to various reports, the different

police services are complying with the recommendation and are avoiding disclosing, in official and unofficial communications, the nationality, ethnicity, religion or status of anyone who is subject to a police action or inspection or is a suspect. ECRI welcomes this development which should contribute to the elimination of stereotypes linking certain groups with criminality.

VII. Education and Awareness Raising

187. In its third report, ECRI recommended 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.

188. The Secretariat Entreculturas, mentioned in ECRI's third report, was established in 1991 to help schools deal with the increasing numbers of foreign pupils and with social, cultural and ethnic diversity. A broad range of activities were developed to raise awareness of the issue of intercultural education as a means to facilitate the integration of immigrant children and ensure better and more equal opportunities. Secretariat Entreculturas, which is now under the authority of ACIDI, continues to produce and disseminate training tools and teaching materials for schools as well as information for the general public. It has also developed two programmes on inter-religious dialogue, as well as a module on the history and culture of Roma.

189. Furthermore, the Choices Programme (*Programa Escolhas*), mentioned briefly in ECRI's third report, is a national government-sponsored programme promoted by the Presidency of the Council of Ministers and run by ACIDI. Its aim is to promote the social inclusion of children and young people from vulnerable social and economic contexts, particularly children of immigrants and ethnic minorities, in order to ensure equal opportunities for all and to strengthen social cohesion. Now in its 4th Generation, the Choices Programme promotes integration in the school system and non-formal education; vocational training and employment; improvement of the communities and citizenship; digital inclusion; and entrepreneurship and empowerment.

190. Measures in the field of education included in the Second Plan for Immigrant Integration include reinforcing training for intercultural dialogue as part of on-going teacher training. However, ECRI has heard that there is, at present, serious lack of investment in teacher training in general and even more so in so-called transversal issues, such as intercultural education. Evidence of this is the fact that teachers are now required to pay for participating in in-service training themselves. ECRI regrets this, as it considers that on-going training for teachers is very important, particularly in the field of intercultural education and dealing with diversity in the classroom.

191. ECRI recommends that the authorities re-establish in-service training courses for teachers, free of charge, in the field of intercultural education and diversity.

VIII. Monitoring Racism and Racial Discrimination

192. In its third report, ECRI recommended that the authorities consider the ways and means of introducing a coherent and complete data gathering system in order to assess the situation of the various vulnerable groups living in Portugal and determine the extent of instances of racism and racial discrimination.

193. ECRI regrets that no such data system has been put in place. The authorities rely on Article 35 § 3 of the Constitution[9] and Article 7 § 1 of Law No. 67/1998 on data protection[10] to justify their position.

194. ECRI notes that the European Committee of Social Rights, in its decision related to housing of Roma mentioned above, recalled that State authorities have responsibility for collecting data on particular groups which are, or could be, discriminated against. It states that the gathering of such data is indispensible to the formulation of rational policy, as States need factual information to deal with the problem.[11] In the decision, the Committee refers to the case of European Roma Rights Centre v. Greece[12] in which legal and constitutional obstacles to the collection of relevant data were raised by the authorities. The Committee considered that when the collection and storage of personal data is prevented for such reasons, but it is also generally acknowledged that a particular group is or could be discriminated against, the authorities have the responsibility for finding alternative means of assessing the extent of the problem and making progress towards resolving it that are not subject to such constitutional restrictions.

195. Moreover, the United Nations Committee on the Elimination of Racial Discrimination also regrets the lack of statistical disaggregated data on the ethnic composition of the population, the purpose of which is to allow Portugal to assess achievements and obstacles in fighting racial discrimination.[13] Thus, ECRI notes that there is a considerable body of international law supporting the gathering of disaggregated equality data for the purpose of combating racial discrimination and subject to appropriate safeguards.

196. ECRI urges the Portuguese authorities to take steps to put in place a monitoring system to enable the collection of data, either by Government agencies or by recognised academic institutions, which may indicate whether particular groups may be disadvantaged or discriminated against on the basis of "race", ethnicity, religion or membership of Roma or other vulnerable communities, and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and voluntary self-identification.

[9] According to Article 35 § 3 of the Constitution, "computers shall not be used to treat data concerning philosophical or political convictions, party or trade union affiliations, religious beliefs, private life or ethnic origin, save with the express consent of the datasubject, with authorisation provided for by law and with guarantees of non-discrimination, or for the purpose of processing statistical data that cannot be individually identified".

[10] Under Article 7 § 1 of Law No. 67/1998 on data protection, the treatment of personal data dealing with racial or ethnic origin is expressly prohibited.

[11] See § 59, European Committee of Social Rights, European Roma Rights Centre v. Portugal, Complaint No. 61/2010, decision on the merits of 30 June 2011.

[12] European Committee of Social Rights, European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 27.

[13] UN Committee on the Elimination of Racial Discrimination, Eightieth session, 13 February - 9 March 2012, Consideration of reports submitted by States parties under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Portugal, § 10.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of Portugal, are the following:

- ECRI urges the Portuguese authorities to take steps to put in place a monitoring system to enable the collection of data, either by Government agencies or by recognised academic institutions, which may indicate whether particular groups may be disadvantaged or discriminated against on the basis of "race", ethnicity, religion or membership of Roma or other vulnerable communities, and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and voluntary self-identification.

- ECRI strongly recommends that the Portuguese authorities take steps to simplify and speed up procedures following the lodging of complaints with ACIDI. In this context, ECRI also recommends that the authorities consider ways in which the principle of sharing the burden of proof could be put into effect.

- ECRI urges the Portuguese authorities to eliminate all walls and other barriers segregating Roma communities.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

BIBLIOGRAPHY

This bibliography lists the main published sources used during the examination of the situation in Portugal: it should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

European Commission against Racism and Intolerance (ECRI)

1. Third Report on the Portugal, 13 February 2007, CRI(2007)4
2. Second report on Portugal, 4 November 2002, CRI(2002)33
3. First report on Portugal, 15 June 1998, CRI(98)50
4. General Policy Recommendation No. 1: Combating racism, xenophobia, antisemitism and intolerance, October 1996, CRI(96)43
5. General Policy Recommendation No. 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, June 1997, CRI(97)36
6. General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies, March 1998, CRI(98)29
7. General Policy Recommendation No. 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, March 1998, CRI(98)30
8. General Policy Recommendation No. 5: Combating intolerance and discrimination against Muslims, April 2000, CRI(2000)21
9. General Policy Recommendation No. 6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, December 2000, CRI(2001)1
10. General Policy Recommendation No. 7: National legislation to combat racism and racial discrimination, February 2003, CRI(2003)8
11. General Policy Recommendation No. 8: Combating racism while fighting terrorism, June 2004, CRI(2004)26
12. General Policy Recommendation No. 9: The fight against antisemitism, September 2004, CRI(2004)37
13. General Policy Recommendation No. 10: Combating racism and racial discrimination in and through school education, March 2007, CRI(2007)6
14. General Policy Recommendation No. 11: Combating racism and racial discrimination in policing, October 2007, CRI(2007)39
15. General Policy Recommendation No. 12: Combating racism and racial discrimination in the field of sport, March 2009, CRI(2009)5
16. General Policy Recommendation No. 13: Combating anti-Gypsyism and discrimination against Roma, September 2011, CRI(2011)37
17. General Policy Recommendation No. 14: Combating racism and racial discrimination in employment, September 2012, CRI(2012)48

Other sources

18. High Commission for Immigration and Intercultural Dialogue (ACIDI), II Plan for immigrant integration 2010-2013, Official Journal of the Republic, Series 1, No. 182 of 17 September 2010
19. Catarina Reis Olivera, Maria Abranches and Claire Healy, Handbook on how to implement a one-stop-shop for immigrant integration, ACIDI and European Commission, February 2009
20. Portuguese Ombudsman (Provedar de Justica), Report to the Parliament 2011, Summary, Lisbon 2012
21. Provedar de Justica, International Convention on the Elimination of All Forms of Racial Discrimination 12th to 14th national implementation reports of Portugal, Contribution of the Portuguese Ombudsman, 30 January2012
22. European Court of Human Rights, Oršuš and Others v. Croatia [GC], Application no. 15766/03, 16 March 2010
23. European Court of Human Rights, Saadi v. the United Kingdom [GC], Application no. 13229/03, 29 January 2008

24. Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Following his visit to Portugal from 7 to 9 May 2012, 10 July 2012, CommDH(2012)22
25. European Committee of Social Rights, Decision on the merits, 30 June 2011, European Roma Rights Centre (ERRC) v. Portugal, Complaint No. 61/2010
26. European Committee of Social Rights, (ERRC) v. Portugal, Complaint No. 61/2010, 29 April 2010
27. Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Portugal, Adopted on 5 November 2009, 26 April 2010, ACFC/OP/II(2009)003
28. Advisory Committee on the Framework Convention for the Protection of National Minorities, Comments of the Government of the Portugal on the first opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by the Portugal, 26 April 2010, GVT/COM/II(2010)001
29. Council of Europe/ERICarts, Compendium of Cultural Policies and Trends in Europe, 13th edition, 2012
30. United Nations Committee on the Elimination of Racial Discrimination (CERD), Consideration of reports submitted by States parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Portugal, 9 March 2012, CERD/C/PRT/CO/12-14
31. CERD, Reports submitted by States parties under article 9 of the Convention, Twelfth to fourteenth periodic reports of States parties due in 2009, Portugal, 13 September 2011, CERD/C/PRT/12-14
32. European Union Agency for Fundamental Rights (FRA) (2012) and UNDP (2012), The situation of Roma in 11 EU Member States, Survey results at a glance, 2012
33. European Union Agency for Fundamental Rights (FRA), Annual Report 2010, Fundamental rights: challenges and achievements in 2010, 15 June 2011
34. FRA, EU-MIDIS, European Union Minorities and Discrimination Survey, Main Results Report, 2009
35. FRA, EU-MIDIS, EU-MIDIS at a glance, 22 April 2009
36. Organisation for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), Hate Crimes in the OSCE Region – Incidents and Responses, Annual Report for 2010, Warsaw, November 2011
37. ODIHR, Hate Crimes in the OSCE Region – Incidents and Responses, Annual Report for 2009, Warsaw, November 2010
38. BBC Monitoring Marketing Unit, Europol warns of surge in far-right activities in Portugal, EU – paper, Text of a report by Portuguese newspaper Diario de Noticias website on 27 April 2012
39. Edite Rosário, Tiago Santos and Silvia Lima, Discours du racisme au Portugal : Essentialisme et infériorisation dans les échanges colloquiaux sur les catégories minoritaires, March 2011
40. European Network against Poverty/Portugal (REAPN), As comunidades ciganas e a saude : um primeiro retrato nacional (Roma communities and health: a first national overview), Madrid 2009
41. European Network against Racism (ENAR), Shadow Report 2010-2011, Racism and related discriminatory practices in Portugal, Portuguese Association for Victim Support, APAV, March 2012
42. European network of legal experts in the non-discrimination field, Report on measures to combat discrimination, Country Report 2010, Portugal, Manuel Malheiros and Alexandra Rosado, State of affairs up to 1 January 2011
43. Executive Summary of the European network of legal experts in the non-discrimination field, Country Report Portugal 2010, by Manuel Malheiros and Alexandra Rosado
44. European network of legal experts in the non-discrimination field, European Anti-discrimination Law Review No. 8, 2009l
45. International British Council and Migration Policy Group, Migration Integration Index (MIPEX) III - Portugal, 2010

46. José Falcão, Discriminação da Comunidade Cigana –Seminário 15/3/2012, Algumas Notas sobre a Estratégia nacional para a Integração das Comunidades Ciganas (ENICC)
47. King Baudouin Foundation and Migration Policy Group, Immigrant citizens survey – How immigrants experience integration in 15 European cities, May 2012
48. Nina Clara Tiesler, Portugal, in Jorgen S. Nielsen et al (Eds.), Yearbook of Muslims in Europe (pp. 447-458), Leiden: Brill, 2011
49. Publico, GNR acusada de « torturar » ciganos detidos numa rusga em Vila Verde, 27 September 2012
50. The Portugal News, New laws for foreigners, 13 September 2012
51. The Portugal News, Outcry over hefty deposit for gypsies wanting holiday homes, 13 September 2012
52. The Portugal RAXEN National Focal Point, Thematic Study, Housing Conditions of Roma and Travellers, Bruno Dias, Tiago Farinha and Elisa Silva, númena, March 2009
53. The Stephen Roth Institute for the Study of Antisemitism and Racism, Portugal 2008-2009
54. US Department of State, Bureau of Democracy, Human Rights and Labour, 2010 Human Rights Report - Portugal, 11 March 2010
55. US Department of State, Bureau of Democracy, Human Rights and Labour, 2009 Human Rights Report –Portugal , 8 April 2011
56. US Department of State, Bureau of Democracy, Human Rights and Labour, International Religious Freedom Report 2010 -Portugal, 17 November 2010
57. US Department of State, Bureau of Democracy, Human Rights and Labour, International Religious Freedom Report 2009 -Portugal, 26 October 2009

APPENDIX: GOVERNMENT'S VIEWPOINT

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

ECRI, in accordance with its country-by-country procedure, engaged in confidential dialogue with the authorities of Portugal on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 6 December 2012, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

Response of the Portuguese Government to the European Commission against Racism and Intolerance (ECRI) draft report on its visit to Portugal from 24 to 28 September 2012

View points made by the Portuguese Government to be reproduced in an appendix to the fourth report on Portugal.

