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Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.

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

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on Portugal is dated 18 September 1997 (published in June 1998). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to Portugal took place on 6-8 November 2001. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the Portuguese national authorities for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the Portuguese national liaison officer whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 20 March 2002 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

Over recent years, Portugal has taken a number of steps to combat racism and intolerance including the adoption of Law No. 134/99 prohibiting racial discrimination. It has also launched a range of activities aimed at promoting the integration of immigrants and Roma/Gypsies in education and work. Portugal has also made efforts to raise human rights awareness among police officers and judges and has made the declaration recognising the competence of the Committee on the Elimination of Racial Discrimination to examine individual applications.

Nonetheless, there are still problems in the application of the anti-racism and discrimination laws, as the application falls short of the protection provided for by the legislation in force. Immigrants and Roma/Gypsies often find themselves in very precarious situations because of administrative failings which hinder or delay their attempts to secure recognition of their rights, and are therefore confronted with acts of discrimination in their day-to-day lives. The lack of precise and sufficient data on these acts makes it difficult to assess the impact of measures taken to combat racism and intolerance.

In the following report, ECRI recommends that the Portuguese authorities take further action to combat racism and intolerance more effectively in a number of areas. The recommendations mainly concern: the need for effective application of existing legislation; the adoption of measures to improve the functioning of administrative and law enforcement services when dealing with members of minority groups; the setting up of an independent specialised body to combat racism; the improvement of the application of the procedures relating to asylum seekers; the protection of immigrants against abuses in the employment field; and action to inform and raise public awareness concerning the fight against racism and intolerance.

SECTION I: OVERVIEW OF THE SITUATION

A. International legal instruments

1. Portugal has signed and ratified a large number of international legal instruments relating to the fight against racism and intolerance. ECRI welcomes the signing by Portugal on 4 November 2000 of Protocol No.12 to the European Convention on Human Rights and hopes that, as foreseen, ratification will follow as rapidly as possible. Portugal has ratified the Framework Convention for the Protection of National Minorities by Decree of 25 June 2001 and ECRI is pleased to learn that this Convention enters into force in Portugal on 1st September 2002. ECRI welcomes the ratification by Portugal of the Revised Social Charter, which will enter into force on 1st July 2002. ECRI was pleased to learn that Portugal had ratified the European Convention on Nationality on 15 October 2001. It encourages the Portuguese authorities to sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level and the European Charter for Regional or Minority Languages.
2. ECRI welcomes the declaration made by Portugal on 25 August 2001 under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination recognising the competence of the Committee set up under this Convention to receive and consider communications from individuals. ECRI urges the Portuguese authorities to inform the public as widely as possible about the system of individual communications set up by virtue of this declaration.
3. ECRI notes that, under Article 8 of the Portuguese Constitution, rules contained in duly ratified and approved international conventions apply in national law as soon as they are officially published and hence must be applied by Portuguese courts as long as they remain in force, in other words as long as Portugal is bound by them at international level.

B. Constitutional provisions and other basic provisions

4. Under Article 13 of the Constitution, “all citizens have the same social dignity and are equal before the law” and “No one shall be privileged or favoured, or discriminated against, or deprived of any right or exempted from any duty, by reason of his or her ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social circumstances”. Article 13 only refers to citizens and must be read in conjunction with Article 15.1 which provides that “aliens and stateless persons temporarily or habitually resident in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens”. However, this extension of rights to aliens and stateless persons does not apply in respect of political rights, the performance of public functions that are not predominantly technical, and rights and duties restricted to Portuguese citizens under the Constitution or the law (Article 15.2).
5. Subject to reciprocal agreement, some of the rights which are, in principle, restricted to Portuguese nationals may also be enjoyed by foreign nationals from other Portuguese-speaking countries. Also subject to reciprocity and without prejudice to the provisions relating to European citizenship, the law may grant aliens the right to stand or vote in local authority elections.

6. Article 16.2 of the Constitution provides that constitutional provisions and laws relating to fundamental rights must be construed and interpreted in accordance with the Universal Declaration of Human Rights. Under Article 18.1, “the constitutional provisions relating to rights, freedoms and guarantees shall be directly applicable to, and binding on, both public and private bodies”. According to the case-law of the Portuguese Constitutional Court, this also includes relations between private individuals.
7. Following a constitutional reform in 1997, Article 46.4 prohibits racist organisations or organisations with a fascist ideology. Law No. 64/78 specifically prohibits fascist organisations and Law No. 28/82 empowers the Constitutional Court to declare an organisation to be fascist and hence to strip it of its legal status. In principle, the above-mentioned statutory provisions only apply to fascist organisations and not to exclusively racist organisations. Article 240 of the Criminal Code does however make it a punishable offence to set up a racist organisation and participate in or provide assistance, particularly financial assistance, to such organisations¹. Nevertheless, ECRI considers that an extension of the Constitutional Court’s competence under Law No. 28/82 to include racist organisations would make it possible to take more effective action against organisations which are racist but do not follow a fascist ideology.
8. Under Article 160.1 d) of the Constitution, members of parliament convicted by a court for membership of an organisation that is racist or follows a fascist ideology cease to hold office. This rule has never been applied.

