

# **Analytical Report on Legislation**

## **RAXEN National Focal Point PORTUGAL**

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para a Imigração e Minorias Étnicas, Lisboa

BY

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# 1. Executive summary

The new challenges faced by Portugal as an immigrant-receiving country demand that measures are taken aimed at integrating immigrants and ethnic minorities in Portuguese society, so as to avoid situations in which racism- and xenophobia-related instances of discrimination occur.

As far as the establishment of an immigration policy is concerned, since 1995 the government has been acting in such a way as to ensure the integration of legal immigrants and ethnic minorities, according to constitutional principles and bearing in mind, in particular, the special ties binding us to peoples from the Community of Portuguese-speaking countries (CPLP) and Portugal's obligations as a member of the European Union.

With a view to ensuring a consistent and coherent action, ACIME (High-Commissioner on Immigration and Ethnic Minorities) has been created. ACIME promotes consultation and dialogue with organisations representing immigrants or ethnic minorities in Portugal, as well as research on immigrants and ethnic minorities' integration, together with the social partners, institutions of social solidarity and other public or private entities with some say in this matter. Additionally, under the Organic Law of the 14th Constitutional Government, the Minister for Equality was created, responsible for, among others, matters related to immigration and ethnic minorities, thus ensuring a ministerial coordination and continuous accompaniment of such topics.

On the other hand, bearing in mind the scope and integrated character of a national immigration policy and the need to establish efficient mechanisms for its coordination and accompaniment at an inter-ministerial level, through Resolution taken in Cabinet No. 14/2001, February 14, the government created the Inter-Ministerial Commission for the Accompaniment of the Immigration Policy, in order to ensure the coordination, accompaniment and assessment of the immigration policy at a global level.

Portuguese legislation includes a vast number of laws aimed at preventing, forbidding and punishing discrimination acts of all kinds and nature.

Among the Portuguese legal instruments to fight against racism and racial or ethnic discrimination are penal, civil and administrative norms, as well as international and EU norms that have been integrated in the national juridical system or are applied directly. Of the utmost importance is Law 134/99, August 28, which forbids discrimination in the exercise of rights caused by race, colour, nationality or ethnic origin, besides deriving from the translation given by the Constitution of the equality principle<sup>1</sup>. This law

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<sup>1</sup> Art. 15 of the Constitution foresees that "foreigners and stateless people that reside or are in national ground held the same rights and are subject to the same duties as Portuguese citizens". Albeit it's not uncontentious in terms of the legal doctrine, the majority doctrine has understood that this legal instrument also covers foreigners in irregular situation, since foresees that this constitutional norm both applies to all those that reside in Portugal (meaning all legal foreigners) and those that are in national ground (meaning illegal foreigners).

establishes the existence of a Commission for Equality and against Racial Discrimination, which came into force in 2001 and whose composition and activities are also described in this report. This Commission has regularly received complaints of racial and ethnic discrimination, though in part due to its novelty it is hard to detect any trend in what concerns a depiction of racial and ethnic discrimination. The number as well as the type of complaints that have been brought to the commission since its enactment will be thoroughly analysed in chapter 7.

The other main source of this type of complaints are Penal Code provisions. A wide set of provisions are laid down here covering a large ground. For instance, Art. 240 defines the crime of racial or religious discrimination; Art. 132, no. 2, identifies any murder instigated by racial, religious or political hatred as aggravated homicide, whilst considering this kind of motivation to involve particular severity and viciousness. This kind of crime carries with it a sanction ranging from 12 to 25 years in prison; Art. 146 identifies any offence determined by racial, religious or political hatred as a serious offence against physical integrity; Art. 239 covers the crime of genocide. These provisions will be thoroughly analysed throughout this report. We can say that Penal Code provisions are well warrant regarding racism and xenophobia. Yet, it is impossible to distinguish between crimes committed on racial grounds from those with religious grounds are apparent. Additionally, the numbers collected by police statistics are usually under statistic secrecy (meaning that are less than 3) hindering the possibility of identifying a trend.

In almost all major legal documents, be they of a penal, civil or administrative scope, there is a norm against discrimination in general. The problem, however, lies in the enforcement of those norms, which are often criticised due to the difficulty in proving discriminatory acts thus preventing successful completion of legal proceedings derived from discriminatory practices.

Despite the vast production of legislation in the last years, which represented a huge effort on behalf of the rights and guarantees of immigrants and ethnic minorities, the problem of discrimination does not seem to have abated. In order for that to happen there seems to be a need to promote associations and to develop more and better projects both through direct support to these communities, by supporting and stimulating their integration, and through research on these topics, either through courses for Portuguese people and foreigners, or even through national sensitising and educational campaigns on phenomena of immigration and ethnic minorities, making their problems known and showing the enrichment that new cultures can represent to us.

In this report, apart from explaining the legislation existing in this area, as well as its applicability, programs, projects and adopted measures are also presented together with state and private organisations, associations, specialised organs and interest groups operating in Portugal.