Observations made by the Ministry for Foreign Affairs:

I. Existence and Application of Legal Provisions

International legal instruments

Recommendation at Paragraph 4 *(page 9)*

ECRI recommends again that Portugal ratifies Protocol No. 12 to the ECHR and signs and ratifies the Convention on the Participation of Foreigners in Public Life at Local Level, the European Charter for Regional or Minority Languages and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

The Portuguese Government takes due note of ECRI's recommendation that Portugal signs and ratifies the Convention on the Participation of Foreigners in Public Life at Local Level, the European Charter for Regional or Minority Languages and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families however this is presently not envisaged. On the recommendation to ratify Protocol No. 12 to the ECHR, the internal ratification process is currently proceeding and we are confident that it will be finalized in the coming months.

Observations made by the Ministry of Justice:

Criminal law provisions

Recommendation at Paragraph 13 *(page 11)*

ECRI recommends that the authorities amend Article 240 of the Criminal Code to include language in the list of grounds.

The Portuguese Government will carefully analyze this recommendation.

Recommendation at Paragraph 15 *(page 11)*

ECRI strongly recommends that the authorities adopt a provision expressly making racist motivation an aggravating circumstance for all offences.

The Portuguese Government will carefully analyze this recommendation.

Application of criminal law provisions

Paragraph 19 *(page 11)*

However, ECRI considers that the authorities should look more closely into the reasons why there is so little recorded racist crime in the country. It could well be, as the authorities claim, that Portuguese society is extremely tolerant in general. However, there could be certain obstacles, such as the unwillingness of victims of racist offences to go the police or, as some reports suggest, a lack of confidence in the criminal justice system. It may also be due to failings by the

police to register the racist nature of offences. ECRI invites the authorities to examine these factors and take steps to remedy them where necessary.

The Portuguese Government will carefully analyze this recommendation.

In what concerns the collection of data by the police regarding the racist nature of the offences please refer to the comments made to paragraph 200.

Civil and administrative law provisions

Paragraph 25 *(page 11)*

ECRI recalls that Law No. 18/2004 transposes Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. It has no provisions on compensation to victims of racial discrimination. Such victims have to turn to the civil courts to claim damages on the basis of the conclusions of the administrative procedure. However, the levels of compensation awarded by the courts are extremely low and this avenue is rarely pursued.

In this context it should be highlighted the adoption of Law 104/2009, 14/09, which approves the regime on the compensation to victims of violent crimes and of domestic violence entered into force on the 1st of January of 2010.

It established the Commission for the Protection of Crime Victims (CPCV) (that has succeeded the Commission for Compensation Requests to Victims of Violent Crimes), an administrative body, totally autonomous from the political power, in charge inquiring, analyzing, deciding such cases and paying compensation in advance to victims of violent crimes.

This new framework is build on the assertion that, in certain circumstances, the victims that have suffered serious damage to their health, either physical or moral, directly resulting from acts of violence, have the right to a compensation paid in advance by the State (even if they have not or cannot join the criminal proceeding as a civil party). It also foresees measures of a social and educational nature to support victims, as well as therapy considered adequate to their physical, psychological and professional recovery.

Its scope is not limited to victims of racial discrimination and there are records of giving support, for instance, to non-Portuguese victims of violent crimes or victims of domestic violence from «multicultural couples».

The findings in these cases seem to indicate that rather that a racial motivation, violence is originated in the context of situations where human relationships have failed or collapsed for several other reasons, such as economic distress.

Portugal is one of the few States of the European Union that does limit the granting of compensation to its nationals as long as the crime has occurred in its territory. Support is given to all persons whenever they are victims of violent crimes and, in particular, of domestic violence in its territory, even if they do not hold a totally legal status in Portugal.

During the year 2012, 157 new cases were submitted to CPVC and 107 cases of violent crime and 161 of domestic violence were concluded. Advancements of compensation were paid in 115 cases: 49 in cases of violent crime giving rise of compensations of, on average, 18.420,186€ (902.589,13€ in total) and 66 in cases of

domestic violence, giving rise of compensations of, on average, 1.449,24€ (95.650,00€ in total).

The amount for advancements of compensations in the CPCV's budget for the year 2012 was all spent and an additional amount of 150.00€ was transferred from other services of the Ministry of Justice for this purpose.

It should be highlighted that the CPCV's budget was not reduced in the year 2012 as it happened in the vast majority of the public services in Portugal. This should be seen as a clear sign of the importance that Portugal attaches to this subject and the work undertaken by the CPCV.

Law 112/2009, of 16/09, on the legal framework applicable to the prevention of domestic violence and on the protection and support to victims of this crime entered into force on the 16 of October of 2009. It recognizes that all victims, regardless of their ascendancy, nationality, social condition, sex, ethnicity, language, age, religion, disability, political or ideological beliefs, sexual orientation, culture and instruction, enjoy the fundamental rights that are inherent to the dignity of the human being and are ensured equal opportunities to live without violence and to preserve their physical and mental health.

The IV National Plan against domestic violence (2010-2013) (approved by the Resolution of the Council of Ministers 100/2010) recognizes as particularly vulnerable victims, among others, the immigrants. As a strategic objective, it also purports to promote specific interventions on particularly vulnerable victims. It foresees in particular the improvement of the information of the immigrant community on domestic violence by setting up focal points in the local centres to support the integration of immigrants and the production and distribution of information material.

Application of civil and administrative law provisions

Paragraph 31 *(page 13)*

Thus, there are still numerous stages and the proceedings are lengthy (often up to a year and a half). Moreover, since no investigatory powers have been granted either to ACIDI or to the CICDR, investigations continue to be carried out by the competent inspection body. For example, a case involving discrimination in employment will be examined by the Labour Inspection. Where the facts indicate the commission of a crime, the police carry out an investigation and inform the Public Prosecution Service. In this respect, ECRI notes that there is an important lacuna in the procedure; where the case relates to an area in which there is no competent inspection body, no investigation can be carried out.

It should be clarified that whenever facts that may constitute a crime occur, the police forces, including the Criminal Police, carry out an investigation and inform the Public Prosecution Services. Where the crime at stake is the crime foreseen in the above mentioned Article 240 of the Criminal Code (please refer to the responses paragraphs 16 and following) an investigation takes place and a criminal procedure by the Public Prosecution Services is initiated even if the victim does not submit a complaint.

Even if there is no specific authority competent to analyse the other cases mentioned in the last sentence of paragraph 31, the Criminal Police and the Public Prosecutor are always competent to carry out an investigation as long as they are informed or somehow aware of the occurrence of the fact which may constitute a crime. This is

true even if the victim does not submit a complaint. Therefore we suggest a slight adjustment of that paragraph in the lines of the following: "31. (…) Where the case **does not constitute a crime and** relates to an area in which there is no inspection body no investigation can be carried out".

Recommendation at Paragraph 37 *(page 14)*

ECRI strongly recommends that the Portuguese authorities take steps to simplify and speed up procedures following the lodging of racial discrimination complaints with ACIDI. In this context, ECRI also recommends that authorities consider ways in which the principle of sharing the burden of proof could be put into effect. ECRI strongly recommends that the Portuguese authorities take steps to simplify and speed up procedures following the lodging of racial discrimination complaints with ACIDI. In this context, ECRI also recommends that in the investigation stage the Portuguese authorities ensure implementation of the principle of sharing the burden of proof, as provided for in national legislation.

The Portuguese Government will analyze these recommendations carefully.

Nonetheless, it should be taken into account that the principle of sharing the burden of proof provided for in Law 18/2004, of 11/05, which transposes the Council Directive 2000/43/EC, 29/06, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, is not applicable as such to criminal procedures (Article 6 (3) of Law 18/2004 and Article 8 (3) of Council Directive 2000/43/CE).

Racist discourse in politics

Recommendation at Paragraph 66 *(page 18)*

ECRI recommends that the authorities monitor carefully the activities of the National Renovator Party. In the light of their findings, they should consider whether further action is required. ECRI refers in this connection to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in particular §§ 16, 17 and 18g.

According to Article 46 of the Constitution of the Portuguese Republic and to Article 8 of the Law on the Political Parties (Organic Law 2/2003, of 22/08, as amended by Organic Law 2/2008, of 14/05) political parties that are racist or display a fascist ideology are not permitted.

No monitoring of the activity of political parties is foreseen in the Portuguese legislation since that would be considered to be against the principle that associations pursue their purposes freely and without interference from the public authorities as determined in Article 46 of the Constitution of the Portuguese Republic.

However if there is a suspicion that a crime may have been practiced that will be investigated by the police authorities and the Public Prosecution Services (please refer to comments to paragraph 31).

Also, Article 18 of the above-mentioned Law foresees that political parties which are racist or display a fascist ideology shall, at the request of the Public Prosecutor, be terminated by the Constitutional Court.

The National Unit against Terrorism of the Criminal Police is competent to prevent, detect, criminally investigate and co-assist the judicial authorities in crimes against cultural identity and personal integrity as well as in others provided for in the Criminal Law on Violations of International Humanitarian Law. There is no national unit in charge of just the cybercrime but rather some sections that in the several units, operating nationwide, investigate this crime.

The Criminal Police cannot close websites because the Portuguese legal order values the freedom of expression and information (article 37 of the Constitution) and the separation and interdependence (article 111 of the Constitution) and only a decision from a judicial authority – and not from the police – may determine a site to be shut down.

Relations with law enforcement agencies

<u>Recommendation at Paragraph 125</u> *(page 27)*

ECRI reiterates its recommendation that effective investigations into alleged cases of racial discrimination or racially-motivated misconduct by the police are carried out and that the perpetrators of these acts are adequately punished. It refers in this context to its General Policy Recommendation No. 11 on combating racial discrimination in policing.

The monitoring of the activity of the security bodies under the Ministry of Justice is made either by the General Inspectorate for the Justice Services (IGSJ) or by the respective disciplinary units. All suspicions of ill-treatment by security bodies against Roma or against any other person are investigated by one of these entities and their authors are, disciplinarily and/or criminally, punished.

