

ECRI

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

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European Commission against Racism and Intolerance

ECRI's country-by-country approach:

REPORT ON PORTUGAL

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, *inter alia*, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.

¹ The report prepared by the Swiss Institute (ref: CRI (97) 38), covering relevant legislation in member States of the Council of Europe is available from ECRI's Secretariat.

- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

A first series of ECRI's country-specific reports was made public in September 1997 and a second series in March 1998². A third series of country-specific reports was transmitted to the governments of the countries concerned in April 1998, and is thus now being made public³.

The following report contains ECRI's analysis and proposals concerning Portugal.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This third series of reports, for which the procedure was completed by April 1998, will be followed by other series of reports during 1998 on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed. It is intended to complete the first round of country reports by the end of 1998.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

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² *The first two series comprise reports on Belgium, the Czech Republic, Finland, Germany, Greece, Hungary, Iceland, Ireland, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, San Marino, Slovenia and Switzerland.*

³ *Reports on Bulgaria, France, Italy, the Netherlands, Portugal and Slovakia.*

REPORT ON PORTUGAL⁴

Introduction

Following the "carnation revolution" of 1974 Portugal joined the ranks of the parliamentary democracies, and has been part of the Europe of human rights for over 20 years now, having joined the Council of Europe in 1976.

The pattern of migration flows in Portugal is quite unusual, making the country and its population very sensitive to the questions of racism and intolerance, since they know from experience what it can mean to be a "foreigner".

With more than 4 million Portuguese living outside their country of origin, Portugal is therefore essentially a land of emigration, although the pattern of emigration today has changed. The number of Portuguese nationals leaving the country for good each year is today quite small, but temporary emigration is on the increase.

Immigration is also progressing in Portugal, making it also a land of immigration, although in a limited measure.

Portugal's particular sensitivity in the field of racism is reflected in its laws. Portuguese legislation in the matter is good, with not only general statements of intent but specific measures in almost every field for combating racism and discrimination.

Some of the key areas identified by ECRI as meriting particular attention include:

- the discrimination which exists in practice in certain areas of social policy, such as programmes to assist with integration into the labour market or in the field of access to housing;
- the situation of illegal immigrants;
- the acts of violence which have been observed in recent years, mostly perpetrated by extremist groups, but which nevertheless reveal certain tensions between communities and represent a threat to the general climate of tolerance that prevails in Portugal.

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Note: Any development subsequent to 18 September 1997 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

I. LEGAL ASPECTS⁵

A. International legal instruments

1. Portugal has acceded to almost all the relevant legal instruments, and the Ministry of Foreign Affairs is currently preparing a draft declaration concerning acceptance of the competence of the Committee on the Elimination of Racial Discrimination (CERD) under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination. Portugal might consider acceding to the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities.

B. Constitutional provisions

2. The constitution enshrines the principle of equality and non-discrimination and bans self-declared fascist groups. Any members of parliament found guilty of membership of fascist organisations are removed from office.

3. Racism is not defined in its own right, but in the context of fascist ideology, under Article 3 of Law No. 64/78 of 6 October 1978. This is understandable in view of Portugal's political past, but an official distinction between the two phenomena could prove useful, since racism exists outside the context of fascist organisation. The distinction could be made through specific legislation on racism.

4. The principle of equality and non-discrimination between non-citizens and citizens is strengthened and elaborated on in various ways in the Portuguese Constitution: protection of workers against all discrimination based on nationality, origin, religion or political ideas (Article 59), equality in education and the duty of education to "promote understanding, tolerance and a spirit of solidarity" (Articles 74 and 76).

C. Criminal law provisions

5. A specific law on fascist organisations provides for their dissolution. Criminal action can be taken against members of such associations. This legislation has proved its efficacy in criminal proceedings brought against a so-called cultural association which was actually a cover for a racist and xenophobic ideology and activities.

6. Homicide perpetrated for motives of racial or religious hatred is punishable as aggravated homicide under Article 132.d of the Criminal Code. A recent addition to the legislation acknowledges the right of immigrant communities or other associations defending the interests in question to take part in criminal proceedings (as "assistente") for racist or xenophobic crimes (Law No. 20/96 of 6 July 1996).

⁵ *A full overview of the legislation existing in Portugal in the field of combating racism and intolerance is provided in the publication CRI (95) 2 rev. prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography).*

7. The mass media may incur sanctions if they misuse the freedom of the press to libellous or slanderous effect or in violation of legal restrictions concerning moral integrity, accuracy and objectiveness or public order and democracy.

D. Civil and administrative law provisions

8. There are specific provisions in Portuguese civil and administrative law for combating racism. For example, any contract containing discriminatory clauses is considered void (Article 483 C.C). Legislative Decree No. 330/90 of 23 October 1990 stipulates that advertising must not encourage discrimination based on race. Legislative Decree No. 64-A/89 of 27 February 1989 contains provisions designed to protect the rights and freedoms of workers at the work place. Furthermore, political parties may not deny membership to anybody on racial grounds.