C. Criminal law provisions

9. Portuguese criminal law contains a number of provisions aimed at combating racism and intolerance, covering incitement to racial hatred, defamation, insult and discriminatory practices.
10. Article 239 of the Criminal Code defines and prohibits genocide, direct public incitement to commit genocide, and conspiracy to commit genocide. Article 240 of the Criminal Code punishes discrimination on grounds of race or religion. Paragraph 1 of this article makes it an offence to found or establish organisations or engage in organised propaganda activities which incite or encourage racial or religious discrimination, hatred or violence. It also prohibits participation in or assistance, including financial assistance, to such organisations or such organised propaganda activities. Paragraph 2 of Article 240 punishes anyone who, in a public meeting, in writing intended for dissemination, or by any other means of social communication, provokes acts of violence against an individual or group of individuals on grounds of their race, colour, or ethnic, national or religious origin with the intention of inciting to or encouraging racial or religious discrimination. Paragraph 2 also punishes anyone who, in a public meeting, in writing intended for dissemination, or by any other means of social communication, defames or insults an individual or group of individuals on grounds of their race, colour, or ethnic, national or religious origin, particularly by denying war crimes and crimes against peace or humanity, with the intention of inciting to or encouraging racial or religious discrimination. Article 240 was not applied in 1998 or 1999. Since 2000, ten cases have been brought on the basis of this provision, but to date only three

¹ See: *Criminal law provisions*.

have been judged. However, ECRI believes that, partly because of the difficulty of proving that an act was racially motivated, this figure does not reflect the real number of racist acts committed. In some cases, although the public prosecutor's department called for a conviction based on Article 240, judges have preferred to convict offenders on other legal grounds than Article 240. ECRI encourages the Portuguese authorities to promote the application of the provisions of Article 240 and to provide awareness raising and initial and in-service training on these issues for all those involved in the criminal justice system, including the police, the prosecuting authorities and the judiciary. It also calls on the Portuguese authorities to make those involved in the judicial system more aware of the need for active measures to counter racially motivated crime and incitement to racial discrimination and violence.

11. Under Article 132.2 f) of the Criminal Code on homicide, motives of racial, religious or political hatred are regarded as aggravating circumstances resulting in a heavier penalty. Such aggravating circumstances may also apply in cases of assault causing bodily harm under Article 146 of the Criminal Code. On the other hand, there is no general rule providing that racist motives constitute an aggravating circumstance for all offences. This means that, for other offences, it is left to the courts to decide, on a case-by-case basis, whether racial motives constitute an aggravating circumstance. Without calling into question the discretion granted to judges under the existing legislation, ECRI would prefer a more systematic and consistent approach in the fight against racist or xenophobic crime. In this connection it refers to its general policy recommendation no.1 in which it recommends that common offences of a racist or xenophobic nature be identified as specific offences or that express provision be made for courts to consider racist motives as aggravating circumstances.
12. ECRI is pleased to note that, when a prosecution is brought for any of the above-mentioned racist or xenophobic offences, immigrant associations and anti-racist and human rights organisations are entitled, under Law No. 20/96, to join the proceedings as *assistente* without being requested to do so by the victim, except where he or she formally objects.
13. ECRI already noted in its first report that the freedom of the press is subject to restrictions concerning the protection of moral integrity, the accuracy and objectivity of the facts reported, and the maintenance of public order and democracy². Misuse of the press, in particular the publication of defamatory and abusive material, is subject to criminal sanctions.

D. Civil and administrative law provisions

- ***Law No.134/99 on the prohibition of discrimination in the exercise of rights on the grounds of race, colour, nationality or ethnic origin***
14. Law No.134/99 of 28 August 1999 prohibits discrimination in the exercise of rights on the grounds of race, colour, nationality or ethnic origin. Racial discrimination is defined in Article 3 as a distinction, exclusion, restriction or preference based on race, colour, ancestry or ethnic or national origin with the intention or the result of preventing or restricting the equal recognition,

² Legislative decree No. 85-C/1975

enjoyment or exercise of rights, freedoms and guarantees or economic, social and cultural rights.

15. Discriminatory practices are defined as actions or omissions, including attempted and negligent actions, carried out on the above-mentioned grounds. Article 4 of the law gives a detailed list of these practices, particularly in the area of employment, access to goods and services, the performance of an economic activity, the sale or rental of property, access to public buildings, health and education. These practices include actions by bodies, officials or employees of the direct or indirect administration of the state, autonomous regions or local authorities which condition or limit the exercise of any right. They also cover official documents in which an individual or a legal entity makes a statement or conveys information, publicly or with the intention to disseminate, in which a group of persons is threatened, insulted or denigrated for motives of racial discrimination.
16. Law No.134/99 makes provision for administrative sanctions which may be applied both to public and to private individuals and legal entities. Discriminatory acts are punished by means of a fine, without prejudice to the offender's civil liability or the application of other appropriate penalties. Under Article 10 of Law No.134/99 and Article 4 of Legislative Implementing Decree No. 111/2000, persons found guilty of discriminatory acts may be liable to ancillary penalties in addition to a fine depending on the seriousness of the offence. These penalties include *inter alia* the publication of the decision, withdrawal of public authorisation to carry out a profession or activities which are governed by this type of authorisation, a ban on competing for a public procurement contract, or withdrawal of a licence. If the offences in question are also liable to criminal sanctions, the offender is only given a criminal sentence.
17. ECRI notes that anyone who is aware of a situation which may constitute an offence should either notify the general inspectorate of the relevant ministry directly³, or the High Commissioner for Immigration and Ethnic Minorities or the Commission on Equality and Racial Discrimination established by Law No. 134/99, which will refer the case to the relevant general inspectorate⁴. The latter will examine the case and then forward it to the Commission on Equality and Discrimination, along with a final report. The decision to impose a fine and ancillary penalties lies with the High Commissioner for Immigration and Ethnic Minorities, who is advised by the Commission on Equality and Racial Discrimination⁵. This decision is subject to an appeal before the ordinary court of the location where the offence was committed. ECRI notes that, under Law No.134/99, such decisions must be interpreted and applied in accordance with the relevant international instruments for the protection of human rights.
18. As the law is recent and the Commission responsible for its application has only just been set up, no penalties have as yet been imposed. ECRI notes, however, that a number of cases are in progress and that some of these are awaiting only the opinion of the Commission and the decision of the High Commissioner in order to be brought to a conclusion. These cases relate primarily to acts

³ For instance, the General Labour Inspectorate must be contacted in cases of infringements by employers.