The mission of the IGSJ is to audit, inspect and supervise all entities, departments and dependent bodies of the Ministry of Justice or those whose activity is subordinated or regulated by this Ministry - including the Criminal Police and the DGRSP. Within the scope of its activity, it assesses claims, complaints, denunciations, participations and reports, it performs inspections and proposes the opening of disciplinary proceedings, inquiries and investigations determined or mandated by the responsible member of the Government. It also monitors the implementation of legislation likely to contribute to the reduction of acts of racism, intolerance and abuse, for example, through the inspections on the entry into force of the new Code on the Enforcement of Sentences and Measures involving Deprivation of Liberty, the implementation of the Regulation on the use of coercive measures in prisons, or the implementation of the Regulation of the conditions of detention in the facilities of the Criminal Police and in detention facilities within the courts and in the Public Prosecution Services.

The DGRSP has an internal service of audit and inspection whose coordination is assured by magistrates. Whenever there is a case or the suspicion of a case of excessive use of force or abuse, an inquiry is launched and, when appropriate, those responsible are subject to a disciplinary penalty and the fact is reported to the Public Prosecution Service. The activity of the prison services is under constant scrutiny; in fact, prisons may be visited at any time by representatives of sovereign bodies, including judges, as well as by representatives of international organisations with responsibilities in matters relating to the promotion and protection of the prisoners' rights (Article 66 of the Code on the Enforcement of Sentences or Measures involving Deprivation of Liberty). Moreover, prisoners have the right to freely correspond themselves with lawyers, notaries, diplomatic and consular authorities, sovereign

bodies, the Ombudsman, the General Inspectorate for Justice Services and the Bar Association (Article 68 (4) of the mentioned Code).

In the Criminal Police, disciplinary matters are committed to the Disciplinary and Inspection Unit. Pursuant to Article 43 (5) of Law 37/2008, of 06/08, which approves the structure of the Criminal Police, as amended by Law 26/2010, of 30/08, the director of the Disciplinary and Inspection Unit is chosen from among judges, prosecutors, advisors or top coordinators of criminal investigation. Currently, the Disciplinary and Inspection Unit is conducted by a magistrate from the Public Prosecution Service that does not belong to the staff board of the Criminal Police. It is considered that the law has set objective conditions for this unit to develop its work with the autonomy and independence required to a fair and impartial inquiry of the cases of a disciplinary nature.

Between 2006 and 2012, the Criminal Police has the following statistical data regarding new and completed inquiry cases on crimes related to racial or religious discrimination:

2004 – 4 new and 3 completed inquiry cases;

2005 – 7 new and 5 completed inquiry cases;

2006 – 4 new and 11 completed inquiry cases;

2007 – 9 new and 14 completed inquiry cases;

2008 – 3 new and 8 completed inquiry cases;

2009 – 1 new and 1 completed inquiry cases;

2010 – 0 new and 1 completed inquiry cases;

2011 – 0 new and 0 completed inquiry cases;

2012 – 3 new and 2 completed inquiry cases.

VI. Conduct of Law Enforcement Officials

New recommendation *(page 37)*

ECRI recommends that the police authorities actively monitor the progress and outcome of all criminal prosecutions against members of the police and that the Ministries of Internal Administration and Justice as well as the police authorities take steps to reassure the public, and especially immigrants and members of the Roma community, that complaints about police misconduct, including racism and racial discrimination, will be vigorously and independently investigated and that police officers found guilty of such conduct will be punished.

Please refer to comments to paragraph 125.

Paragraph 186 *(page 37)*

The police authorities have informed ECRI that they cannot implement this recommendation based on their interpretation of the principle of equality set out in the Constitution (see §§ 5-8) as not allowing any kind of positive measures which would facilitate the integration of members of ethnic minorities or vulnerable groups into security forces and law enforcement agencies. Therefore, while there are annual calls for recruitment to the various police

services open to all Portuguese citizens who meet the necessary requirements and pass the selection tests, there is no specific recruitment programme aimed at members of vulnerable groups. Moreover, since there is no collection of equality data, it is impossible to know how many members of vulnerable groups (if any) are currently employed in the various police services.

In the case of the Criminal Police the recruitment of new police officers does not take place yearly but more or less every three or four years depending on the factual circumstances and needs of that police body. Therefore the Portuguese Government suggests the amendment of paragraph 186 in the following lines: *"186. (…) Therefore, while there are (~~annual~~) **regular** calls for…".*

Recommendation at Paragraph 189 *(page 38)*

ECRI recommends that the authorities appoint socio-cultural mediators, particularly from the Roma community, to all the different police agencies with the aim of improving relations between law enforcement officials and vulnerable groups.

The following projects could also be mentioned in the context of efforts to improve relations between public authorities and vulnerable groups.

Firstly, the protocol signed between the Alternative Dispute Resolution Office (GRAL) and the High Commissioner for Immigration and Intercultural Dialogue (ACIDI), in order to enhance a better integration of immigrant communities and ethnic minorities in the justice field.

This protocol was signed on 26/05/2011, as to establish a strategic partnership between those bodies to promote access to the law and to the alternative dispute resolution mechanisms by the immigrant communities and the ethnic minorities. Under this protocol, ACIDI undertakes to refer to GRAL all disputes that can be solved by alternative dispute resolution mechanisms and to promote, publicize and inform citizens about these alternative means. For that purpose, GRAL conducted training and enlightenment sessions for the ACIDI staff.

Secondly, the protocols signed between the Institute of Registries and Notaries and the Association for the Support of Immigrants, the Jesuit Refugee Service, the Immigrant Solidarity Association, the House of Brazil in Lisbon, and with the Association «Olho Vivo» (association for the Protection of Patrimony, Environment and Human Rights), in 05.11.2007, with a view to preventing racial discrimination in access to its services and in order to provide foreign citizens residing in Portugal full access to information on the processing of the requests for granting, acquisition and loss of nationality and on the forwarding of the respective declarations or requests to the competent Central Registry. These protocols allow immigrants to obtain in an easy, close and trustworthy manner, the information and the support needed to acquire the Portuguese nationality. On the other hand, attendance points of the Central Registry were set up at the National Immigrant Support Centres (Lisbon and Porto), which allow immigrants, in full respect of their linguistic and cultural differences, to obtain information, counselling and assistance in obtaining Portuguese nationality given by specialized professionals.

Thirdly, the orientation of the DGRSP that all young persons in educational centers shall be legalized (or undergo a legalization process) in order to ensure equal access to training courses to foreign young people or belonging to other ethnic groups.

Fourthly, the protocol signed between the DGRSP and the SEF, in 2009, which aims at facilitating the communication between foreigner inmates with SEF – in particular, by promoting their legalization, their social rehabilitation and the recognition of the skills acquired or developed in prison – and to reinforce the knowledge of the agents of both services on the applicable legislation.

VII. Education and Awareness Raising

It could be pointed out in this context the publication, under the remit of the Alternative Dispute Resolution Office (GRAL), of the work "Fundamental Rights 2.0" (2010), which aims at presenting, in a perspective of non-lawyers, an analysis of the fundamental rights under the Constitution of the Portuguese Republic, contributing for the access and the knowledge by the citizens of their principles and basic rights.

Recommendation at Paragraph 200 *(page 38)*

ECRI urges the Portuguese authorities to take steps to put in place a monitoring system to enable the collection of data, either by Government agencies or by recognised academic institutions, which may indicate whether particular groups may be disadvantaged or discriminated against on the basis of "race", ethnicity, religion or membership of Roma or other vulnerable communities, and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and voluntary self-identification.

Although a monitoring system as the one described is not in place in Portugal, it should be highlighted that the Statistics Department of the Ministry of Justice has continuously been developing the collection of data regarding racial discrimination, crimes motivated by racial hate or skin colour.

In fact, Portugal currently collects date on:

- Reports of crimes motivated by racial or religious discrimination to the police authorities (since 1993);

- Criminal procedures concluded in the first instance courts regarding crimes motivated by racial or religious discrimination (since 2007);

- Criminal procedures concluded in the first instance courts regarding homicides or physical offences crimes motivated by racial hate or skin colour (disaggregated from the data on homicides and physical offences crimes in general, i.e., regardless of motivation, since 2008);

Also, it should be noted that data on reports of homicides or physical offences crimes is collected but it is so in general, i.e., regardless of motivation, since the motivation may not be reported or known to the police authorities at the moment of the report of the crime and will be assessed later on by the Public Prosecution Services and the Courts.

On the 6 December 2012 data on all of the abovementioned topics could be consulted up to the year 2011.

Furthermore, it should be taken into account the Portuguese legal framework on data protection which guarantees, amongst other things, that:

- "Information technology may not be used to treat data concerning philosophical or political convictions, party or trade union affiliations,

religious faith, private life or ethnic origins, save with the express consent of the data subject, or with an authorization provided for by law and with guarantees of non-discrimination, or for the purpose of processing statistical data that are not individually identifiable" (Article 35 (3) of the Constitution of the Portuguese Republic; having in mind that paragraph 7 of the same Article foresees that personal data contained in manual files enjoy the same protection; and Article 7 (1) of Law 67/98, of 26/10, which transposes Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data);

- Personal data can be collected solely where there is a specific, explicit and legitimate purpose that requires it and cannot be treated disaccording with such purposes (Article 5 (1)(b) of Law 67/98, 26/10);

- The treatment of data shall be made in full respect of the private life and rights, liberties and fundamental rights in the Constitution of the Portuguese Republic (Article 2 of Law 67/98, 26/10).

Observations made by the Ministry of Internal Administration:

The Portuguese Government regrets the observations made by the ECRI in the Draft Report without any factual base and not evidence-based alleging that the Security Forces and Services tolerate racist and xenophobic behaviours. These observations are totally unfounded and incorrect. As a matter of fact, not only the Security Forces and Services do punish such behaviours as they train their officers to the respect of human rights of all citizens, irrespectively of their racial or ethnical origin, as they also promote the security and integration of racial and ethnical minorities, as proves the good practices of the Security Forces and Services identified in this document, namely the "Project of Investigation and Support to Especially Vulnerable Victims" and the "Integrated Programme of Proximity Policing" (both referred in this document related to paragraph 126 of the Report) and the Programmes "SEF in Motion" and "SEF goes to school" (both referred in this document related to paragraph 134 of the Report).

In the following paragraphs of this document the Portuguese Government will specifically refer to the parts of the ECRI Report to which we consider relevant to respond to be as close to the Portuguese reality as possible, as well as the most correct and accurate possible.

SUMMARY

"Cases of police harassment, misconduct and abuses against Roma continue to be reported." *(Page 8)*

The Portuguese Government firmly disagrees with the allegation above quoted from the ECRI Report. The observation made lead to an interpretation that the alleged acts occur specifically with Roma citizens which is false.

(i) The number of participations and condemnations by the kind of acts referred in the quoted paragraph, allegedly committed by officers presents, has witnessed, in general , a decreasing tendency, and has merely residual numbers;

(ii) Nevertheless, if analysed, in particular, the punctual cases existing, one easily understands that the characteristics are transversal, such as gender, age, religion, nationality or ethnicity;

(iii) There is no xenophobic tendency institutionally tolerated by the National Republican Guard (*Guarda Nacional Republicana* – GNR) or by the Public Security Police (*Polícia de Segurança Pública* - PSP), and pretending to imply the contrary is contributing to raising, amongst the population, the institutional intolerance that the GNR and the PSP police officers and officials attempt themselves to eradicate everyday.

"No statistical disaggregated equality data are collected for combating racial discrimination." *(Page 8)*

The criminal information that is elaborated in Portugal is produced in function of the crime perpetrated. In the meeting held on September 26, 2012, between the MAI and the ECRI's Delegation that visited Portugal, the competent entities did explain that the type of crimes aimed in this inspective action is typified in article 240 of the Portuguese Criminal Code (*Código Penal*). To produce criminal information based in the criminal ethnicity or of the victim raises doubts on its constitutionality as it may be a measure precisely encouraging xenophobic perspectives.