Finally conclusions drawn from the report itself are presented, as well as possible recommendations.

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### 3. Acronyms used

ACED – Association against Exclusion and pro Development  
ACIME – High commissariat for Immigration and Ethnic Minorities  
AI – Amnesty International  
ANEFA – National Agency for Adult Education and Training  
Art. – Article  
CE – European Community  
CECRI (ECRI) – European Commission against Racism and Intolerance  
CGTP-IN – General Confederation of Portuguese Workers-Intersindical  
CNRSI – National Commission for the National Benefit for Integration  
COCAI – Consulting Council for Immigration Issues  
CPLP – Community of Portuguese-speaking Countries  
CRP – Constitution of the Portuguese Republic  
DL – Decree-Law  
DUDH – Universal Declaration of Human Rights  
IDICR – Institute for the Development and Inspection of Working Conditions  
IEFP – Institute for Employment and Professional Training  
IGAE – General Inspection of Economic Activities  
IGAI – General Inspection of Internal Administration  
IGAT – General Inspection of Territorial Administration  
IGOPTC – General Inspection of Public Construction, Transport and Communications  
IGSJ – General Inspection of Justice Services  
IGT – General Labour Inspection  
IMOPPI – Institute for the Markets of Public and Private Construction and Buildings  
JOCE – European Union Official Gazette  
L – Law  
MAN – National Action Movement  
MP – Prosecuting Counsel  
OA – Bar Association  
OIT – International Work Organisation  
ONG – Non-Governmental Organisation  
PALOP's – Portuguese-Speaking Countries  
PR – President of the Republic  
RAM – Madeira Autonomous Region  
RAR – Anti-Racist Network  
RCM – A Cabinet's Recommendation  
SCAI – Coordinating Secretariat of the Immigrants' Associations  
SEF – Foreigners and Borders Service  
SOLIM – Immigrant Solidarity  
TUE – European Union Treaty  
UE – European Union  
UGR – Workers' General Union  
URSS – Union of Socialist Soviet Republics

## 4. Glossary/definition of terms and concepts used

**Define the groups in focus: migrants and minorities, first, second, third generation migrants, national and other minorities, asylum seekers, refugees, etc in accordance with official documents, statistics, legislative acts.**

### IMMIGRANTS:

Although there is no legal definition of the concept of immigrant, it is usually associated with non nationals residing on national territory. In Portugal, immigration is a relatively recent phenomenon and it is linked with immigrant workers.

Law no. 4/2001, dated January 10<sup>th</sup>, which altered Law no. 244/98, dated August 8<sup>th</sup>, regulates the conditions of entry, permanence, exit and deportation of foreigners from national territory. It defines which types of visa grant foreigners the right to become legal residents in Portugal, among which should be highlighted Permanence Permits, Residence Permits and Work Visas.

This change brought about a new legal disposition, the Permanence Permit (art. 55), granted to foreign workers in possession of a work contract approved by the *Inspecção Geral de Trabalho* [General Labour Inspection]. This permit is equivalent to a Work Visa in all respects, except for the fact that it can be claimed by individuals settled on national territory.

### MINORITIES:

The concept of ethnic minorities was used for the first time in the XII Constitutional Government Programme (1996/2000). However, this concept is not defined in the Portuguese legal code, since the need to lend it a determinate legal meaning has not so far been felt. Hence, its sociological definition was tacitly adopted.

According to Prof. Beatriz Rocha Trindade, in Portugal only the Romani community can be considered a national ethnic minority, inasmuch as “*the concept of ethnic minorities is necessarily tied to a situation extending from generation to generation – i.e., it is necessarily tied to the preservation of codes regarding a specific culture. Such is the case with the Roma community, which constitute a well-defined ethnic minority, although they are seldom viewed as such*”<sup>2</sup>

### 1<sup>ST</sup>, 2<sup>ND</sup> AND 3<sup>RD</sup> GENERATION IMMIGRANTS:

In Portugal, the first generation of immigrants is for the most part associated with individuals originating from PALOPS (countries with Portuguese as its official language), who, in the wake of their countries’ independence, chose Portugal as their destination. The second and third generation immigrants are their descendants, many of

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<sup>2</sup> Maria Beatriz Rocha Trindade, “Minorias, Polissémia do Conceito e Diversidade de Manifestação”, in *Emigração-Imigração em Portugal. Actas do Colóquio Internacional sobre Emigração e Imigração em Portugal nos Séculos XIX e XX* [Emigration-Immigration in Portugal. Minutes of the International Meeting on Emigration and Immigration in Portugal in the 19th and 20th centuries], Lisbon, Ed. Fragmentos, 1993, p.428.

which are Portuguese nationals as a result of their progenitors having benefited from the provision implemented by Decree-Law no. 308-A/75, dated June 24<sup>th</sup>, which regulated the mechanisms for the preservation and acquisition of Portuguese nationality, and of their inclusion in the disposition that grants nationality by birth to children of foreigners born on national territory, as laid down in Law no.37/81, dated August 12<sup>th</sup>.