⁴ See: The High Commissioner for Immigration and Ethnic Minorities, paragraphs 21 to 23.

⁵ See paragraph 23.

committed by private individuals such as refusing access to employment or refusing to rent accommodation, but they also include actions on the part of public authorities such as refusal to issue a certificate or restrictions on freedom of movement on one of the grounds stated in the law. ECRI also notes that the actions being investigated were reported by private individuals, human rights associations, or the High Commissioner for Immigration and Ethnic Minorities himself. ECRI welcomes the adoption of Law No.134/99 and hopes that it will be stringently applied by the relevant bodies as a means of effectively combating all acts of a discriminatory nature.

- ***Other provisions***

19. As regards civil law, ECRI notes that, among the civil law provisions upon which victims of discrimination may rely, Article 483 of the Civil Code provides for the possibility of invoking an offender's civil liability and claiming damages. However, this rule has not yet been applied in the context of a racial discrimination case. Under Article 70 of the Civil Code, individuals may institute legal proceedings to protect themselves against any unlawful interference with their physical or psychological personality. Furthermore, victims are entitled to ask the courts to put a stop to such interference or, where there is a threat of such interference, to prevent it. Article 70 does not appear to have been used in cases of unlawful interference of a racist nature. Accordingly, ECRI encourages the Portuguese authorities to draw the attention both of the public and legal experts to the possibility of using Civil Code Articles 483 and 70 in cases of racial discrimination.

E. Specialised bodies and other institutions

- ***The High Commissioner for Immigration and Ethnic Minorities***

20. The post of High Commissioner for Immigration and Ethnic Minorities was established under qualified legislation enacted in 1996. The High Commissioner reports to the presidency of the Council of Ministers and derives special authority from his or her direct link with the Prime Minister. He or she heads an office similar to that of a parliamentary undersecretary and enjoys wide-ranging powers including consultation and dialogue with the bodies representing immigrants or ethnic minorities in Portugal. The High Commissioner carries out studies on various themes relating to the integration of immigrants or ethnic minorities in co-operation with employers' associations and trade unions, social welfare institutions and other public or private bodies involved in this area. His or her role is to help improve the living conditions of Portugal's immigrants, to help eliminate discrimination and combat racism, xenophobia and exclusion. The High Commissioner also works with the government authorities responsible for the entry, residence and departure of foreign nationals in Portugal and proposes legislative measures to help immigrants and ethnic minorities.
21. The High Commissioner for Immigration and Ethnic Minorities co-ordinates the "interministerial working group for the Gypsy community" and, since 2000, the "interministerial working group on the integration of immigrants into Portuguese society". In framing social integration and anti-exclusion policies, the High Commissioner is assisted by an advisory board on immigration issues, set up in 1998 and comprising representatives of social welfare institutions, employers' associations, trade unions and immigrants' groups. ECRI welcomes the setting up of interministerial groups on immigration and the Roma/Gypsies. It also

welcomes the creation of the Advisory Board and encourages the Portuguese authorities to take due account of its opinions and to provide it with all the necessary resources to enable it to perform its tasks as efficiently as possible.

22. The High Commissioner for Immigration and Ethnic Minorities can also impose fines under Law No. 134/99 mentioned in the section on civil and administrative law provisions⁶. To this end, he or she consults the Commission on Equality and Racial Discrimination of which he or she is chair and which consists of two members of the Portuguese Parliament, two government representatives and two representatives respectively of immigrants' groups, anti-racist organisations, trade unions, employers' associations and human rights organisations, as well as three prominent figures appointed by the other members. This Commission also gathers information about discriminatory acts, proposes laws and regulations to prevent discrimination and encourages studies and surveys in this area. The Commission was appointed only recently and ECRI hopes that it will be given all the necessary resources to enable it to operate effectively.

- ***Provedor de Justiça***

23. The Provedor de Justiça, an independent ombudsman appointed by parliament, was mentioned in the first ECRI report. His or her main tasks are to defend and promote the rights, freedoms, safeguards and lawful interests of citizens, by ensuring, through informal means, that the authorities exercise their powers fairly and in compliance with the law. He or she can hear complaints from nationals or non-nationals against acts or omissions committed by the authorities. The Provedor de Justiça has no power to take legally-binding decisions but can make recommendations of a general or specific nature. He or she can also draw attention to deficiencies in a particular law, and propose that it be amended or repealed, or even that new legislation be enacted. The Provedor de Justiça can ask the Constitutional Court to declare certain legal provisions anti-constitutional or unlawful or to assess any unconstitutional omissions. In performing his or her tasks, he or she has the power to inspect, without prior notice, any government department, at any level, and to conduct hearings and investigations.
24. ECRI notes that the Provedor de Justiça has addressed a number of matters concerning racism against non-nationals or the Roma/Gypsy community, mainly by adopting recommendations. One example involved a police order which required taxi drivers to drive any African clients wishing to travel to certain deprived areas to the police station first for registration. Thanks to the Provedor de Justiça, the order was revoked. ECRI invites the Provedor de Justiça to continue to give a high priority to the fight against racism and intolerance and to keep a close eye on the situation in this respect.
25. As indicated by ECRI in its first report, it would be desirable for Portugal to set up an independent body specialising in the fight against racism and racial discrimination. ECRI encourages the authorities to be guided in this by its general policy recommendation No. 2 on specialised bodies to combat racism and intolerance at national level.

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See paragraph 17.