"Effective investigations into alleged cases of racial discrimination or racially motivated misconduct by the police should be carried out and the perpetrators adequately punished." *(Page 8)*

Concerning the observation above made by the ECRI, it is important to mention that in Portugal, apart from the procedure through the Public Prosecutor (*Ministério Público*), that assures total independency from an eventual participation of the GNR or the PSP in the processes involving their own officers and officials - as it allows this entity to develop all process, from the reception of the complaint to its presentation to the Court - it is already possible for any citizen to present a criminal denounce electronically, through internet, having, only after that, to go to a police precinct or to a delegation of the Public Prosecutor (*Ministério Público*) to validate the process.

It is important to make clear that the data inserted in the electronic complaint, even if not validated in the police precinct or in the delegation of the Public Prosecutor, may not be erased by the Security Forces and Services. As such, it would be easy to detect any episode of an eventual complaint electronically presented that, later, for any reason, any entity of criminal police had refused to validate.

On the contrary of what the ECRI pretends to refer, not only the Portuguese State does not fail by default in this matter, as it has available two independent mechanisms to participate criminal complaints, among them, obviously, those against the officers' behaviour.

III. RACISM IN PUBLIC DISCOURSE

Racist statements and publications, including in the media and on Internet

Paragraph 75 *(page 20)*

In the Report, the ECRI refers to a website using the logo of the GNR that disseminated extreme hate speech against Roma. At this purpose and in line with the information previously given to the ECRI that visited Portugal – namely, during the meeting held on the 26th of September, the GNR informs that:

(i) The GNR strongly repudiates any kind of speech or language of racial discrimination, of racial disrespect or of racial hate, and punishes any eventual situations that may occur of this nature by their officials with the sanctions foreseen in the Portuguese Law in force;

(ii) The GNR applications for admission of new candidates to enter in this Security Force are open to all Portuguese citizens irrespectively of their racial or ethnic origin once they meet the professional requirements and pass the necessary admission tests. In result of this open admission process, the GNR also has officials of different ethnic and racial origins and, therefore, for the main reasons of the respect and protection of all persons' humans rights and also for this reason it would never allow any offensive behaviour towards persons of any ethnic or racial origin;

(iii) The modern means of communication and information, among the various advantages that they bring to the relationship between the authority and the citizen, also entail major risks from the point of view of identity theft and misuse of symbols and logos of bodies and organisations around the world;

(iv) In becoming aware of these facts, the GNR shall participate them, in accordance with the applicable national law, to the legally competent authority – the Public Prosecutor's Office – so that the appropriate investigatory measures may be initiated;

(v) This is a crime which attacks the good reputation of the GNR, which this Security Force vehemently condemns;, it was, moreover, an illegal act committed via Internet; hence it should be referred that, according to the cybercrime law, the investigation of crimes committed via Internet falls under the jurisdiction of the Portuguese Criminal Police (*Polícia Judiciária* - PJ). Thus, due to the subject matter, the GNR could not take additional measures;

(vi) The GNR condemns any form of misuse of its symbols and logos, whereby also condemning any situation of discrimination that may be verified in the context of its officers, as, in accordance with the applicable law, there are duly imposed inspection and sanctioning channels to deal with situations of this nature.

V. VULNERABLE/TARGET GROUPS

Roma

- ***Access to Employment, goods and services***

Paragraph 111 *(page 26)*

In what concerns the reference made in this paragraph to the non-discrimination of Roma in the access to employment, it is important to reiterate the information given by the GNR Representative in the meeting held with the ECRI Delegation. In that occasion, the Portuguese Authorities informed that the GNR annually publishes an application to enter into this Security Force, being this application open to all

Portuguese young citizens that meet the necessary requirements and that pass the selection tests.

The race and the ethnicity are not criteria of exclusion for the application and selection. Therefore, as the members of Roma communities are Portuguese citizens, they may apply to enter into the GNR and have success entering in this Security Force, if, as all the other Portuguese citizens, they pass the cultural, physical, medical and psychological tests.

Identical situation occurs to enter into the PSP, in which public application and selection procedures, race and ethnicity are not criteria, being them open to all Portuguese citizens in equal circumstances and without any kind of discrimination once they meet the necessary requirements and pass the tests made to that purpose.

- ***Relations with Law Enforcement Agencies***

Paragraph 121 *(page 27)*

In what concerns the references made by the ECRI in this paragraph, the Portuguese Government reiterates the comments made in this document related to the ECRI Report in its Summary at page 8 referring to cases of alleged police harassment, misconduct and abuses against Roma.

Paragraph 122 *(page 27)*

The first part of this paragraph was already commented by the Portuguese Government as it repeats the content integrated in the Summary of the ECRI Report. Nevertheless, assuming that it exists any document produced by the national NGO that supports the ECRI idea that, in Portugal, it exists in such a generalise way a perception of discrimination and victimisation by misconduct of the GNR or of the PSP, the Portuguese Government regrets that such document has not been shared with the competent national authorities as the State does with its research papers which presentations are public or with the Annual Reports of Internal Security, that are as well made public. The Portuguese Government fears, nevertheless, that this ECRI idea results from opinions with strong subjectivity and without scientific validity. Notwithstanding, the competent national authorities express the biggest interest to, with the NGO that produced the eventual document, develop efforts to continue improving the work with the Roma communities.

Paragraph 123 *(page 27 and 28)*

In what concerns the allegations of abuses committed by the GNR officers at a Roma camp near Vila Verde, referred by the ECRI, the GNR informs that:

(i) The detainees were present to Court (*Tribunal Judicial de Vila Verde*) on September 25, 2012, with the exception of one detainee that was escorted to the Braga Prison, in result of a warrant of the Court (*Tribunal de Execução de Penas do Porto*);

(ii) The Court (*Tribunal Judicial de Vila Verde*) did not made any remarks concerning the GNR behaviour with the detainees and all the detentions and apprehensions made were duly validated;

(iii) The GNR Territorial Post of Amares (*Posto Territorial de Amares*) has a video surveillance system that allows for the verification that there did not take place any aggression or mistreatment to the detainees;

(iv) There has been no use of "Taser" weapons by the GNR Territorial Post of Amares;

(v) In any moment were the detainees assaulted or tortured in the Amares GNR Territorial Post;

(vi) In the interior of Amares Post do not exist any water points - with the exception of the sanitary taps and showers- or tanks or other similar equipment to make possible the alleged "waterboarding" referred in the ECRI Report;

(vii) The GNR has no knowledge of the presentation of any reclamation/complaint allegedly presented by the alleged victimes, the social workers or any NGO.

Recommendation at paragraph 126 *(page 28)*

In this paragraph the ECRI suggests that it may exist an institutionalization of racism or racial discrimination in the police.

The Portuguese Government vehemently refuses this kind of insinuation.

As the ECRI heard in its Delegation's meeting with the GNR and the PSP representatives, the MAI, in the recent years, carried out and continues to carry projects specifically oriented to these communities and proving exactly the opposite of what the ECRI intends to refer in the Report.

The institutional policyis demonstrated, in practice, with the implementation of multiple initiatives aiming precisely to contribute, through formal and informal partnerships and based in the philosophy of proximity policing, to improve the quality of life of these specific groups, with special incidence in the area of security.

In the meeting with the ECRI Delegation, the GNR Representative referred that, in the scope of the proximity policing, the GNR pays special attention to the more vulnerable groups, developing proximity relations and trust relations with all the population, especially with ethnic minorities.

GNR has been developing the Project of Investigation and Support to Especially Vulnerable Victims (*Projeto de Investigação e Apoio a Vítimas Especialmente Vulneráveis* – IAVE), in which target groups are included the ethnic minorities. The National Republican Guard (GNR) recognizes the crimes committed against women, children, elderly and other especially vulnerable populations as one of the most delicate incidents that the criminal investigation department must deal with. These types of criminality are known as an area concealed behind the "family" frame of shame and covered by the ignorance about the law and the unawareness of the existing supports. The problem is so complex that the biggest challenge to the investigators is how to obtain enough evidences in order to produce adequate proof to accuse the suspects. Therefore, the Project "Investigation and Support to Especially Vulnerable Victims (IAVE)" was created and carried out to reply to this specific situation.

Nowadays the IAVE Project is based on a concept of community policing, whose focus is established on a philosophy and organizational strategy based on two aspects: prevention and quality service - both increasing a better integration of police forces with their communities, interacting together, especially through partnerships. This is a model that meets the objectives of the GNR intervention with the victimized citizens by developing actions both in police criminal investigations and as well as under a strong psychosocial support to those victims.

Following this philosophy were implemented the new specialized teams, in every district, called NIAVE (Investigation and Support to Especially Vulnerable Victims Teams). The main responsibility of NIAVE's daily work is: "to bring to the investigation all crimes committed against particularly vulnerable victims and to promote all needed actions in order to support the victims". In terms of organization, the elements with IAVE training are distributed in 24 specialized teams (18 in District Capitals, and 6 decentralized, with a ratio of 3-4 per Team), complemented with a minimum of 254 specialized investigators, at the rate of 1 per GNR Post. Currently the headcount is 310 investigators, 78 within the IAVE Teams and 232 within the GNR Posts.

The IAVE specialists are recruited in a voluntary scheme, amongst the criminal investigators, with field service experience, denoting particular talent for addressing these issues. The specific training of these elements, in addition to the criminal investigation course, and a previous experience as an Investigator, is complemented with a specific subspecialisation, at the GNR School, directly related with the victims support. This subspecialisation course was designed in coordination and collaboration with various organizations, institutions and associations linked to this problem, providing different perspectives and visions of these events, enriching the training.

In the same meeting, when asked about improvements at different levels that had been implemented in light of the ECRI recommendations made in its third Report of the visit to our country, the PSP Representative replied with improvements at three levels.

In a first level, of national scope, he referred that the PSP has been working in cooperation with the High Commissariat for the Immigration and Intercultural Dialogue (*Alto Comissariado para a Imigração e Diálogo Intercultural - ACIDI*) and with the Directorate General for Home Affairs (*Direção Geral de Administração Interna - DGAI*) in order to obtain a better knowledge and understanding of the reality of the different minority groups existent in the country and, through that information, improve police replies to these realities.

In a second level, of regional scope, it was referred that the PSP, having in mind that the solution to these communities' problems is not exclusive of the police, since 2008, participates in 11 Local Safety Audits (*Contratos Locais de Segurança*), aiming precisely to work in partnership with the other partners in the process of integration, socialisation and security of these communities. Through this process the PSP works to purpose of a better integration and acceptance of these groups, culturally less accessible, and that, through the work on social network and institutional interaction, PSP looks for a bigger proximity between police officers and the members of these communities.

In a third level, of local scope, and resulting from that approximation, the PSP, through the Integrated Programme of Proximity Policing (*Programa Integrado de Policiamento de Proximidade*), and following a goal decided for 2012, already carried out 35 actions of "intercultural dialogue", contributing to reducing social barriers and eventual cultural stigmas, promoting with these actions the equality, the tolerance and the acceptation of minority communities in the areas where they exist.

The ECRI also suggests to be conducted an enquiry into any possible institutionalisation of racism or racial discrimination in the police. At this purpose, the first question to be raised by the Portuguese Government is: based in which facts would such an enquiry be opened? Until today never has been presented any circumstantial evidence of an alleged institutionalisation of racism or racial discrimination fomented or even institutionally tolerated by the GNR or by the PSP.

On the contrary, such behaviour, when proved, is dully punished. It would be an absolute paradox if the same institutions incentivise or tolerate the behaviour they then punish.

Immigrants

<u>Paragraph 134</u> *(page 29)*

In what concerns the information mentioned in this paragraph the Portuguese Government thanks the ECRI for the recognition of the improvement made in this area, and considers important to stress that, in general, the situation has improved dramatically, in large part thanks to the catch up with backlogs successfully achieved by the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras* – SEF), which, between 2005 and 2006, surmounted approximately 40.000 backlog cases; together with the adoption of new technologies for costumers' service, which included the strategy of transferring from the back office to the front office approximately 80% of the procedures.