NATIONAL:

According to art. 4 of the Constitution of the Portuguese Republic (CPR, available at [http://www.portugal.gov.pt/en/Political+System/Constitution/constitution\\_p02.htm](http://www.portugal.gov.pt/en/Political+System/Constitution/constitution_p02.htm)), are Portuguese nationals all individuals “*who are regarded as such by law or under international convention*”. However, Portuguese legislation does not distinctly define the concept of ‘national’. Be that as it may, the Nationality Law – Law no. 37/81, dated October 3<sup>rd</sup> <sup>3</sup>, regulated by Decree-Law no. 322/82, dated August 12<sup>th</sup> <sup>4</sup> – states unmistakably who is to be regarded a Portuguese citizen, that is, who is a ‘national’. Art. 1 of the above mentioned legal diploma, under the heading “Nationality by Birth”, specifies that:

“1. *The following are deemed Portuguese by birth:*

- infants born to a Portuguese father or a Portuguese mother or to parents under Portuguese administration, or born abroad if the Portuguese progenitor is there in service under the Portuguese Government;
- infants born abroad to Portuguese father or Portuguese mother if they state their wish to acquire Portuguese nationality or if they register their birth in the Portuguese Civil Registry;
- infants born on Portuguese territory, children of foreign residents holding a valid residence permit for as long as a minimum of 6 or 10 years, depending on their being, respectively, national citizens of countries with Portuguese as its official language or of other countries, and in so far as they are not in Portugal in service under their respective Government, if they state their wish to acquire Portuguese nationality;
- infants born in Portuguese territory when they do not have any other nationality.
- New-born infants found in Portuguese territory or in territory under Portuguese administration are presumed to have been born in those territories, unless there is proof otherwise.”

However, are also deemed nationals those that have acquired Portuguese nationality by marriage (art.3), adoption (art. 5) or naturalisation (art. 6), provided that they comply with the necessary legal requirements. There are many citizens with Portuguese nationality – therefore nationals – who acquired it when the Portuguese former colonies gained their independence. Decree-Law no. 308A/75, dated June 24<sup>th</sup>, regulated the mechanisms of continuance and acquisition of Portuguese nationality. These were used by a large

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<sup>3</sup> Altered by Law no. 24/94, dated August 19<sup>th</sup>, which rewrote articles 1, 3, 6 and 9, and repealed paragraph 2 of art. 7 and arts. 13 and 15.

<sup>4</sup> Revised in *Diário da República*, I, dated 21/09/1982, and altered by Decree-Law no. 117/93, dated April 13<sup>th</sup>, which rewrote arts. 15, 18 and 20, as well as by Decree-Law no. 253/94, dated October 20<sup>th</sup>, which rewrote paragraphs 2 and 3 of art. 19 and art. 20, and by Decree-Law no. 37/97, dated January 31<sup>st</sup>, which rewrote arts. 6, 7, 8, 29, 32, 33, 47 and 56.

number migrants originating from the former colonies and which had no direct family connections with Portuguese nationals.

#### EXILES/ASYLUM SEEKERS:

Law no. 15/98, dated March 26th – Asylum Law [available at <http://www.gddc.pt/legislacao-lingua-estrangeira/english/lei-asilo.html>] – stipulates three distinct situations whereby individuals are entitled to protection: the refugee status (art. 1 to 6), residence permit for humanitarian reasons (art.8) and temporary protection (art. 9).

In Portugal, the number of asylum applications is extremely low, especially when compared with the number of economic immigrants or with the number of asylum applications in other European countries.

The Asylum Law was subject to two major amendments. The first took place in 1993, as a response to the increasing number of applicants from Eastern Europe, leading to a stricter legal code in this matter. The second, in the opposite sense, took place in 1998, introducing a form of “temporary protection” and allowing the asylum seeker to exercise a remunerative activity.

The Portuguese legal framework does not define the concept of exile or asylum seeker. However, this concept can be discerned through the interpretation of article 1, based on art. 1 no.2 of the Geneva Convention.

Art. 1 of the Asylum Law bears the heading “Guarantee of the Right to Asylum”, and reads as follows:

- “The right to asylum shall be guaranteed to foreigners or stateless persons fleeing persecution or serious threat as a result of activity they engaged in within their State of origin or habitual residence in favour of democracy, social and national liberation, peace among people, human freedom and human rights.
- Shall also be entitled to asylum any foreigners or stateless persons who, having a well-founded fear of persecution” by reasons of their race, religious belief, nationality, political opinions or membership of a certain social group, cannot or, as a result of that fear, do not wish to return to their State of origin or their habitual residence.
- Asylum shall only be granted to the foreigner with more than one nationality when the reasons stated in the above paragraphs apply to all the States of which he/she is a national.”