F. Reception and status of non-citizens

- *Refugees and Asylum seekers*

26. Under Article 33 of the Constitution, "The right of asylum is guaranteed to aliens and stateless persons who are persecuted, or under a serious threat of persecution, in consequence of their activities on behalf of democracy, social or national liberation, peace between peoples or liberty or human rights of individuals." Portugal receives relatively few applications for asylum compared with other European countries. Law No. 15/98 superseded Law No. 70/93 and established new legal rules on asylum.
27. The asylum application procedure is divided into two phases, an admissibility phase and an admission phase. In the former, the applicant is required to file an application within a period of eight days with the Aliens and Frontiers Service (SEF), which notifies the Portuguese Council for Refugees (CPR), an independent, non-governmental organisation responsible for helping asylum seekers⁷. During this phase, the asylum seekers are placed in a reception centre run by the CPR. The SEF is required to make a decision on admissibility exactly twenty days after the application is filed. If the application is rejected by the SEF, the applicant may request a review by the National Commissariat for Refugees. In the event of a negative decision, the applicant can appeal to the administrative court. However, the lodging of such an appeal does not have a suspensive effect, and this has a number of consequences which give rise to criticism⁸.
28. Upon successful completion of the admissibility phase, the procedure enters the admission phase. The applicant is issued with a temporary residence permit entitling him or her to work and receive medical assistance in the same way as Portuguese nationals. The application for asylum is then assessed by the National Commissariat for Refugees and commented on by the CPR, with the Ministry of the Interior having the final say. In the event of a negative decision, the applicant can file a suspensive appeal with the Administrative Supreme Court.
29. Where the application for asylum is filed at border posts, and in particular airports – as is most often the case –, Law No. 15/98 provides for a special fast-track procedure. Persons applying under this procedure are kept in the international zone of the airport or port concerned. A holding centre was recently set up in the international zone of Lisbon airport for persons in the admissibility phase.
30. As regards the admissibility phase of the asylum application procedure, ECRI's attention has been drawn to a number of problems. ECRI is concerned by reports stating that, contrary to legal provisions in force, applicants in the admissibility phase - who are not allowed to work - are not in practice guaranteed free legal aid and free medical treatment. It has been reported that some asylum seekers resort to working illegally while still in the admissibility phase, in order to support themselves. ECRI is also concerned to note that appeals to the administrative court do not have a suspensive effect, which

⁷ The CPR has taken over from the UNHCR which closed its Portuguese office in 1998.

⁸ See paragraph 31.

means that the appellant can be deported. Should this happen and should the application for asylum subsequently be accepted, the individual concerned might not be able, for example, to afford to return to Portugal. Also, even though it takes nine months on average, and in certain cases has taken two years, for the administrative court to decide an appeal, asylum seekers are in practice not entitled to appropriate social or medical assistance during this period and are not allowed to work. They are thus totally dependent on help from voluntary organisations and may be tempted to work illegally.

31. As regards the asylum application procedure at border posts, ECRI recommends that the Portuguese authorities should ensure that the need to process claims rapidly does not prevent applications from receiving in-depth and careful consideration.

- Immigration

32. ECRI deals with the question of immigration in section II of this report.

G. Education and training/awareness-raising

33. ECRI welcomes the introduction into school curricula of a course in civic education, alongside numerous other positive measures. It encourages the Portuguese authorities to give considerable emphasis in this course to teaching pupils about human rights and tolerance. ECRI believes that, even if the course content is decided at national level, it should nevertheless be fairly flexible in order to meet more specific local needs in the fight against intolerance.
34. In its general policy recommendation No. 1 on combating racism, xenophobia, antisemitism and intolerance, ECRI recommends that member states “ensure that school curricula, for example in the field of history teaching, are set up in such a way as to enhance the appreciation of cultural diversity”. ECRI urges the Portuguese authorities to ensure that education in tolerance and respect for diversity receives a high level of attention in this respect. ECRI further considers that there is a strong case for making pupils aware, through the school curriculum, of how Portugal has benefited from immigration and cultural diversity⁹.
35. ECRI is pleased to note that courses in human rights are being run for police officers, prison staff and judicial personnel. It encourages the authorities to make sure that these courses include aspects more specifically concerned with the problems of racism and discrimination.

H. Access to public services

36. ECRI notes with interest the decision by the Portuguese authorities to introduce “sociocultural mediators” in schools, mainly to facilitate dialogue between teachers, pupils and parents. ECRI notes that a number of these mediators, of Roma/Gypsy origin, have already been trained and assigned to a small number of schools. It is pleased to see that, under Law No. 105/2001, the scheme has been extended to social security and health care institutions, the Aliens and Frontiers Service and numerous public services at national and local level.

⁹ See: section II, issues of particular concern.

These sociocultural mediators will be responsible for promoting intercultural dialogue, as a means of developing mutual respect and understanding. They will have to devise appropriate strategies for this, and they will also be expected to mediate between public officials and users of public services, in order to facilitate communication between the two.

37. ECRI welcomes these initiatives and believes that they will be very helpful in improving relations between minority communities and the public authorities. It appears, however, that the mediators who have been trained to date do not have the jobs, status or pay that would allow them to devote themselves to the task full time, and to make a career of it. They are thus obliged to take on second jobs. ECRI strongly urges the Portuguese authorities to remedy this problem, which could seriously jeopardise the effectiveness of the scheme, to ensure that mediators' posts are created and actually filled in the schools and public services concerned and to create the necessary working conditions to enable mediators to devote themselves exclusively to the task at hand.