This was achieved by reinforcing the training of staff serving the public, consequently making it possible to reach a decision on most cases – there and then - upon their delivery, thereby saving applicants from having to visit SEF more than once, as the electronic card was later sent by post to their respective address.

Similarly, aiming at avoiding useless trips and do away with lengthy queues outside the service bureaus, from 2006 onwards, SEF made available, through its Call Centre, a telephone service for pre-booking appointments managed by dozens of socio-cultural mediators, provided – through the signing of protocols - by the associations of immigrants represented in the Consultative Council for Immigration Matters (*Conselho Consultivo para os Assuntos da Imigração* – COCAI), and later a service of on-line booking that itemised the set of documents that was required for each specific case.

Likewise, regarding customers' service, there were major improvements, both in relation to the number of bureaus and to the quality of those bureaus, especially with the introduction of SEF's branches in One-Stop-Shops (*Lojas do Cidadão*) all over the country and the opening of new branches in areas with high concentration of immigrants (Lisbon alone with more than 4 of these branches) to achieve greater proximity with the foreign population in densely populated areas.

With the same purpose, SEF signed a number of protocols with immigrant associations and with the Jesuit Refugee Service (*Serviço Jesuíta de Refugiados*) in order to launch a procedure for the recruitment of socio-cultural mediators (55) to be placed in the main public-service branches, with the exception of the National Centres for the Immigrant Support (*Centros Nacionais de Apoio ao Imigrante* –CNAI), whose mediators are recruited directly by the High Commissariat for the Immigration and Intercultural Dialogue (*Alto Comissariado para a Imigração e Diálogo Intercultural* – ACIDI), and who, since the end of 2006, have been in effective and permanent collaboration with the customer's service network (encompassing 6 Regional Directorates and 25 Delegations) particularly in what concerns language and cultural barriers.

In addition to this set of initiatives we must recall the project "SEF in Motion" (*SEF em Movimento*), promoted since 2006 and aimed at bringing the service closer to the foreign citizens who have limited mobility who, normally, belong to vulnerable groups such as the elderly, the handicapped, the sick, large families and detainees. In the wake of this project, in 2009, SEF launched another initiative called "SEF goes

to school" (*SEF vai à escola*) which made it possible to legalize hundreds of students and their parents.

The "SEF in Motion" is a priority action aiming to revitalise attendance to the public. This project is based in the principle of simplification of citizens' lives in their interaction with SEF, with special attention given to vulnerable groups of citizens, mainly those with more difficulties in going to SEF Services. With an implementation based on the multiplication of attendance places, closer to citizens daily life, using technology support to fasten the procedures and to avoid any useless paper, the project is based in the cooperation between SEF and several institutions, namely the Social Reinsertion Institute, NGO, Associations of Immigrants and Local Authorities. The initiative is composed of both dimensions: sensitisation and information as well as in documentation.

The initiative "SEF goes to School" pursued the same goals and was carried out in close cooperation with the local authorities of the Ministry of Education and operated in schools aiming the attribution or renewal of authorisations of residence in Portuguese territory. The project had as purpose the administrative regularisation concerning the stay/residence in Portugal of all foreign minors with school age and their respective parents in that situation.

The documental work is connected with the divulgation necessities. Therefore, SEF, through its Contact Centre, SEF Television, as well as through the multiple communication units and other activities of Communication and Public Relations, has been developing an important effort to inform immigrants on their rights and obligations towards the Portuguese State, particularly through the campaigns on legal instruments, namely the presentation of the Foreigners Law published on 2007, the new Electronic Residence Visa – a Foreign Citizen Card; and the documental regularisation of minors with school age.

In addition to all this initiatives, an investment was made in a new technologic workflow toll which manages proceedings from the phase of application submission, with the dematerialization of documents, therefore allowing for enhanced rationalization of resources. Last but not least, one cannot fail to observe the rather fruitful dialogue and constant cooperation that SEF – as immigration authority – has maintained with ACIDI, which, in its turn provided a valuable contribution with the establishment of National and Local Immigrant Support Centres.

Refugees and Asylum seekers

Paragraph 151 *(page 32)*

The ECRI reiterated 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 …"

The Portuguese Government considers that this recommendation is no longer necessary, as the current Asylum Law (Act 27/2008, of 30 June), in articles 25 and 30, specifically provides for the possibility of appeal against an administrative decision of non-admissibility of an asylum request, with suspensive effect, which prevents the possibility of any deportation until such time as the judicial decision is reached. This aspect was underlined in the meeting held with ECRI, in Lisbon, during its last visit to Portugal, and therefore one can only assume this is a misunderstanding.

Paragraph 157 *(page 33)*

ECRI refers that asylum seekers in Border Posts, while waiting for a judicial decision, remain in detention for long periods.

According to the provisions of the above mentioned current Asylum Law, the applicant remains in the international zone of the port or airport while awaiting a decision on the admissibility of his/her asylum request. Where an appeal is filed, the applicant must await in the international zone until such time as the judicial decision is taken.

Entry in national territory may only occur after a decision of admissibility of the application is delivered or in cases where such decision is not reached within the time-limit set out in the Law (tacit admission). This is with the exception of unaccompanied minors, families with minors and pregnant women that are allowed to enter national territory while awaiting a decision on the admissibility of their asylum request.

However, the Portuguese Government does not see this as a detention insofar as the applicant may, at any given time, and provided he/she withdraws the application, travel into another country, including the country where they have arrived from, which, in the Portuguese experience, in the majority of cases does not coincide with the country of nationality.

The competent national authorities see it as desirable that, in practice, judicial decisions are rendered in a shorter period of time. Meetings were held with the President of the Administrative Court of Lisbon, with a view to accelerate decisions at the level of the lower courts, which has had practical results. However, the Law rules that a decision rendered by a lower court may be object of an appeal, in the course of which both the suspensive effect and the free legal aid is maintained (barrister, costs and court fees). In these cases, and where the applicant decides to resort to all judicial levels (from lower to upper courts), the period of permanence in the international zone may not exceed the time-limit of 60 days.

Paragraphs 158 and 159 *(page 33)*

ECRI reminds the Portuguese authorities that the detention of asylum seekers should normally be avoided and be a measure of last resort.

On this issue, the current Asylum Law, in the provisions contained in articles 11 and 12, rules that "asylum applicants are allowed to remain in national territory for the purpose of going through the procedures leading to granting of asylum, up to the moment of the admissibility of the request."

The delivery of the asylum application is not jeopardized by the knowledge of any administrative or criminal proceedings for entry and permanence in national territory filed against the applicant and respective family members in his / her company.

This means that asylum applicants may not be detained, and must remain in freedom while awaiting the decision on the asylum request, even in those cases where administrative or judicial proceedings have been started against them on grounds of illegal entry and permanence. In case of insufficient financial capacity they may be lodged in the Refugees Accommodation Centre, run by the Portuguese Council for Refugees, which is an open establishment.

In short, there is no detention of asylum applicants in Portugal, on grounds of having applied for asylum and having entered and remained illegally in national territory.

Paragraph 164 *(page 34)*

The ECRI states that on 27 August 2012, there was a conflict in the Refugee Reception Centre (CPR) where the Police had to intervene.

This information is correct but it requires clarification as to the motive that led to a conflict. It resulted from the fact that applicants whose requests for admissibility had been granted, refused to leave the Accommodation Centre, despite it being overcrowded, and did not accept the proposal of the CPR of moving them into bedrooms and apartments while keeping the remaining social benefits. The applicants claimed that they had no intention of being separated from other applicants that they had met in the Centre. At a later stage they did accept this transfer into other lodgings.

It is important to clarify that asylum applicants whose admissibility request has been decided favourably are granted a Residence Title that enables them to work. The Social Security provides them with the necessary social support for their maintenance, subject to an evaluation of each specific case.

Paragraph 165 *(page 34)*

The ECRI notes that following this crisis point, and thanks to the intervention of the High Commissioner for Refugees, an agreement was reached with the Social Security Services to the effect that they would resume, with immediate effect, their obligations to provide welfare and housing assistance to those persons admitted to the asylum procedure.

As a matter of fact, it is important to underline that the Ministry of Home Affairs was the entity that had the initiative of signing this protocol, which was not aimed at laying down the obligations of the Social Security with regards the social support to be provided to duly admitted asylum applicants -since this was already provided for in the currently in force Asylum Law (article 72) and was always complied with by the Social Security, except after November 2011 for newly admitted cases. One is bound to clarify that all admitted applicants that were already receiving social support from the Social Security continued to receive that support. Only for new cases there was an interruption to this support, but even then the Social Security assisted some individual cases.

For this reason, asylum applicants whose application has been admitted continued to be supported by the Portuguese Refugee Council, whose funds have been reinforced by the Ministry of Home Affairs.

One must also clarify that the main purpose of the Protocol signed between SEF, the Social Security Institute (*Instituto da Segurança Social*), the Institute for Employment and Professional Training (*Instituto do Emprego e Formação Profissional*), the Lisbon House of Mercy (*Santa Casa da Misericórdia de Lisboa*), ACIDI, and the Portuguese Refugee Council (*Conselho Português para os Refugiados*), was that of defining the intervention of the various public entities and NGOs within the process of integration of admitted asylum applicants and beneficiaries of refugee or subsidiary protection status. Those entities were already involved in the process of integration, and the Protocol was intended at defining and improving the practical cooperation between them.

Paragraph 170 *page 35*

The ECRI encouraged the Portuguese authorities to provide the Portuguese Council for Refugees with all the necessary means to enable it to perform its task in the best possible conditions.

The Portuguese Government has, at all times, supported, financially and in other forms, the work carried out by the Portuguese Refugee Council for the benefit of asylum applicants and refugees. Examples of such a policy are various protocols through which, the Ministry of Home Affairs and the Ministry of Solidarity and Social Security support the running costs of the Bobadela Refugee Accommodation Centre; as well as the legal assistance provided by the Portuguese Refugee Council to applicants throughout all stages of asylum proceedings, which, in critical situations, includes a reinforcement of funds and the setting up of adequate conditions for the full exercise of its duties by the Portuguese Refugee Council.

VI. CONDUCT OF LAW ENFORCEMENT OFFICIALS

Paragraph 177 *(page 36)*

The Portuguese Government reiterates the information given by the GNR Representative to the ECRI during the meeting held with this Commission's Delegation during the visit to Portugal. In that occasion the GNR Representative informed that:

(i) The GNR is a military Security Force, with specific training in the support to vulnerable groups such as children, elder, women and victims of crime, there including ethnic minorities. Also in the scope of the proximity policing, the GNR pays special attention to the more vulnerable groups, developing proximity relations and trust relations with all the population, especially in this kind of population.

(ii) Also in what concerns training available by the GNR, both in initial training and in continuous training, this subjects are included. The GNR, in its *curricula,* has training in Fundamental Rights and Human Rights.

The Portuguese Government also reiterates the information given by the PSP Representative in the same meeting, where he informed that all Officials currently trained by the PSP have to have the Master Integrated Course in Policies Sciences (*Curso de Mestrado Integrado em Ciências Policiais*) that includes in its *curricula*:

(i) Constitutional Law (45 hours of training);
(ii) Communication Techniques (30 hours of training);
(iii) Criminal Law and Mere Social Ordering (224 hours of training);
(iv) Criminal Process and Judicial Organization (142 hours of training);
(v) Fundamental Rights and Human Rights (116 hours of training);
(vi) Strategic and tactics of the Security Forces (322 hours of training);
(vii) Command and Lead (64 hours of training);
(viii) Ethics (90 hours of training).

The Course of Agents Training (*Curso de Formação de Agentes*) in its *curricula*, includes:

(i) Police Deontology (35 hours of training);
(ii) Fundamental Rights and Citizenship (30 hours of training);
(iii) Communication and Reception (45 hours of training);

(iv) Techniques of Police Intervention (85 hours of training);
(v) Criminal Law and Criminal Process (115 hours of training).