#### REFUGEES:

In Portugal, there is no legal distinction between the concepts of exile (asylum seeker) and refugee. Concession of the right to asylum, under art. 1 of Law no. 15/98, dated March 26<sup>th</sup>, endows the beneficiary with the status of refugee, thereby making him/her subject to the provisions of the Asylum Law, without prejudice of the provisions of any International treaties or conventions of which Portugal is a party or adheres to (art. 2).

Noting that, under the terms of article 6 – Refugee Status – refugees shall enjoy the same rights and shall be bound to the same duties as any foreigners living in Portugal, in so far

as they are not contrary to the provisions of the Asylum Law, of the 1951 Geneva Convention and of the 1967 New York Protocol and shall be obliged, namely, to comply with Law and regulations, as well as with any measures taken to maintain public order (no. 1).

The Refugee shall be entitled, under the terms of the 1951 Geneva Convention, to be given an identity card that attests to his or her status, to be issued by the Minister of Internal Affairs.

#### DEFINE DISCRIMINATION AND ANTI-DISCRIMINATION IN LEGISLATION IN USE IN THIS REPORT

Portugal ratified the International Convention on the Elimination of All Forms of Racial Discrimination<sup>5</sup>[[http://www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm)]. In the Convention preamble, one reads, ensuing the general considerations, that all the Party States have *“resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination; (...)”*.

Art. 1 of the Convention defines the concept of “racial discrimination”, stating that the term *“shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”*

The Convention stipulates that all states party to it undertake to pursue “by all appropriate means and without delay” a policy set on “eliminating racial discrimination in all its forms” and, in arts. 2, 3 and 4 it enumerates a range of obligations to which the states are bound.

The Constitution of the Portuguese Republic, in art. 13, also establishes the principle of equality, stating that “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” (no.2). Furthermore, it integrates, in art. 26, the right to legal protection against any form of discrimination.

More recently, Law no. 134/99, dated August 28<sup>th</sup><sup>6</sup>, came in force, grounded on the Constitutional Principle of Equality and aiming at the prevention and prohibition of racial discrimination in all its forms, as well as the penalization of the engagement in any acts that constitute a breach to the exercise of any economic, social or cultural rights by reason of race, colour, nationality or ethnic origin. By way of example, it presents a host of discriminatory practices that constitute a misdemeanor punishable by fines and other appropriate penalties.

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<sup>5</sup> Approved by Portugal, for the purpose of accession, through Law no. 7/82, dated April 29<sup>th</sup>.

<sup>6</sup> Approved by unanimity on August 28<sup>th</sup> 1999, regulated by Decree-Law no. 111/2000, dated 4<sup>th</sup> July.

Art. 3 of the same law defines “racial discrimination” as follows: *“By racial discrimination we understand any distinction, exclusion, restriction or preference on grounds of race, colour, ancestry, national or ethnic origin, with the intention or the result of annulling or restricting the equal recognition, enjoyment or exercise of rights, freedoms and guarantess or economic, social and cultural rights”*

Besides defining the concept of racial discrimination, this document expands on the concept of discriminatory practice, and puts forward, in a non categorical form, a set of practices deemed discriminatory (art. 4), binding all public and private entities to the diploma (art. 2). It also implements a sanction regime (arts. 9 to 15) for certain discriminatory behaviours in the most sensitive areas, such as employment, access to goods and services, access and exercise of an economic activity, access to housing, to public places, health and education, among others. And it foresees the Creation of the Commission for Equality and Against Racial Discrimination, aimed at overseeing the law’s application.

## **5. Introduction (aim, motivation and organisation of the study on legislation, theoretical considerations on anti-discrimination)**

In Portugal, the phenomenon of immigration is relatively new. Notwithstanding, ways of dealing adequately with the issue have been sought. The Activities Report by ACIME (High-Commissioner on Immigration and Ethnic Minorities), bearing the title “Integração de Imigrantes e Minorias Étnicas” [Integration of Immigrants and Ethnic Minorities] – which covers the period between 1996 and 1999 – states that the Government acknowledges the new challenges facing Portugal today, as a country of immigration, and adds that the later call for measures aiming at the integration of immigrants and ethnic minorities in Portuguese society, so as to avoid situations of discrimination related with racism and xenophobia.

The purpose of this study is to transmit to the European Observatory on Racism and Xenophobia the most relevant practical and legal measures adopted by the Portuguese State so as to fight racial discrimination and promote the integration of immigrants, ethnic minorities and refugees in Portuguese society.

This report embraces three core purposes:

- To pinpoint the mechanisms of integration of immigrants, ethnic minorities and refugees, i.e., the measures and actions set on meeting that target.
- To analyse the legal framework for the measures in the fight against racism, with particular emphasis on legislative changes, their effects and practical consequences.
- To put forward recommendations, based on the main gaps in the legal system, with the purpose of improving the efficiency of the judicial and juridical proceedings.

It was in view of these purposes that we overviewed and analysed legislation, measures, activities, publications and the remaining information that deemed relevant to this field.