- Access to education

38. Article 74 of the Constitution states that "everyone has the right to education with the guarantee of the right to equal opportunities for access and success in schooling". The children of immigrants lawfully resident in Portugal have the same right of access to education as Portuguese nationals. ECRI has been informed of a large number of initiatives at all levels of the education system to facilitate the integration of young Roma/Gypsies at school. The Secretariat responsible for co-ordinating multicultural education programmes, attached to the Ministry of Education, works with the High Commissioner for Immigration and Ethnic Minorities on programmes and measures to promote social interaction, tolerance, dialogue and solidarity between the various ethnic and cultural groups. In particular, ECRI welcomes the idea of setting up a school network to enable a relatively small number of Roma/Gypsy children whose parents are nomadic or semi-nomadic to receive schooling all year round, firstly by designating a "parent school" which is responsible for sending them lessons, and secondly by issuing "school ID cards" enabling the children of travelling Roma/Gypsies to attend any school, since schools are obliged to admit them immediately at whatever level is indicated on their ID card. It appears, however, that this scheme is not widely known among the target communities, and ECRI strongly urges the Portuguese authorities to inform people about its existence and to monitor its implementation in all schools nationwide.
39. It appears that Roma/Gypsy children have a high failure and drop-out rate in Portugal. ECRI notes that the government is aware of this problem and has taken steps to encourage school attendance by children from these communities, by ensuring, for example, that Roma/Gypsy culture is reflected in school curricula and textbooks. ECRI urges the government to continue its efforts and to step up action in this area.

I. Employment

40. Law No. 20/98 on foreign workers aims to combat illegal labour and protect foreigners from unfair employment practices¹⁰. It provides for criminal penalties against employers who hire illegal workers and establishes a system for ensuring that foreign workers' employment contracts comply with the current legislation. Accordingly, any contract of employment concerning a foreign worker must be drawn up in writing and submitted to the Labour Inspectorate for prior approval. This arrangement, which does not apply when hiring Portuguese workers, is designed to protect foreign workers who are considered to be particularly vulnerable to any unfair clauses that may appear in the contract of employment. ECRI welcomes the commitment to combating unfair employment practices but urges the Portuguese authorities to make sure that the additional formalities arising from Law No. 20/98 do not have the effect of placing foreign workers at a disadvantage in relation to Portuguese workers. As mentioned above, Law No. 134/99 aimed at combating discrimination applies to the employment sphere. ECRI emphasises the need to ensure the effective implementation of this law and to inform workers about its existence.
41. Immigrants and Roma/Gypsies face serious difficulties in entering the labour market. A number of initiatives have been taken to combat the problem, including a new employment promotion scheme entitled "Portugal welcome" which offers a range of courses, including Portuguese language courses and education in workers' rights. Specific schemes have also been introduced for Roma/Gypsies. The Institute of Employment and Vocational Training, which is in charge of these schemes, has concluded a co-operation agreement with the High Commissioner for Immigration and Ethnic Minorities with a view to raising public awareness of the issue and making it easier for immigrants and members of ethnic minorities to enter the labour market. ECRI welcomes these initiatives and hopes that the Portuguese authorities will continue and step up their efforts in this area, while at the same time providing information about whatever measures are taken. ECRI also urges the authorities to closely monitor the implementation of these initiatives and to assess their outcome with a view to adopting the best possible equal opportunities policy.

J. Vulnerable groups

- ***Immigrants***
42. ECRI deals with issues relating to immigrants in Section II of this report.
- ***Roma/Gypsies***
43. ECRI deals with issues relating to Roma/Gypsies in Section II of this report.

¹⁰ See: *Immigration, in section II, issues of particular concern.*

K. Monitoring of the situation in the country

44. According to the Portuguese authorities, the collection of data on people's ethnic origin is strictly regulated in Portugal¹¹. ECRI is nevertheless concerned at the lack of reliable information about the situation of the various minority groups which live in the country. This lack of information makes it difficult to assess acts of racist violence or discrimination perpetrated against members of these communities. It also makes it difficult to gauge the effectiveness of the various measures taken to combat racism and intolerance.
45. ECRI urges the Portuguese authorities to consider how they could introduce a comprehensive, coherent system of data collection, in order to assess the situation of the various minority groups living in Portugal and gauge the scale of racism and discrimination. Such a system should comply with domestic law and European regulations and recommendations concerning data protection and privacy, as stated in ECRI general policy recommendation no. 1 on combating racism, xenophobia, antisemitism and intolerance. When collecting data, the Portuguese authorities should take particular care to respect the anonymity and dignity of the respondents and to obtain their full consent.

L. Conduct of law enforcement officials

46. There have been several reports of law enforcement officials using excessive force against detainees or other persons with whom they have come into conflict, a large proportion of them immigrants or Roma/Gypsies¹².
47. The Portuguese authorities are aware of these problems: steps have been taken to resolve them and there have been some improvements since the early 1990s. In case of allegations of police ill-treatment, an investigation is carried out by three parties: the police themselves, the public prosecutor's office and the General Inspectorate of Internal Administration. Some of these investigations have resulted in criminal convictions and disciplinary measures. ECRI notes that the general inspectors employed by the Ministry of the Interior have the power to carry out spot checks in police stations and hopes that full use will be made of this facility to prevent ill-treatment of immigrants and Roma/Gypsies. ECRI urges the Portuguese authorities to condemn any police misconduct involving immigrants or members of the Roma/Gypsy community and to make public the penalty imposed. The penalties imposed and the publicity surrounding them will be an effective means of countering any feelings of impunity, damaging to relations between the police and the communities in question. In this connection, ECRI urges the Portuguese authorities to consider taking steps to increase the number of immigrants and members of minority groups employed in the police force. ECRI welcomes the existence of the General Inspectorate of the Internal Administration, which is chaired by a magistrate, enjoys functional and technical autonomy and is governed by strict criteria of legality and objectivity.

¹¹ See paragraph 47.

¹² On this subject, see: section II, O. Roma/Gypsies.

SECTION II: ISSUES OF PARTICULAR CONCERN

In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Portugal, ECRI would like to draw attention to the issue of immigration and the situation of the Roma/Gypsies.