In this last Course, the students have their specific competences evaluated also in:

(vi) Knowing how to make the reception in a Police Precinct (60 hours of training);
(vii) Knowing how to make identifications and detentions (60 hours of training);
(viii) Knowing how to police in a Quick Intervention Team (*Equipa de Intervenção Rápida*) (60 hours of training);
(ix) Knowing how to effectuate a patrol (90 hours of training).

The PSP Representative, in the same occasion, highlighted the gradual interest that the thematic of the ethnical minorities has raised in the PSP, being presented as an evident data the fact that in the past 5 years 8 studies were produced on this thematic, particularly concerning the following subjects: "Police activity in sensitive urban areas", "Local safety audits" or "Policing diversity". In what concerns this last subject, it was stressed the importance of the cooperation maintained with the Irish Police awarded in its project in this subject and that thanks to it became an international reference.

In order to make it clear, such quantity of training in this specific area, especially in what concerns the Officials, puts the Portuguese professionals with a time of training well above the European average, what constitutes a special reason of proud of an urban police of humanistic nature as it is the PSP.

Even crossing the content of paragraph 177 (page 35) with the one of paragraphs 20 to 23 (page 12) the Portuguese Government observes that the information given to the ECRI concerning the Security Forces' training was not taken into consideration with the relevance it really has in fact with important and very positive consequences in raising the quality of the GNR and the PSP activity.

Paragraph 179 *(page 36)*

The extrapolation that ECRI makes in this paragraph that the eventual increase of incidents reported by NGO involving police officers and African and Roma citizens results from racist violence is completely absent of rigour.

The incidents where the GNR and the PSP needed to use fire guns and that involved Africans or Roma were caused by the necessity to establish the public order due to the fact that those citizens had put in danger their lives, the lives of the members of their communities and of the citizens of the neighbouring communities.

Presenting these situations as a consequence of activities moved by xenophobic intentions is completely false as the GNR and the PSP, as well as the Portuguese Government, strongly repudiate and punish any eventual xenophobic or racial discrimination behaviour that may occur.

Paragraphs 180, 181, 182 *(page 36)* ***and 183*** *(page 37)* ***as well as recommendations at paragraphs 37*** *(page 14)*, ***125*** *(page 27*

The mentioned considerations and recommendations concern three major questions that are repeatedly raised in the Report, which are:

- The "*principle of sharing the burden of proof*", referred to in the Report, namely in the Summary, in paragraphs 25, 29, 32, 80 and in the

recommendation at paragraph 37 and also in the second recommendation of the ECRI Interim Follow-up (*current page 41*);

- The "*effective investigations into alleged cases of racial discrimination or racially motivated misconduct by the police should be carried out*", referred to in the Report, namely in the Summary, in paragraphs 32, 34, 35, 36 (*page 14*), 80, 123, 124, 180, 181, 182 and 183 and in the recommendations at paragraphs 125 (*current page 41*);

(i) In the following paragraphs of this document the Portuguese Government will refer to the principle of sharing the burden of proof.

Law No. 18/2004, dated May 11, 2004, implemented in the national legal order the Directive 2000/43/EC of the Council of the European Union, dated June 29, 2000, which applies the principle of equal treatment among persons irrespective of racial or ethnical origin and whose purpose is to establish a legal framework to fight discrimination based on motives of racial or ethnical origin.

Article 6 of Law No. 18/2004 defines the burden of the proof as follows:

"1- It is incumbent upon who allegedly suffered discrimination to prove it by presenting elements of fact susceptible of being evidence of it, leaving to the other party to prove that the differences of treatment are not based on any one of the elements mentioned in article 3.

*2- **The provisions of no. 1 do not apply to either the criminal procedure or to the files in which the inquiry on the facts is incumbent upon the court of law or other competent body, according to the law.***

(...)"

Although no. 1 establishes the principle of sharing the burden of proof by ascribing to the respondent the effort to prove that no violation of the principle of equal treatment did occur – **establishing a guilty presumption** in relation to the respondent –, no. 2 dismisses that sharing, refusing its application to the criminal procedure and also to the cases in which the investigation of the facts is incumbent upon a court of law or is ascribed to another competent body.

It is important to understand the sense and scope of that principle as it was drawn in Directive 2000/43/EC and when its exclusion is allowed.

The burden of prove is referred to in article 8 of the Directive, which states:

"1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

(...)

3. Paragraph 1 shall not apply to criminal procedures.

(...)

5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case."

Member States were not forced to apply the principle of sharing the burden of proof, neither to the criminal procedures nor to the actions or processes in which the **inquiry** into the facts belongs to the court or **competent body**.

In Portugal the implementation of the Directive 2000/43/EC into the national law gave way to a legal framework to fight discrimination based in motives of racial or ethnical origin, which is based on the procedures of regulatory offence, according to article 10, no. 1, of Law No. 18/2004.

Law No. 18/2004, in its article 12, no. 1 subparagraph d) and no. 2, determines that the corresponding inspectorate general is the competent body to initiate that inquiry procedure. In the legal scope of the MAI, IGAI is the competent body to initiate those inquiry procedures.

In this case the procedures of regulatory offences are the responsibility of the ACIDI, the administrative authority with competence to open and lead the process, as well as to make the final decision on those processes, to determine its consignment to the archives and to apply a fine ("*coima*")[*] to the defendant, as set in article 13 of Law No. 18/2004.

It is very important to understand the legal nature of the procedures of regulatory offences in order not to formulate conclusions based on assumptions that have no grounds in the legal framework in force in Portugal.

The law of regulatory offences, in Portugal, was inspired by the German model of the «Ordnungswidrigkeiten», and created by Decree-Law No. 232/79, dated July 24, 1979. It was created to respond to *"... the necessity of disposing of a sanctionable law different from the criminal law"*, gap that would *"... frequently made impossible to the legislator to make use of sanctions adjusted to the nature and severity of the illicit to repress or prevent."*, as reads in the preamble of Decree-Law No. 232/79.

IGAI's intervention or the intervention of any other inspectorate general in these procedures of regulatory offences include the inquiry into the facts and beginning of the respective cases, being that intervention procedure concluded with the formulation of proposals of decision that are then submitted to the ACIDI appreciation.

The procedures of regulatory offences only inappropriately may be qualified as an administrative procedure as, being true that the procedures of regulatory offences have two distinct phases, one administrative and another judicial, the fact that the initial phase of the process has an administrative aspect led by an administrative authority, by itself does not justify that in a simplistically way the procedures of regulatory offences are qualified as an administrative process when, in reality, regulatory offences law is public punitive law.

The procedures of regulatory offences, any procedures of regulatory offences, obey to the principle of legality and the agent of a regulatory offence assumes in the process the statute of defendant as results from article 15, no. 2, of

[*] *A pecuniary penalty that may not, as in the criminal procedure be converted into imprisonment. (N.da T.)*

Law No. 18/2004 and articles 43 and 50 of the General Regime of the Regulatory Offences (*Regime Geral das Contraordenações*), as amended by Decree-Law No. 433/82, dated October 27, 1982.

According to article 1 of the General Regime of the Regulatory Offences a regulatory offence is any illicit and objectionable fact that meets a legal type from which results a fine, therefore the procedures of regulatory offence may be concluded with the application of a sanction, the fine, that although having administrative nature and being applied by administrative authorities, is typically a punitive sanction that has the dissuasive sense of a censorship of social order.

We have to highlight that, in terms of subsidiary law; article 41, no. 1, of the General Regime of Regulatory Offences even foresees the application of the regulatory rules of the criminal process to the procedures of regulatory offences.

It is also important to understand that in the General Regime of the Regulatory Offences the principles of **officiousness** and of **investigation** are in force (article 54), which means that, assuming the character of a duty, it is incumbent upon the competent administrative authority to find all the facts reported, that in this case is deferred to the competent inspectorate general; therefore, the effort of finding the evidence belongs to the administrative authority and not to any victim or person concerned by the procedures of regulatory offences, which is a characteristic of the accusatory processes.

In other words, to the victim of discrimination, based on motives of racial or ethnical origin, it will be enough to present a complaint, duly grounded, presenting elements susceptible of indicting it.

The victim will not need to present proves; he/she will only have to claim the existence of the censurable illicit fact or facts committed against him/her that resulted in discrimination based in motives of racial or ethnical origin.

The complaint may be presented before any of the bodies mentioned in article 12 of Law No. 18/2004.

But the agent of the regulatory offence, the person concerned, the one that may be indicted with the statute of defendant in the procedure of regulatory offence (if that is the conclusion of the probative data obtained), will neither need to present any evidence that no violation of the principle of equal treatment took place. The person concerned will not need to prove that he/she is innocent. It is the competent body to find the facts that will have to prove that the defendant is guilty.

Because the procedures of regulatory offences have an accusatory nature, it is the competent body, that is to say, the competent inspectorate general by reason of the matter, that has the responsibility and duty to find out the facts and obtain all the evidences that may lead to the material truth.

Like any other sanctionable process, as the criminal process or the disciplinary process, the procedures of regulatory offences only result in the application of a fine after it has been guaranteed to the defendant the right of hearing and defence regarding the facts alleged against him/her and when, concluded the case, the proof obtained is unequivocal and enough to allow the conclusion that the illicit and censurable fact occurred. Otherwise, the case

must be dismissed. This is the way these matters are dealt with in a civilized country.

Therefore, what is referred in paragraph 32 of the ECRI Report "... *It appears that it is entirely up to the plaintiff to prove that racial discrimination has occurred. As a result, the vast majority of cases are closed on account of lack of proof*." does not make sense. The first sentence, of a speculative nature, does not have a factual base to support it. The second sentence, of a conclusive nature and only based in the preceding sentence, is a complete nonsense.

Summarising, the implementation of the Directive 2000/43/EC into the national legal order created in Portugal a legal framework to fight discrimination based on motives of racial and ethnical cause that corresponds to procedures of regulatory offences, as results from article 10, no. 1, of Law No. 18/2004.

The repetitive and unrelenting way ECRI sates that the principle of sharing the burden of proof is not applied does not make sense and forgets, namely, what is set in article 8, no. 5, of the Directive 2000/43/EC, implemented into the national legal order by article 6, no. 2 of Law No. 18/2004.

Therefore, it has no grounds and is out of the legal framework in force in Portugal the statement that ECRI repeatedly makes in the Report saying that the principle of sharing the burden of proof is not applied by us (this reference is made in the Summary of the ECRI Report, in its paragraphs 25, 29, 32 and 80, in the recommendation made at paragraph 37 and in the second recommendation of the Interim Follow-up.

For the reasons above mentioned, we suggest that ECRI should remove such statement, in its several formulations, from the Report.

(ii) In the following paragraphs of this document we will refer to the effectiveness of investigation and powers of the authority that is responsible to investigate.

ECRI also questions the effectiveness of the investigations conducted in the scope of Law No. 18/2004 and, consequently, the way the general inspectorates conduct the enquiry processes, questioning, namely, their autonomy and independence (we will be back to this issue later on), and, at the same time, it objects that those authorities have the necessary and sufficient powers to that purpose. Based on that assumption, paragraph 183 refers to the ECRI's General Policy Recommendation No. 11 and, in particular, to paragraphs 58 to 61 of the explanatory memorandum, knowing that, specifically in paragraphs 59 to 61 are enounced the powers that ECRI considers necessary to allow the competent body to effectively investigate this type of cases that involve the police, and that reads as follows:

"59. This body entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police should be given all the necessary powers to exercise its task effectively. Therefore, it should have powers such as requesting the production of documents and other elements for inspection and examination; seizure of documents and other elements for the purpose of making copies or extracts; and questioning persons. When the facts brought to its knowledge are of a criminal nature,

this body must be required to bring the case before the prosecuting authorities.