9. Finally, government Resolution 38/93 of 15 May 1993 is designed to help immigrants and ethnic minorities to achieve full integration, inter alia through education, training and social work.

E. Specialised bodies

10. Article 23 of the Constitution provides for the Institution of the *Provedor de Justiça*, an independent figure appointed by parliament. The statute of this institution was laid down in Law No. 9/91 of 9 April 1991, modified by Law No. 30/96 of 14 August 1996.

11. His or her main task consists in defending and promoting the rights, freedoms and interests of citizens, by ensuring, through informal means, that the public authorities exercise their powers fairly and in compliance with the law. Private individuals refer their complaints to the *Provedor de Justiça*, who has no power to take legally binding decisions but can make recommendations to the relevant authorities to prevent and repair injustices, and also has broad powers of initiative in addition to the contentious or non-contentious courses of action provided for in the constitution or the legislation. He may also ask the constitutional court to declare certain legal provisions anti-constitutional (Articles 281 and 283). Portugal may wish to consider, bearing in mind the principles laid down in ECRI's general policy recommendation N° 2 on specialised bodies at national level to combat racism, xenophobia, antisemitism and intolerance, whether a specialised body in the field of racism and intolerance might be of supplementary value.

II. POLICY ASPECTS

F. Vulnerable groups/minority groups

12. The Roma/Gypsy community represents a major victim group in racist incidents, followed by black people from the Portuguese-speaking countries of Africa. It seems that the arrival of Roma/Gypsy groups in certain neighbourhoods has given rise to protests and even to demands that they leave. These protests reflect the tensions caused when different lifestyles co-exist side by side. The established, sedentary population often sees

the arrival of travelling people in their neighbourhood as a threat. These fears are not necessarily or exclusively based on the difference in ethnic origin, but are also fuelled by prejudice creating a negative image of Roma/Gypsies by associating them with crime and trafficking in various forms.

13. It is therefore essential to foster the social and occupational integration of these minority groups in order to break the vicious circle which merely leads to their further exclusion.

G. Reception and status of non-citizens

14. Since the independence of the colonies, the Portuguese Government has striven to cope with a large flow of immigrants from the former colonies. In 1975, for example, a legislative decree granted Portuguese citizenship to almost 27,000 returnees from the colonies out of 43,538 applicants. More recently, in the face of illegal immigration, the Portuguese Government conducted a special campaign between October 1992 and March 1993 to legalise the situation of these immigrants. The initial results show that some 40,000 people benefited from these measures. Almost half of them were from Angola, and the others from Guinea-Bissau, Cape Verde and Brazil. Finally, another campaign, initiated by the Law No 17/96 of 24 May 1996, is currently under way in an attempt to solve the problem once and for all. Although the final results are not yet available the government had received 35,082 applications by 12 December 1996.

15. There is provision in Portuguese law for dual nationality, but the number of naturalisations remains very small. Where reciprocal agreements have been concluded with the countries of origin, legal residents are entitled to vote in local elections.

16. In 1993 there was a sharp increase in applications for asylum, from a few hundred to some 1,600 applications. This would appear to have been an exception, however, since subsequent figures from the immigration authorities have shown a gradual return to normal, with 614 applications in 1994, 332 in 1995 and 216 in 1996. Perhaps this downward trend is owed to the fact that very few applications were actually accepted, discouraging others from applying. According to NGOs, processing applications for asylum involves too much bureaucracy. This strict application of the law can probably be put down to the pressure of European treaties, particularly the Schengen Agreement, to which Portugal is party. A new law on asylum is currently being drafted, to solve the problems encountered in the application of the present law.

H. Education and training

- *Education*

17. Portugal's activities in the field of education and awareness-raising among young people are numerous and varied, particularly since Order No. 13/03/1991 setting up a secretariat to co-ordinate multicultural education programmes, all designed in one way or

another to foster dialogue, friendly relations and solidarity between different peoples, ethnic groups and cultures.

18. Particular attention is paid to Roma/Gypsy children, especially in basic schooling. According to an unofficial source, however, 60% of Roma/Gypsy children under 14 years of age do not go to school. ECRI believes that the awareness campaign among Roma/Gypsy families envisaged by the Ministry of Education in collaboration with humanitarian institutions could help to improve this situation. A resolution of the Council of Ministers (17/10/96) recently set up a team to study the Roma/Gypsy question and propose concrete action.

- Training

19. Following the problems of violence and racism reported in various police units during arrests or preventive detention, ECRI believes that an awareness-raising campaign or special training courses for the police forces would be very useful in preventing the violence sometimes perpetrated by police officers and in reminding them of their responsibilities in respect of problems of racism. Police officers should be trained in matters relating to racism and discrimination in order to motivate them to assume their responsibilities in combating these phenomena. While taking into account the competence of the *Provedor de Justiça* in this field, the government decided additionally to create the General Inspectorate of Internal Administration, which controls the police authorities. This Inspectorate, which is governed by Decree No 227/95 of 11 September 1995, is autonomous, directed by a magistrate and controls all activities of the police forces. ECRI welcomes the establishment of this body and encourages it to treat any discrimination practiced by police officers with appropriate severity to emphasise the seriousness of such behaviour.