M. Immigration

- ***Regularisation procedure for immigrants with no legal status in Portugal***

48. On various occasions the Portuguese authorities have organised procedures for the extraordinary regularisation of aliens without legal status. The first two waves of regularisation took place in 1992-1993 and 1996. The most recent was carried out in implementation of Legislative Decree No. 4/2001, adopted on 10 January 2001, which entitles aliens without legal status, under certain conditions, to temporary residence permits. The stated purpose of this legislation was to ease residence requirements for aliens on Portuguese territory and counter the incidence of clandestine immigration. Since the law was passed, around 127,000 aliens without legal status have been granted temporary residence permits. The regularisation procedure is closely linked to the employment situation in Portugal. In order to obtain temporary residence, aliens are obliged to show that they have been offered a contract of employment. Such contracts are subject to the same rules as contracts for aliens under the terms of Law No. 20/98, which is referred to above¹³. Aliens receive a permit valid for twelve months and renewable five times, each time for a further year. The legislative decree expressly provides that, once the temporary residence permit has been renewed over a continuous period of five years beginning with issue of the first permit, the holder becomes automatically entitled to permanent residence.
49. This wide-ranging regularisation procedure has placed on a legal footing aliens without legal status, whose situation is especially insecure, chiefly because they have often been in clandestine employment. ECRI notes that being granted an employment contract entitles aliens to unemployment benefit if they have worked for the minimum statutory period. In theory they can also take advantage of vocational training and change employer at any time.
50. While ECRI welcomes the positive aspects of this procedure for extraordinary regularisation, it is concerned about the difficulties of implementing the legislation. According to reports, aliens with a temporary residence permit face many obstacles which do much to offset the benefits of the procedure. One of the most significant problems concerns the insecurity in which these persons find themselves, as a result of which they may accept working conditions that Portuguese nationals would refuse, since failing to obtain work or losing a job could cause the residence permit to be withdrawn. Numerous abuses have been reported, chief of which is the failure to make monthly salary payments. Employees hesitate to complain about such abuses because of the extremely serious consequences to which they may be exposed. In this connection, ECRI strongly urges the Portuguese authorities to promote awareness among both

¹³ See above, *Employment*.

employers and workers of statutory employee rights. Moreover, although aliens with temporary resident status enjoy the same right to health care as Portuguese workers according, *inter alia*, to Order No. 25 360/2001 of 16 November 2001, this right is not always effective since certain administration services refuse to recognise the validity of temporary residence permits. There have also been reports of failure to obtain access to unemployment benefits, university education and vocational training. Lastly, the situation of aliens with a temporary residence permit valid for one year remains insecure, largely because they face insuperable obstacles when applying for bank loans.

51. ECRI is particularly concerned about the excessive time often taken by the Aliens and Frontiers Service to renew temporary residence permits. It is reported that aliens frequently receive replies concerning a permit's renewal after the date by which an application for the following renewal should in theory have been registered. Impossible situations have arisen in which authorisation concerning family reunification has been closely followed by refusal to renew a residence permit.
52. ECRI strongly recommends that the Portuguese authorities closely monitor the implementation of Legislative Decree No. 4/2001 on the 2001 procedure for extraordinary regularisation so as to guarantee the effectiveness of the statutory protection provided for in this law and ensure that aliens whose status has been regularised are not left in a situation of insecurity - particularly as regards their relations with employers - which does not improve upon the situation they faced as immigrants with no legal status. ECRI also strongly urges the Portuguese authorities to ensure that the status awarded to aliens in such circumstances is recognised in practice by all relevant departments and that they duly receive the benefits to which they are entitled. ECRI's attention was drawn to some concerns that the situation of aliens whose temporary residence status is to be renewed over a period of five years might change in the future to their detriment as regards their authorisation to reside permanently on Portuguese territory. In this context, ECRI would expect that such a change will not occur.

- ***Relations with the Aliens and Frontiers Service (SEF)***

53. The role of the Aliens and Frontiers Service (SEF) is to handle the arrival of aliens on Portuguese territory, their residence and departure, the issue of their naturalisation and problems relating to family reunification. To this end it is responsible for issuing the necessary papers and ensuring that aliens conform to the relevant requirements. The Aliens and Frontiers Service has in particular authority to initiate extraordinary regularisation as provided for in Legislative Decree No. 4/2001¹⁴.
54. Since the 1980s, the foreign population in Portugal has increased sevenfold (from 50 000 persons to 350 000 persons). ECRI is aware of the abrupt and considerable increase in the workload of the SEF due to the successive regularisation drives. Nevertheless, ECRI is seriously concerned about the excessive amount of time taken by the SEF to reply to applications and issue documents. The fact that replies to applications for the renewal of temporary residence permits or family reunification may take a year or more causes

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See above, *Regularisation procedure for illegal immigrants*.

insuperable difficulties for applicants. In one example of a practice deemed to be detrimental, there are reports that applicants occasionally have to spend an entire day on SEF premises before being able to speak with a member of staff. The most frequent criticism of the SEF is that it has the greatest number of delays and the longest waiting time of all government departments. One explanation for these excessive delays is that the SEF appears not to have recruited sufficient additional staff to carry out its duties in connection with extraordinary regularisation. A further explanation could be found in the overly complex procedures introduced through aliens legislation.