60. The body entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police may take different forms. It might be a national institution for the protection and promotion of human rights, a specialised police Ombudsman, a civilian oversight commission on police activities, or the specialised body which ECRI recommends be established in its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

61. In addition to investigation powers, this body could be given the following powers for cases which do not entail criminal responsibility: friendly settlement of disputes; monitoring the activities of the police and making recommendations for improving legislation, regulations and practices in order to combat racism and racial discrimination in policing; and the establishment of codes of conduct…".

Therefore, it is important to look to the legal framework applicable to the generality of the general inspectorates, in the case set forth in Decree-Law No. 276/2007, dated 31 July, 2007, which establishes the legal framework of the activity of inspection, auditing and control of direct and indirect Public Administration Services to which have been attributed the mission of accomplishing the responsibilities of the internal **or external** control to identify those that are operative skills of the general inspectorates, and assess the relevance of the objections and critics that are made by ECRI.

Those operative skills are, mainly, those that result from the legal framework of the activity of inspection, auditing and control of the direct and indirect Public Administration Services, which qualify them as **"guaranties of the exercise of the inspection activity".**

According to article 17 of the Decree-Law No. 276/2007, the inspectors have the right to a professional identification badge and to a free-pass that they must show during their activity. To develop their activity, according to article 16, the inspectors have **prerogatives.** In concrete, these prerogatives are:

- The right to access and free-pass, according to the law, during the time and in the necessary schedule to develop their activities, in all services and premises of public or private bodies subjected to their attributions;
- Demand for examination, consultation and junction to the file the books, documents, records and archives, and other relevant data the bodies may possess and whose activity is the object of an inspection action;
- Gather information on the activities inspected, do exams to any infraction traces, as well as expertise examinations, measurements and sampling for laboratorial examination;
- Carry out investigations, in order to obtain probative data, to the places where actions subjected to their range of activity occur and that may be considered illicit actions, without depending on a previous notice;

- To promote, according to the applicable legislation, the sealing of any facilities, as well as the apprehension of documents and evidence possessed by the bodies inspected or by their personnel, when it is indispensable to the inspection action, after which the competent notice must be drawn;
- To require the cooperation of police authorities, in the cases of refuse of access or obstruction to the inspection activity by the targeted persons, to remove that obstruction and ensure the performance and safety of the inspective actions;
- To require the adoption of provisional remedies that are necessary and urgent to ensure the means of proof, when necessary and according to the Code of Criminal Procedure;
- To obtain, in order to support the activities in course in those services, the provision of material and equipment, as well as the cooperation of the necessary personnel, namely to have executed or complemented the services in delay, whose lack makes impossible or difficult those actions;
- To use, in the inspected places, granted by the respective inspected bodies, premises in conditions of dignity and of effectiveness to the development of their activities;
- To exchange communications in service with all public or private bodies concerning subjects of their competence;
- To make, alone or with recourse to a police or administrative authority, the necessary notices, in accordance with all the legal requirements;
- To be considered as public authority to the effects of criminal protection.

Besides this large number of prerogatives, Decree-Law No. 276/2007 also establishes that the direct and indirect Public Administration Services, as well as the **natural and artificial persons of public and private law**, who are the object of inspective action, are bound to the **duties of information and cooperation**, namely by giving the information that is necessary for the inspective activity, in the terms, supports and with the regularity and urgency required (article 4, no. 1).

At the same time, leaders and workers of the inspected bodies have the **duty** to deliver, in the delay determined for that purpose, all the explanations, opinions, information and cooperation that the inspections require of them (article 4, no. 2).

The same Decree-Law No. 276/2007 also establishes that, to accomplish their attributions, the inspections may require the direct and indirect Public Administration Services to provide them with specialized personnel to assist the inspective actions (article 4, no. 4).

It must be highlighted that, according to Decree-Law No. 276/2007, the violation of the duty of information and of cooperation with the inspection actions makes the offender susceptible of disciplinary and criminal responsibility, according to the applicable law (article 4, no. 5).

The Decree-Law No. 276/2007 also establishes that artificial persons of public law must provide the inspections with all the cooperation required (article 5, no. 1), and inspections may demand for information to any artificial persons of private law or to any natural person, whenever necessary to establish the facts (article 5, no. 2).

We also stress that, according to Decree-Law No. 276/2007, the heads of the bodies and agencies of the direct and indirect Public Administration Services, as well as enterprises and societies that are the object of inspection actions may receive a notice from the inspector in charge of the inspection action to provide the declarations or testimonies considered necessary (article 13, no. 1); it must also be mention that the notice to hear other persons may be required to police authorities, after all the applicable provisions of the Code of Criminal Procedure have been met (article 13, no. 3).

Therefore, the general inspectorates in Portugal have all legal tools they need to perform deep and exhaustive investigations on subjects of their competence.

The ECRI Report refers specifically to IGAI in paragraphs 123 and 180. We consider relevant to pay attention to some important information on this matter, namely concerning IGAI's Organic Law and the specific legal framework applicable.

IGAI's Organic Law is currently based in Decree-Law No. 58/2012, dated March 14, 2012, and Decree-Law No. 146/2012, dated July 12, 2012. The preamble of Decree-Law No. 146/2012 reads as follows:

"IGAI is, since its creation, an operational body of auditing and control especially dedicated to audit legality in one of the most delicate area of the intervention of the Democratic State Based on the Rule of Law, as it is the exercise of powers of authority and the legitimate use of coercion measures by the forces and services of security whose action, given its special characteristics, may conflict with the rights, freedom and fundamental guarantees of citizens…."

As referred in the preamble of Decree-Law No. 227/95, dated September 11, 1995, which created IGAI, since its origin this body was conceived to be composed by: "*individuals with big maturity and professional experience, highly qualified and with credibility to perform the delicate tasks that are committed to them, with exemption, independency, neutrality, dedication and abnegation…*"

According to IGAI's Organic Law, this Inspectorate is a central body of the direct Public Administration Services with **technical and administrative autonomy** (article 1). IGAI has, therefore, the mission of ensuring the **high level** functions of auditing, inspection and control regarding all the **entities, services and bodies, dependent on or whose activity is legally under the responsibility or regulated by the member of the Government in charge of the area of Home Affairs** (article 2, no. 1).

Given its specificities and the delicate area where IGAI exercises its competences, IGAI is, among all the general inspectorates, the only Inspectorate General whose inspectors, all of them, exercise their inspective functions in a regime of assignment ("*comissão de serviço*") with the duration of 3 years (article 2, no. 2 of Decree Law 170/2009, dated August 3, 2009).

Also according to its Organic Law, IGAI is required, namely:

- To ascertain all the news of severe violation of the fundamental rights of citizens by the services or their agents, that IGAI has knowledge of, and to appreciate the complaints, reclamations and denouncements presented concerning alleged violations of legality and, in general, the suspicions of irregularity or malfunctioning of the services (article 2, no. 2, subparagraph c);
- To do inquiries, investigations and expert examinations, as well as investigation and disciplinary procedures (article 2, no. 2, subparagraph d);
- To propose to the member of the Government in charge of the area of Home Affairs legislative measures concerning the improvement of the quality and effectiveness of entities, services and bodies under the jurisdictions of the MAI (article 2, no. 2, subparagraph e);
- To communicate to the competent bodies for the criminal investigation the facts with legal-criminal relevance and to cooperate with these bodies in obtaining proof whenever this is required (article 2, no. 2, subparagraph f).

The Organic Law also foresees that IGAI does not interfere with the operational action of the security forces and services, having nevertheless the competence, whenever convenient, to investigate the way it is carried out and the respective consequences (article 3).

Among the competences of the Inspector General, foreseen in IGAI's Organic Law, we would like to highlight the following:

- To propose to the member of the Government in charge of Home Affairs the legal measures concerning the improvement of quality and effectiveness of the services and the improvement of the institutions of security and of protection and rescue (article 5, no. 2, subparagraph b);
- To determine the performance of thematic inspections without previous notice, according to its Plan of Activities, as well as the performance of control actions (article 5, no. 2, subparagraph c);
- To open and pronounce a decision on investigation and inquiry procedures, as well as to propose disciplinary procedures and enquiries (article 5, no. 2, subparagraph d).

In what specifically concerns the IGAI, we need to have the exact perception of the implications and the entities susceptible to be covered by all these attributions, competences and powers given by the law. According to data of the National Institute of Statistics (*Instituto Nacional de Estatística*), in 2011 the number of personnel in the security forces and services and in other bodies of support to the investigation corresponded to 50,455 persons. Among those, 23,209 belonged to the GNR, 21,558 to the PSP and 695 to the SEF. The three security forces and services in that year had a total of 45,462 professionals in active duty, all of them integrated in the MAI, and therefore, subjected to the exercise of the competences of the IGAI. In terms of percentage, the referred 45,462 professionals represented 90.1% of the mentioned 50,455 that correspond to the total of the professionals that in

2011 worked in the security forces and services and in the bodies of support to the investigation.

IGAI systematically carries out visits without previous notice to the GNR posts, the PSP precincts and the SEF Temporary Reception Centers, in any day of the week, at any time of the day or the night. These visits aim to have a preventive nature concerning the security forces and services' behavior, having always special care and attention in the inspection of the detention areas (cells) and of the conditions given to the detainees, which are regulated in detail by the Regulation on the Material Conditions of Detention in Police Premises (*Regulamento das Condições Materiais de Detenção em Estabelecimentos Policiais*), approved and annexed to Decision No. 8684/99, dated April 20, 1999.

It is also important to mention that IGAI has competence to audit the activity of private security and to inspect the societies that carry out that type of services. In Portugal, in 2011, there were 192 enterprises working in this field.

IGAI is also competent to audit and initiate regulatory offences procedures regarding restaurants and bars in which a system of private security is mandatory (article 8, no. 1 of Decree-Law 101/2008, dated 16 June.

Therefore, IGAI has a very large scope of attributions, competences and inspective powers that, contrary to the image that ECRI intends to give in its Report, are far from being insufficient or ineffective. And in case there is any functional contingency, it will only be the result of a great scope of entities and agents susceptible to be audited and inspected by IGAI.

Also concerning the IGAI's effectiveness, the procedures carried out show the deep and exhaustive way they have been carried out, aiming to obtain proofs and to discover the material truth. These procedures are always available to be consulted and appreciated by ECRI anytime this Commission wants to do it.

In paragraph 31 ECRI says: *"… since no investigatory powers have been granted either to ACIDI or to the CICDR, investigations continue to be carried out by the competent inspection body. For example, a case involving discrimination in employment will be examined by the Labour Inspectorate. In this respect, ECRI notes that there is an important lacuna in the procedure; where the case relates to an area in which there is no competent inspection body, no investigation can be carried out."* This affirmation reveals that ECRI does not know how a process of regulatory offence develops in Portugal and, more specifically, a misinterpretation of Law No. 18/2004. It is important to make clear that, to the law, it is irrelevant if the facts occurred in the street, in a close precinct or any other place. To the law, what is relevant is the knowledge of the facts and of the offenders, irrespectively of the place where the facts may have occurred (articles 3 and 12 of Law 18/2004). It is relevant and important to know who was the agent who committed the alleged discriminatory act since it will be the identification of the offender that will determine which inspectorate general is the competent one to carry out the investigation. Therefore, the quoted affirmation of ECRI is a technical assessment error.

In that respect, IGAI, among other investigations carried out according to Law No. 18/2204, may point out several procedures in which the facts that motivated the complaint of the citizen occurred in the street, normally in the context of traffic inspections conducted by the GNR or the PSP officers. This

clearly demonstrates that the affirmation made by ECRI at paragraph 31 has no factual fundament, neither support in the law; therefore, the conclusion is not correct.

As a result of what was previously referred, we may conclude that the assessment made by ECRI has no grounds and is not legally based when this Commission doubts the effectiveness and powers attributed to the authority in charge of investigating cases of alleged racial discrimination.