Furthermore, we also took into account all the studies, statistics and activities undertaken by institutions and public bodies with competencies in this field, such as the ACIME, the Alien and Border Service, the Portuguese Council for Refugees, The Cabinet for Asylum and Refugees, etc.

Since ONGs, Associations, Universities and their Research Units have a very important role in the Portuguese civil society in terms of the public debate over these issues, as well as on account of their relevant and multifarious actions, their activities were also taken into account.

As to the legal framework, the study of norms concerning the protection against discrimination on grounds of race or ethnic origin was carried out via a critical analysis of the legislation and the changes it has brought about during the period at issue here. This work is further anchored in an examination of the complaints and lawsuits related to

racial discrimination filed with the judicial bodies or with the Commission for Equality and against Racial Discrimination.

Our conclusions and recommendations stem from our understanding that the fight against racial discrimination far surpasses a mere, more or less consistent, set of legal norms and repressive rules. It also encompasses actions and policies that evince the political commitment of state authorities – and other agents – to create a society that guarantees the dignity of all citizens, irrespective of their race, colour, nationality or ethnic origin.

The State, and the government in particular, in co-operation with entities that represent the communities most vulnerable to racist acts, is responsible for creating the conditions that will guarantee equal access to an effective exercise of rights by immigrants and their families, ethnic minorities and refugees. The support lent to these citizens, namely with regard to access to healthcare, education, professional training and social security, is the lens through which one can assess the success or failure of the measures adopted.

In Portugal, discriminatory acts based on racist convictions and attitudes are punishable through a fairly wide set of legal norms expressed in penal, civil and administrative laws. These discriminatory acts may manifest themselves in a number of ways, they may be undertaken either directly or indirectly and result from a range of diverse factors. However, the existent legal norms stipulate sanctions applicable to the different forms and degrees of discrimination.

In this sense, not only have there been introduced new legal instruments, but those that already existed have been improved so as to become more effective in meeting their targets. It is worth noting that the fight against discrimination is already manifest in the Constitution of the Portuguese Republic (CPR), which, grounded on the principle of human dignity, establishes a range of fundamental rights, liberties and guarantees that must be applied in conformity with the Principle of Equality, according to which all citizens are equal before the law (art. 13 C.P.R.<sup>7</sup>).

Law no. 134/99, dated August 28<sup>th</sup>, based on the Constitutional Principle of Equality, forbids discrimination in the exercise of rights on grounds of race, colour, nationality or ethnic origin. All the legal dispositions related to this issue will be analysed in the course of this report.

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<sup>7</sup> Art. 13 of the Constitution of the Portuguese Republic: “1. All citizens have the same social rank and are equal before the law.

2. 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.

## **6. Background — Immigration and Integration policies**

### **6.1. ACCOUNT OF IMMIGRANT POPULATIONS AND ETHNIC MINORITIES**

In line with article 13 of the CRP, which establishes the principle of equality, paragraph 3 of article 35 determines that computerised storage cannot be used for information concerning a person's ideological or political convictions, party or trade union affiliations, religious beliefs, private life or ethnic origin, the same applying to the case of statistical data that is based on ethnic and racial factors. As a result, it is not possible to obtain dependable demographic data regarding the weight of ethnic groups in the composition of the population.

The resident population in Portugal, according to the 2001 Census, was 10,356,117, chiefly concentrated in Northern and Central regions and in Greater Lisbon. The variation between the 1991 Census and the 2001 Census is globally positive, staying at 6.2%. The areas determining a negative growth are the Autonomous Region of Madeira (RAM) and the region of Alentejo.

Regarding the population currently staying in Portugal, the 2001 Census accounts for 10,148,259 persons, mainly concentrated in Northern and Central regions and around Greater Lisbon as well.. The variation between the 1991 and the 2001 Censuses is once again positive, but the observable growth trend is less significant, in the order of 4.1 percentage points. The RAM and the region of Alentejo again display a negative growth tendency.

An inspection into the number of foreigners who have entered Portugal between 1984 e 2001 reveals that their number has tripled, with 9,811.0 persons entering in 1984 and 28,149.9 in 2001, most of them male. Between 1975 and 2001, and taking into account the wider period in question, the number of legally resident foreigners had already grown consistently, going from 31,983 to 223,602 persons.

Official statistics regarding the last two decades show that the number of foreigners residing in Portugal has registered a continuing increase. On the 31<sup>st</sup> of January 2001, the number of legal immigrants, according to data from SEF (Border and Alien Service) was at 350.503<sup>8</sup>, which means there was a 285% increase in relation to 1980.

169,953 Permanence Permits were granted until May 2002, and it is worth noting their distribution: 60,310 (35,5 %) were granted to Ukranians; 3,820 (19,8 %) to Brazilians; 11,746 (6,9 %) to Moldavians; 10,089 (5,9 %) to Romanians; 7,728 (4,5 %) to Cape-Verdians; 7,236 (4,25 %) to Angolans; 6,431 (3,8 %) to Russians; and 4,127 (2,4 %) to Guineans.<sup>9</sup>

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<sup>8</sup> Which corresponds to 223.602 residents and 126.901 people holding permanence permits.