20. Positive initiatives have been taken in favour of young people, as Portugal's involvement in the campaign against racism and xenophobia shows. On 18 December 1996 the Portuguese Government decided to renew the "All different, all equal" campaign, an initiative on which one can but congratulate them. It would be a good idea for the authorities to consider broadening the target audience, particularly in those sectors where the problems arise.

I. Employment

21. In 1993 the unemployment rate stood at 5.5%, and in less than two years it rose by a further 2%, making the economic and social situation even more difficult, especially in conjunction with the trend for Portuguese people living abroad to return home in recent years. It would therefore appear to be in the labour market that discrimination against immigrants and ethnic minorities gives most cause for concern; the highest unemployment rates are found amongst the immigrant population. According to unofficial sources, half the resident non-citizen population is unemployed, which is rather alarming considering that most immigrants are young men.

J. The skinhead problem

22. Since 1985 Portugal has begun to witness the phenomenon of racial violence and harassment by groups of skinheads. Although episodic and limited geographically to the outskirts of large conurbations, where economic and social difficulties of every kind are concentrated, these events must not be underestimated by the Portuguese authorities.

23. In Lisbon the Municipal Council for Immigrant Communities and Ethnic Minorities could collect much useful information about these acts and their perpetrators and thereby improve understanding of the problem. It would perhaps also be useful to set up a special task force or provide special training courses in all the official bodies and departments concerned.

K. Media

24. The code of ethics of Portuguese journalists requires them to respect the fundamental principles of human rights and refrain from encouraging racial hatred. In one instance when a newspaper published a report on the murder of a taxi driver in terms likely to stir racial hatred, the Ethical Council of Portuguese Journalists criticised the newspaper's attitude.

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General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Portuguese government on 13 July 1994.

ECRI accepts no responsibility for the data below.

140 000 non-citizens residing legally in Portugal, of which: 32 036 from Cape-Verde; 15 731 from Brazil; 8 117 from the USA; 7 635 from Angola; 6 538 from Guinea-Bissau

552 asylum requests in 1992 and 1659 in 1993, mainly from Roma/Gypsies, Angolan and Zaireans

* *Population: 9 920 760 (January 1996). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography).*

BIBLIOGRAPHY

This bibliography lists the main sources consulted during the examination of the situation in Portugal: it does not cover all the various sources of information (media, contacts within the country, national NGOs etc) which were utilised.

1. Reply supplied to the ECRI questionnaire by the Portuguese authorities (January 1995)
2. Reply supplied to the ECRI questionnaire by the CIVITAS (October 1994)
3. CRI (94) 2 and Addendum: Situation in the member States of the Council of Europe concerning the issues under examination by the European Commission against Racism and Intolerance: Working papers submitted by the members of ECRI, Council of Europe document
4. Recent Demographic Developments in Europe, Council of Europe Press, 1994
5. CDMG (94) 16 final: Recent developments in policies relating to migration and migrants, Council of Europe document
6. "Political extremism and the threat to democracy in Europe", Institute of Jewish Affairs
7. Trends in International Migration, Annual Report 1993, OECD, 1994
8. CRI (95) 2 rev.: Legal measures to combat racism and intolerance in the member States of the Council of Europe, Council of Europe publication
9. Antisemitism World Report 1995, Institute of Jewish Affairs publication
10. CERD/C/179/Add2: Report submitted by Portugal to the Committee on the Elimination of Racial Discrimination, 1990, United Nations public document
11. CERD/C/SR.896: Report of the Committee on the Elimination of Racial Discrimination concerning Portugal, United Nations public document
12. Report of the CERD: Conclusions concerning the third and fourth periodical reports of Portugal
13. Report of the Committee for the Prevention of Torture following its May 1995 visit and reply of the Portuguese government
14. "Country reports on Human Rights Practices for 1994", US Department of State, 1995 and 1996
15. Statement by the Delegation of Portugal to the Sixth Conference of European Ministers responsible for migration affairs, Warsaw, June 1996
16. Final report of the Steering Committee of the Campaign against Racism, Xenophobia, Antisemitism and Intolerance

17. "Combating racial violence in Europe: a study and practical guidelines", Community Relations series, prepared by Mr Robin Oakley, Council of Europe publications
18. "Lisbonne régularise ses clandestins, le BTP grogne", article from the Expresso of 20/11/1996 reproduced in the Courrier International of 28/11/1996
19. "Le Portugal rattrapé par la normalité libérale", article in the Monde Diplomatique, 12/1995
20. "Faiblesse de la démocratie", Ana Naviro Pedro, article in the Monde Diplomatique, 12/1995
21. "L'Europe et ses migrations", Ed. Complexe, Brussels, 1995
22. "New Xenophobia in Europe", eds Baumgartl, B. and Favell, A., Kluwer Law International, 1995
23. Report of Amnesty International on torture and ill-treatment, concerning Portugal, 1993