55. According to some observers, some members of the service have assumed excessive, even discretionary, powers and have, for example revoked visas issued with due legality by Portuguese embassies abroad. There are also reports that the SEF does not always employ professional interpreters when questioning aliens, which can lead to inaccuracies in translation. ECRI is concerned that this may have harmful consequences.
56. By law, persons seeking naturalisation must provide evidence that they have sufficient resources for their needs. In this respect, there are reports that in the course of the naturalisation procedure, the SEF has required candidates to demonstrate an income several times higher than the legal minimum wage for Portuguese citizens. However, following an intervention by the Provedor de Justiça, which ECRI welcomes, it appears that this requirement has now been reduced to the level of the minimum wage and has been laid down in a ministerial order¹⁵.
57. ECRI strongly recommends that the Portuguese authorities do everything in their power to improve the services provided by the SEF. Among other things, the SEF should be given all the human and financial resources which it needs to carry out its duties properly. In this connection, training SEF staff in respect for human rights and specific issues relating to aliens could be one way of improving relations between applicants and the service

- ***Immigrants from Portuguese-speaking countries in Africa and the countries of Central and Eastern Europe***

58. For a long time, most immigrants coming to Portugal were from Portuguese-speaking African countries and Brazil. For some years now, they have been arriving largely from countries in Central and Eastern Europe, such as Ukraine, Moldova and the Czech Republic. The recent pattern of immigration means a fresh challenge for Portugal, given that the new arrivals do not speak Portuguese. ECRI is concerned by reports that immigrants from Central and Eastern Europe are generally given a warmer welcome in society than their counterparts from African countries. Although one reason for this state of affairs is the fact that Central and Eastern European immigrants usually have better vocational qualifications, ECRI is worried that other factors such as physical appearance (skin colour) and religion also play a role, since they supposedly make it easier for them to integrate into society as a whole. Immigrants from Central and Eastern Europe are more evenly distributed around Portugal than those from Portuguese-speaking countries in Africa, who tend to be concentrated in the Lisbon area and are therefore more noticeable.

¹⁵

Ministerial Order of 14 February 2002

There are reports that African immigrants are sometimes overlooked and placed at a disadvantage within society, in comparison with those from Central and Eastern Europe. Such a situation may provoke friction between different immigrant communities, although there are also examples of mutual support.

59. ECRI urges the Portuguese authorities to take action against “two-speed” immigration, which could cause some immigrants to feel excluded. To this end, training and cultural activities could be organised jointly for all immigrant communities. ECRI also calls on the Portuguese authorities to ensure that no immigrant community is disadvantaged in comparison with any other. In more general terms, it recommends that the authorities raise public awareness in order to combat stereotyping and prejudice, whichever immigrant community they affect. ECRI considers that increasing emphasis on the notion of Portugal as a multicultural society could improve all immigrants’ chances of enjoying genuinely equal opportunities in society, whatever their origins.

N. Roma/Gypsies

60. Portugal is home to between 50,000 and 60,000 Roma/Gypsies, who are scattered all over the country. This community has lived in Portugal since at least the 15th century and is considered - and considers itself - to be an ethnic minority. These days the vast majority of Roma/Gypsies are sedentary, and the nomadic population is constantly declining. Some Roma/Gypsies are semi-nomadic and travel predominantly during the summer months.
61. ECRI is concerned to learn that there is prejudice against the Roma/Gypsy community, especially on the part of society and certain local and central authorities. The weight of this prejudice frequently leads to discrimination in everyday life. For example, there are reports of discrimination against Roma/Gypsies in access to housing, employment and social services¹⁶. ECRI recommends that the Portuguese authorities take whatever action is necessary to combat this form of discrimination and hopes that full use will be made to this end of Law No. 134/99, referred to above¹⁷.
62. Roma/Gypsies are particularly vulnerable when they live in shanty ghettos. ECRI is therefore pleased to note that Portugal has resolved to eradicate shanty neighbourhoods and will shortly be rehousing all families living in such places. It urges the Portuguese authorities to do everything in their power to provide Roma/Gypsy families, without discrimination, with decent housing, for example under the Rehousing Programme (PER).
63. ECRI is concerned by reports of a number of racist acts. Although some measures have been taken, the Portuguese authorities do not always appear to have taken such acts as seriously as they ought. For example, the local authorities in a certain municipality issued a statement to the effect that “undesirables” must be excluded from the local community and that property must therefore not be rented or sold to members of ethnic or nomadic groups. The municipality also offered an advisory service to provide help in choosing tenants or house buyers. Following the intervention, among others, of Roma/Gypsy associations, the *Provedor de Justiça* and the High Commissioner

¹⁶ See above, paragraphs 38 and 43.

¹⁷ See above, Civil and administrative law provisions.

for Immigration and Ethnic Minorities, this statement was replaced by one explaining that the municipality had not intended to discredit ethnic and nomadic minorities and that prospective tenants or house buyers belonging to these minorities must not be subject to discrimination. ECRI recommends in general terms that steps be taken to ensure that local authority decisions do not result in discrimination. To this end it calls on the Portuguese government to structure institutions in such a way as to encourage active involvement and the participation of Roma/Gypsy communities in policy-making processes.

64. Relations between the Roma/Gypsy minority and law enforcement officials too have been described as problematic and tense, with Roma/Gypsies being subjected to frequent spot checks, humiliating treatment and even ill-treatment at the hands of the police, chiefly in local police stations. ECRI is particularly concerned by allegations that police officers responsible for such acts have gone unpunished. It very strongly urges the Portuguese authorities to take all necessary measures to ensure that investigations into acts of ill-treatment committed against members of the Roma/Gypsy community are duly carried out and that those responsible are identified and punished. ECRI also calls on the Portuguese authorities to raise awareness among law enforcement officials, in particular by means of training, of the problems of violence towards Roma/Gypsies.
65. ECRI is fully aware of the many measures taken by the Portuguese authorities to combat prejudice and encourage Roma/Gypsy integration into employment and education in particular. It welcomes these efforts and recommends that they be pursued and consolidated in order to eliminate all the prejudice, discrimination and social exclusion currently experienced by Roma/Gypsies. It also urges the authorities to closely monitor the implementation of measures adopted in this field. In this connection, it draws attention to its general policy recommendation No. 3 on combating racism and intolerance against Roma/Gypsies.