<sup>9</sup> As per data released by the Foreigners and Borders Department ([www.sef.pt](http://www.sef.pt)). These figures are confirmed by *SOS Racismo's Imigração em Portugal (SOS Racismo: Lisbon, November 2002)*.

According to the latest estimates, there are 446,000 foreign citizens, between resident and permanent, legally living in Portugal, amounting to 4% of the Portuguese population. This figure is expected to increase substantially during the last quarter of 2003, starting on the 15<sup>th</sup> of September 2003, when a programme for the extraordinary regularisation of Brazilian immigrants is set to take place.

Immigrants' associations and non-governmental organisations estimate that there are about 250,000 undocumented immigrants currently residing in Portugal, however it is not possible to confirm this number.

With regard to requests for asylum, special consideration must be given to two categories: the first concerns individual requests for asylum and the second refers to asylum requests by family units. In 2002, then, requests for asylum originated largely from the African continent, from countries formerly belonging to the Soviet Union, from Latin America and from the Asian continent. The most significant number of individual requests came from Sierra Leone nationals, with 39 claimants. 27 requests for asylum were furthermore submitted by Polish family units. In total, 180 individual requests for asylum and 65 asylum requests for family units were submitted to the proper authorities.

Between 1993 and 2001, 112 asylum applications were accepted under the Geneva convention, which, when measured against the total number of applications submitted throughout the same period, rates at 2.7%<sup>10</sup>. With regard to residence permits for humanitarian reasons, 161 applications were accepted between 1998 and 2001, which corresponds to a 16% acceptance rate.

There is a range of factors that can be pinpointed to account for these figures: Portugal's geographic situation, its image abroad as an less developed country within the European Union, its relative tolerance towards irregular immigration and the possibility of legalising one's permanence under the Legislation on Foreigners<sup>11</sup>. There is, however, another plausible explanation, which is to do with the fact that those that would feasibly have grounds to seek asylum knew beforehand that most applications are declined. Refusal leaves asylum applicants in a situation of utter vulnerability both from a social and a legal point of view.

Among the industrialised nations statistically relevant in terms of asylum, Portugal appears in 33<sup>rd</sup> place, and is the EU country less sought after for the purposes of asylum. This can be ascertained by simply weighing the requests for asylum lodged in Portugal against those lodged in the United Kingdom, which tops the list of countries favoured by those requesting asylum, immediately followed by the United States and Germany. Portugal registered 0 requests for asylum per 1,000 inhabitants, whereas in the United Kingdom that number rises to 1.9 requests for asylum per 1,000 inhabitants. The largest number of requests for asylum during the four-year period between 1995 and 1998 originated mostly from Romania, contrasting with what happened in 2002, when the majority of requests came from Sierra Leone.

Still within this four-year period, 1998 was the year in which the most requests for asylum were submitted: 435 individual requests for asylum, a considerable number when

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<sup>10</sup> Bárbara Mesquita, "Asilo e Imigração Económica ou a Fronteira Indefinida" in *A Imigração em Portugal*, SOS Racismo, Lisbon, November 2002.

<sup>11</sup> Portuguese Council for Refugees, "Study for the diagnosis and Evaluation of the reception Process for Asylum Seekers in Portugal", Final report, Lisbon, May 2002.

compared to the 12 asylum requests for family units which were submitted during this same year.

Regarding access routes for the entry and departure of foreigners in Portugal, and considering sea, land and air routes, one can attest to the fact that the number of entries and departures by sea has decreased considerably in recent years: 242 in 1996 against only 188 in 2001. In contrast, entries and departures by the use of aerial and land routes are on a slow but steady rise; land routes are the most sought-after routes, having been used by 18,894 persons in 1996 and 22,703 in 2001. Altogether, Portugal witnessed 28,150 entries and departures by the use of these three recurring routes during 2001.

## **6.2. LEGISLATION AND IMMIGRATION POLICY**

Organic Law of the XIII Constitutional Government — Decree-Law no. 296-A/95 of 17 of November — provided for the creation of the High Commissioner for Immigration and placed this post under the presidency of the Council of Ministers. Decree-Law no. 3-A/96 of 26 of January subsequently defined the status and competences of the ACIME (High Commissioner for Immigration and Ethnic Minorities), which essentially amounts to the State's acknowledgment of the fact that Portugal has now become a country of immigration. In November 2002, Decree-Law no. 251/2002 converted the High Commissioner into a wider structure, now named High Commissariat.

The creation of the ACIME came about at a time when a great number of foreign citizens were in Portugal in illegal circumstances, a new situation which required the implementation of adequate measures to face it.