(iii) In the following paragraphs of this document we will refer to the autonomy and independence of the authority in charge of the investigation.

IGAI is an external inspection body of the Security Forces and Services and is totally autonomous and independent from those Forces and Services.

Besides all what was previously said concerning the autonomy and independence of the general inspectorates and of IGAI itself, it is also important to mention that the leaders of the general inspectorates, including those of IGAI, and the respective inspectors have **technical autonomy** in their inspective tasks (article 10 of the Decree Law 276/2007, dated July 31, 2007) what is also underlined in IGAI's Organic Law (article 1 of Decree Law 58/2012, dated March 14, 2012).

In this respect, we recall that the facts susceptible of constituting discrimination based on motives of racial or ethnical origin follow the procedures of regulatory offences headed by the **principle of legality** (article 43 of Decree Law No. 433/82, dated October 27, 1982) so, also through that process the general inspectorates, IGAI included, must comply with the law.

On the other hand, the leaders of the general inspectorates and the inspectors have to respect the **principle of the proportionality**, and consequently, their behavior must be that of adopting procedures adequate to the purposes of the action, and are also subject to the **principle of the contradictory** (articles 11 and 12 of Decree Law No. 276/2007, dated July 31, 2007).

The said principles, to which the general inspectorates and their respective inspectors must obey, are a guarantee of autonomy, independence and impartiality of their respective action.

Together with that, if we take in consideration the large number of attributions, competences and powers (referred to in the previous paragraph (ii) of this document) that are attributed to the general inspectorates in general, and to IGAI in particular, we understand how wrong is the assessment made by ECRI.

But ECRI goes as far as to put in question the autonomy and the independence of the general inspectorates due to the fact that in their leadership are judges and public prosecutors, and, once more, is wrong in its analysis. In fact, the judges and public prosecutors that are in the leadership of the general inspectorates remain linked to their respective statutes of origin and to the accomplishment of the duties resulting from them, a link that the Statutes themselves underline with the expression *"… in any situation in which they may be."*.

Therefore, as far as public prosecutors are concerned, their respective Statute (Law No. 47/86, dated October 15, 1986, with the last amendment

made by Law No. 9/2011, dated April 12, 2011) establishes that: *"The Public Prosecutor has autonomy in relation to the other bodies of the central, regional and local powers, according to the law, being that autonomy characterized for its subjection to criteria of legality and objectivity and for the exclusive subjection of the Public Prosecutor to the directives, orders and instructions foreseen in the law."* (Article 2). It also results from the Code of Criminal Procedure (applicable to the procedures of regulatory offences through article 41, no. 1 of Decree Law No. 433/82, dated October 27, 1982) that the public prosecutor obeys *"in all procedural interventions to criteria of close objectivity"* (article 53, no. 1, of the Code of Criminal Procedure).

And, as far as the judges are concerned, we have to consider articles 4 and 7 of their respective Statute (Law 21/85, dated July 30, 1985, with the last amendment made by Law No. 9/2011, dated April 12, 2011) that set and define, respectively, the independence and the guarantee of impartiality that are required of them. And if not considered enough, we can also mention article 202 and followings of the Constitution of the Portuguese Republic, important to highlight its article 2 – *"In justice administration it is incumbent on the court to assure the defense of the legally protected rights and interests of the citizens, to repress the violation of the democratic legality and to resolve conflicts of public and private interests."*. – and also article 203, where is reinforced as warrant holders of sovereign bodies – Courts – their independency and subjection **only** to the law.

Paragraph 181 *(page 36)*

In what concerns the conclusions taken by ECRI, the Portuguese Government does not deem it acceptable that negative conclusions should be drawn from mere intuition.

In what concerns the number of complaints of racism and racial discrimination, the competent national authorities consider as positive these residual numbers and also the final results of the investigations resulting from them, that successively prove what is clear: that there are no racial motivations in the situations where the GNR and the PSP need to use the force to establish public order, either in situations involving members of these communities or any other citizens. As proved by the facts, ethnicity is not a criteria used to distinguish the GNR or the PSP standards of activity.

Paragraph 182 *(page 37)*

Concerning the observations made by ECRI in this paragraph, the Portuguese Government considers important to point out that the presumption of innocence is the back-bone principle of Portugal's penal system. There must be no accusation or conviction without evidence that avert such presumption beyond reasonable doubt.

Observations made by the Ministry of Solidarity and Social Security:

The Ministry of Solidarity and Social Security takes note with interest of the Draft ECRI Report on Portugal (Fourth monitoring Cycle) comments, conclusions and recommendations relating to all forms of racism and intolerance in Portugal.

The Ministry of Solidarity and Social Security would like to highlight a general, and also a specific remark related to part V "Refugees and Asylum Seekers".

I- General Remarks

The Portuguese Government believes that respecting human rights — namely the right to non-discrimination — is not a secondary but a basic main issue. Therefore, the Portuguese Government firmly believes that all forms of racism and intolerance are equally unacceptable. Therefore, they must be fought in a non-discriminatory way, granting the same level of protection to all.

But we consider that the way to overcome this is not necessarily trough the adoption of affirmative action directed at one particular group, based on racial or ethnic grounds.

Firstly, because it conflicts with our constitutional principle of equal treatment and non-discrimination and, secondly, because we think that positive discrimination measures contain the risk of having the counterproductive effect of stimulating divisions and clashes in societies where they currently do not exist.

In its report the ECRI also addresses of the lack of disaggregated data in Portugal based on racial or ethnic origin. We are aware that collecting disaggregated data can be a way for policy-makers to establish indicators and monitor the state of implementation of these policies, namely in the field of human rights.

Portugal collects disaggregated data based on sex, age, economic conditions, level of education and nationality, among others. However, our Constitution prohibits the collection of data based on racial or ethnic grounds. This prohibition derives from the constitutional principle of equality and non-discrimination. Notwithstanding, we take note of this recommendation and will examine the issue carefully.

II-Specific remarks

Part V - Refugees and Asylum Seekers

In Portugal, as far as Social Security concerns, the benefits to refugees and asylum seekers, including economic support, have been recently reassessed concerning the support strategy, nevertheless, without ceasing the actual benefits. As for the specific support given in this area, The Portuguese Government highlights the Protocol between the Portuguese Centre for Refugees (CPR) and Social Security Institute (ISS) to provide Counselling and professional support, and also the financial rubric "Social Benefits - Actions supporting the homeless, refugees and others" to be used by social services. It should be highlighted the joint action established with the Jesuit Service for Refugees - Pedro Arrupe Centre, in areas such as legal aid, psychosocial and employment support.

Lately, there has been an effort to deal with certain situations in a better and more quickly way by decentralising «case management» social services. It is possible to diversify local partnerships in order to overcome the saturation of support deliverance.

Recently a policy measure specifically towards the social integration of people who find themselves in a situation of asylum seekers, or benefit from international protection or have a status of reinstalled refugees led to an interministerial Protocol, in September 2012. ISS stands as coordinator (for the matters regarding this specific Protocol) and several other entities assumed responsibilities of institutional cooperation and commitment in this area namely: Immigration and Borders Service; Institute for Employment and Vocational Training; High Commission for Immigration

and Intercultural Dialogue; Portuguese Centre for Refugees; and Santa Casa da Misericórdia de Lisboa.

Observations made by the Ministry of Education and Science:

Paragraph 54 e 55 *(Page 17)*

Many schools regularly develop planned initiatives such as the following ones:

- Use of cultural and/or language mediators (students, family or human resources of the municipality or of several NGOs) so as to facilitate the hosting and integration of new students;
- Actions aimed at the exchange of knowledge and traditions in an intercultural perspective.

Under Measure 30 of the II PII and in the scope of a working partnership with several institutions, including the ACIDI, the DGE-MEC is developing a series of actions to promote the development of school projects and initiatives to foster Education for Interculturality;

- *Selo da Escola Intercultural* (Intercultural School Seal) – It is an initiative whose goal is to identify and distinguish schools that implement good intercultural practice with their local and school communities;
- Reference document for Education for Interculturality – The preparation of a reference document for Education for Interculturality is planned, so as to become a reference for schools, teaching staff and other educational agents; (**paragraph 192**)
- Teacher training – The design of a teacher training course under this theme is planned. The teacher training course will be implemented by the CFAE. (comment for **paragraph 195, page 39**)

Paragraph 56 *(Page 35)*

The Portuguese Government must deny this statement, as curricula for both basic and secondary education include Portuguese as a Foreign Language (PFL).

In this context, and regarding the 1st cycle of basic education, PFL is made available within the scope of Supervised Study. In 2nd and 3rd Cycles of basic education, as well as in secondary education, if a minimum of 10 pupils exist the school offers PFL classes. If the set minimum of 10 pupils, allowing for different levels of language proficiency, isn't reached, the school must, within the scope of its autonomy, provide PFL support activities.

Pupils not included in PFL proficiency level classes are subject to an internal assessment on Portuguese Language / Portuguese, under the responsibility of this subject's teacher, following an established individualised strategy.

PFL pupils included in the starting (A1, A2) or intermediate (B1) levels are assessed at 6th and 9th school grades, and at the 12th grade they must sit through the PFL final national.

Paragraph 193 *(Page 38)*

The Portuguese Government develops other programmes whose strategies may not have Interculturality has an explicit goal. However, although these programmes are mainly targetted at preventing early school dropout and promoting school success, they include Interculturality in their actions:

- *Programa TEIP - Territórios educativos de intervenção prioritária*) (Programme for Educational Territories of Priority Intervention)
- *Português Língua não Materna* (Portuguese as a Second Language)
- *Programa Mais Sucesso Escolar* (More School Success Programme)
- Diverse education and training paths - *Percursos curriculares alternativos, CEF - Cursos de Educação e Formação, etc. (*Alternative Curriculum Paths; Education and Training Courses, etc.)

Observations made by the High Commissioner for Immigration and Intercultural Dialogue (ACIDI):

SUMMARY

Paragraph 2 *(Page 7)*

Is mentioned that ***"…….A National Strategy for the Integration of Roma Communities, running until 2020, has been adopted"***.

The Portuguese Government proposes the following: *A National Strategy for the Integration of Roma Communities has not been formally approved, although some of the measures foreseen in the Strategy are already being implemented."*

Paragraph 50 *(Page 16)* ***and*** ***Paragraph 83*** *(Page 21)*

Please refer to comments to Paragraph 2 *(Page 7)*.

Recommendation at Paragraph 15 *(Page 11)*

"ECRI strongly recommends that the authorities adopt a provision expressly making racist motivation an aggravating circumstance for all offences."

Regarding this recommendation, please note that the Article 71º of the Portuguese Criminal Code, already states that:

"*Article 71*

Determination of the penalty measure:

1- The determination of the penalty measure is done according to the agent's guilt and prevention

needs, within the law's defined limits.

2- On determining the concrete penalty, the court considers all circumstances that, not being elements of the type of crime, are in favour of the agent or against him, taking into consideration, namely:

a) The degree of unlawfulness of the act, its form of execution and the seriousness of its consequences, as well as the degree of violation of the duties imposed on the agent;

b) The strength of the intent or of the negligence;

c) The feelings manifested on the perpetration of the crime and the aims or motives that determined it;

d) The agent's personal situation and his economic condition;

e) The conduct prior to the act and after it, especially when the latter is aimed at repairing the consequences of the crime;

f) The lack of preparation to maintain a lawful conduct, manifested in the act, when that lack of preparation must be censured by the imposition of a penalty;

3- The reasons for the measure of the penalty are expressly mentioned in the sentence."

Therefore, it is clear that a judge, when has to apply a *penalty measure,* has already to take in consideration "*The feelings manifested on the perpetration of the crime and the aims or motives that determined it*" and the racist motivation will be an aggravating circumstance.

http://www.verbojuridico.com/download/portuguesepenalcode.pdf