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

APPENDIX

ECRI wishes to point out that the analysis contained in its second report on Portugal, is dated 20 March 2002, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, a national liaison officer was nominated by the authorities of Portugal to engage in a process of confidential dialogue with ECRI on its draft text on Portugal and a number of her comments were taken into account by ECRI, and integrated into the report.

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

OBSERVATIONS PROVIDED BY THE AUTHORITIES OF PORTUGAL CONCERNING ECRI'S REPORT ON PORTUGAL

"SEF's ACTIVITY

Paragraph 27 - draft of an alternative wording

Within the asylum procedure one has to distinguish the decision on the admissibility of the application and the decision whether to grant or refuse the refugee status. "In the former the applicant is required to file an application within a period of eight days with the Aliens and Frontiers Service (SEF), which notifies the Portuguese Council for Refugees (CPR) an independent, non governmental organisation responsible for helping asylum seekers. During this phase, the asylum seekers are placed in a reception centre run by the CPR. The SEF is required to make a decision on admissibility exactly twenty days after the application is filed. If the application is rejected by the SEF, the applicant may request a review by the National Commissariat for Refugees. In the event of a negative decision, the applicant can appeal to the administrative court."

The appeal against the decision to refuse the refugee status has the effect of a stay of execution. The appeal against the decision of the National Commissioner for Refugees, on the contrary, does not have that effect. The decision remains binding on the applicant. The aim of the admissibility procedure is to verify if the application is manifestly unfounded or not.

The aim is to avoid false asylum claims and the fraudulent resort to a noble instrument.

Paragraph 30 - draft of an alternative wording

" ...It has been reported some asylum...in order to support themselves." During the admission stage, the applicant has no access to the labour market. It is worth noting, however, that the admissibility procedure lasts maximum 2 to 5 weeks and during this period the National Commissioner for Refugees, which is financed by the Portuguese State, takes care of the applicant.

Once the application is accepted, the applicant is issued with a temporary residence permit. This temporary residence permit entitles him to enter the labour market or, if he does not find a job or is having grave financial difficulties, to receive support from the social security.

The applicants receive legal aid given by the Portuguese Council for Refugees and they have access to the national health system.

Paragraph 31 - Comments on ECRI's recommendations

As far as the asylum claims made at border points are concerned, they are handled speedily without questioning the applicants' rights. The applicants are heard and the evidences are assessed. In case of doubt the decision is in favour of the applicant, in other words, the application is admitted.

Paragraph 50 - draft of an alternative wording

The issuance of leaves to stay was an expeditious mechanism for giving illegal workers an opportunity to regularize their position by obtaining the necessary leave to stay. The number referred by ECRI - more than 150.000 immigrants have regularized their position with resort to this instrument - expresses the success of tables initiative.

The security problem regarding the holders of a leave to stay is the same as the one concerning the holders a work visa. And obviously it would be senseless to create a system that would be more favourable to those would had entered illegally than to the legal immigrants, holders of the adequate work visa.

There are, it is truth, employers putting their workers under pressure. Some of these employers refuse to make a contract with them. However, alternatives solutions, such as the possibility of proving the labour relations with resort to witnesses or the possibility of trade unions and immigrants' associations intervening in this process, are provided for in the regulations concerning the law relating to aliens.

Paragraph 52 - draft of an alternative wording

ECRI is particularly concerned about the renewal of temporary residence permits. But Serviço do Estrangeiros e Fronteiras (SEF) explained that the time the renewal of "temporary residence permits" is taking -a fact that concerns SEF too- is due to the huge increase in the applications for temporary residence permits, that have to be examined and eventually granted, as a result of the growth of the immigrant population. Measures have been taken to overcome this situation and recover lost time. So, at present, this problem is facing only the Direcção Regional de Lisboa e Vale do Tejo e Alentejo (one of SEF's regional offices).

Paragraph 56 - Comments on ECRI's recommendations

A person who holds a visa is not entitled to enter national territory. The visa only entitles him to go to a border control point and request leave to enter the country. This possibility derives from the common handbook for the control of external borders, thus this is not a practise exclusive to Portugal. All EU State Members resort to it. The visa is cancelled at the border control points when it was obtained by false means or when its holder is reported for purposes of non admission to the Schengen area.

As regards the use of interpreters during the interviews for which the immigrants are called for, SEF has a group of interpreters to whom it pays a fee. They are nationals of the main countries of origin of the immigrant population and are skilled at speaking the languages of those countries. Nevertheless, the great majority of the immigrants living in Portugal come from Portuguese speaking countries

There are no cases of immigrants being deprived of their rights for linguistic reasons.

Paragraph 57 - Comments on ECRI's recommendations

Regarding the fact that the citizens who apply for naturalization have to produce evidence of their means of subsistence, as explained in the last paragraph of point 57, at present the Portuguese authorities do not require the foreign nationals to present more means than those earned by the national citizens, be it salaries or pensions.

Paragraph 59 - Comments on ECRI's recommendations

As regards the concerns expressed by ECRI in its report, namely the concerns relating to discrimination due among other factors to the physical appearance, Portugal does not have indicators of the existence of such cases. One of the reasons is that Portuguese and African nationals have a long history of mixed community life.

We may in fact consider that the workers coming from Eastern countries are integrating well. They are all over the country and not only in the urban zones (mainly in the Lisbon region) as, generally speaking, it happens to be the case of the African communities.

There is another very important factor, namely the fact that the people living outside towns and cities feel more sympathetic towards the immigrant population. One must not forget that in the past many of the Portuguese who immigrated were from Portugal's countryside.”