An extraordinary programme of regularisation was accordingly established by means of Law no. 17/96, aimed at putting an end to the situations of exclusion that were occurring at the time. This programme of extraordinary regularisation finished on the 11<sup>th</sup> of December 1996.

Law no. 8/98 of 13 of February allowed the Government to make changes to Decree-Law no. 60/93 of 3 of March, which defined the legal framework of entry, stay, departure and expulsion of foreign citizens from Portuguese territory.

The aim of these changes was to extend the range of the Law's applicability with regard to the right of residence and to clarify all legal dispositions related to Council Directives no. 90/364/CEE and no. 90/365/CEE, both dated June 28th.

As a result of the above-mentioned authorisation, Decree-Law no. 244/98 of 8 of August now regulated the conditions of entry, permanence, departure and expulsion of foreign citizens from Portuguese territory.

This legal decree was later subjected to some minor changes by both Law no. 97/99 of 26 of July and Decree-Law no. 4/2001 of 10 of January. The latter introduced a legal notion — the 'Permanence Permit' —, which authorised foreign citizens to legally take employment in Portugal, and led to a new programme of extraordinary regularisation.

Article 36, paragraph 1, of Decree-Law no. 244/98 of 8 of August, which was altered by Decree-Law no. 4/2001 of 10 of January, established that the admission of immigrant labour would be contingent on an annual report on the needs of the labour market, depending on area of activity.

The IIEFP (Institute of Employment and Vocational Training) is assigned with the coordination of this document, whose final version is basically made up of three different reports:

- The first is a forecast of labour needs for 2001, and is based on a macroeconomic model (laid down by the Centre for Studies of Portuguese-Speaking Peoples and Cultures).
- The second is a forecast of the needs of the sectors more likely to be affected by immigration, following a survey (carried out by the Department of Labour, Employment and Professional Training Statistics of the Ministry for Social Security and Labour) in which several companies (10%) from mainland Portugal were consulted.
- The third (produced by the IIEFP) carries out an assessment and trend estimate regarding unfulfilled and revoked employment offers.
- The process of consultation with social partners was omitted, both in the production of this report (as was expressly maintained by Article 36, paragraph 2, of Decree-Law no. 4/2001 of 10 of January) and in the period prior to its approval (as had been established by the Council of Ministers Resolution 14/2001 of 14 of February).

Resolution no. 164/2001 of 30 of November approved the report on the needs of the labour market for 2001 and brought the extraordinary regularisation in progress to a close. After the date of publication of the Resolution, only those foreign workers — up to a maximum of 20,000 — who could demonstrate having entered Portuguese territory before the aforementioned publication date would be eligible to legalise their situation. This Resolution allowed the admission of foreign workers from non-EU countries, subject to their being granted a working visa. This admission of foreign workers, however, ultimately did not take place.

It was also established that, once the Resolution came into force on the 31<sup>st</sup> of November 2001, only in exceptional circumstances would new processes of granting of residence permits be reassessed, as maintained by article 55, with the exception of applications that had been received by the IDICT (Institute for the Development and Inspection of Working Conditions) until the date of publication.

Decree-Law no. 244/98 of 8 of August was regulated by Decree-Regulation no. 5-A/2000 of 26 of April, which was altered by Decree-Regulation (Decreto-Regulamentar) no. 9/2001 of 31 of May after the entry into force of Decree-Law no. 4/2001 of 10 of January. This change intended to bring the programme of granting of working visas and residence extensions, as well as the new legal procedure for the granting and extension of residence permits, in line with the Law. Among the considerable number of measures consistent with the national immigration plan contemplated in the Government Programme, the Government deemed it necessary to alter the legal regime imposed by Decree-Law no. 4/2001 of 10 of January, and thus instituted an immigration policy based on three

fundamental pillars: the promotion of legal immigration, in compliance with the real possibilities of the country; the effective integration of immigrants; and the fight against illegal immigration.

For this reason, and by using Legislative Authorisation no. 22/2002 of 21 of August, the Government published Decree-Law no. 34/2003 on the 25<sup>th</sup> of February 2003, changing the regime of entry, removal, stay and expulsion of foreign citizens from the national territory, after consultation with the self-governing bodies of the Autonomous Regions, the National Association of Portuguese Municipalities, with trade unions' and employers' confederations, several non-governmental associations and with the COCAI (Advisory Council for Matters of Immigration), all representing immigrants' associations.

Taking the first objective mentioned above into account, it is manifest that the Government intends, by means of this decree, to repeal the regime regulating permanence permits and allow the conditions of stay in Portugal to entirely follow from the granting of visas or permits of residence.

Also geared towards promoting legal immigration, an annual mandatory upper limit on entries by third-country nationals shall be imposed by the Government on a multiannual basis, following the IEFP's Opinion and after consultation with the Autonomous Regions, the IGT (General Labour Inspectorate), the National Association of Portuguese Municipalities, with trade unions' and employers' confederations and with the ACIME. This imposition will also define the economic and social criteria which infer the determination of the labour needs and of each region's reception capacity, ensuring the participation of local government in the entire process.

So as to develop a policy that allows the effective integration of immigrants staying in Portugal under the regime of family support provided for by article 38, one should note that the holders of a temporary stay visa are now granted the possibility of finding employment, in terms similar to those assured by the working visa, which will be defined by the Decree-Regulation, and in cases where there is a strong rationale for that to happen.

One should further emphasise the creation of a new type of working visa, intended for the practice of an occupation involving scientific research or a highly qualified technical knowledge, and expected to facilitate the settling of scientists and higher qualified technical staff in Portugal.

The possibility of reassessing measures which prohibit the entry into national territory was also catered for, with a view to their elimination on humanitarian grounds or for reasons pertaining to national interest, and provided that those measures fall within time-limits defined by the present decree and that they have not been court-issued.

The minimum period of residence required for foreign citizens to obtain a permanent residence permit will equally be reduced, thus permitting the legalisation of all immigrants who are effectively integrated into Portuguese society.

The process of family reunion is also altered, its granting now depending on the applicant's genuine attachment to the country, namely by way of her or his legal permanence in the country during a certain period of time, as stated by several EU

decisions. The option for the minimum time period defined by these determinations should none the less be preferred.

As a final point, the Government also states its continuous commitment to guarantee the access to social protection, education and healthcare that has hitherto been enjoyed by the immigrant community in Portugal.

In what concerns the fight against illegal immigration, domestic legislation should be made to conform to EU guidelines and directives, particularly in what concerns the control of migration flows and the streamlining of processes leading to the removal from EU territory of any person who has illegally entered it, supplying the Foreigners and Borders Department (SEF) and the security forces with expeditious legal means designed to ensure the effective and prompt execution of court decisions.

A number of changes, intended to reduce the bureaucracy involved in the SEF's procedures, is also established, in addition to the stipulation of a regime of criminal sanctions more appropriate to the prevention and suppression of illicit acts which affect both illegal immigration and the exploitation of foreign workers in an illegal situation.

The regime of penalties of an administrative nature should also be updated through the increase in the amount of fines and their conversion into Euros.

Finally, Council Directive no. 2001/51/EC of 28 of June, concerning the obligations of carriers transporting foreign nationals into the territory of the Member States, is transposed to the domestic legal order, thus completing the dispositions of article 26 of the Convention for the Implementing of the Schengen Agreement, dated 14<sup>th</sup> of June 1985, and the regulations pursuant to both Directive no. 2002/90/EC of 28 of November, concerning the definition of facilitation of unauthorised entry, transit and residence and the Council Framework Decision of 28 of November 2002, on the increase of the criminal frame to assist the prevention of facilitation of unauthorised entry, transit and residence.

### **6.3. LEGISLATION AND INTEGRATION POLICY**

In terms of integration policy, the Government has been acting to ensure the integration of legalised immigrants and ethnic minorities since 1995, in agreement with constitutional principles and taking into account both the singular ties between our country and the Community of Portuguese-Speaking Countries (CPLP) and Portugal's duties as a member of the European Union.

With the intention of contributing to that coordinated and coherent activity, both the ACIME and the post of Minister for Equality were created — the latter pursuant to the Organic Law of the XIV Constitutional Government — and given authority over matters concerning immigration and ethnic minorities, therefore facilitating the permanent coordination and monitoring of these issues at a ministerial level.

As it became imperative to ease the cooperation between the member of Government responsible for matters concerning equality and all state departments in charge of the integration of legalised immigrants and ethnic minorities, including local government, so

as to prevent or solve situations requiring expeditious and appropriate response, a working group was created by the Council of Ministers Resolution no. 48/2000 of 13 of April 2000. The objectives of this working group are to point out and analyse the situations and problems which hamper the integration of immigrants into Portuguese society; to promote the coordination between local and national authorities, in the face of concrete problems which require partnerships between them; and to release an annual report assessing the degree of accomplishment of immigrant integration policies and of immigrants' contribution to the country's development.

The working group was made up of two representatives of the member of Government responsible for matters concerning equality, one of them being the ACIME, which also ensured the coordination of the entire working group; a representative of the Minister for Foreign Affairs; a representative of the Minister for State and Social Equipment; a representative of the Minister for Internal Administration; a representative of the Minister for Work and Solidarity; a representative of the Minister for Justice; a representative of the Minister for Education; a representative of the Minister for Health; a representative of the Minister for State Reform and Public Administration; a representative of National Association of Portuguese Municipalities; and a representative of the ANAFRE (National Association of Local Councils). The duties performed by all representatives of the working group are done so on an unpaid basis.<sup>12</sup>

Since the president may invite representatives and technical staff of the Public Administration, other public and private bodies, and citizens' groups whose consultation or contribution was thought to be relevant, to take part in the meetings of the working group, it is the ACIME's responsibility to ensure technical and administrative support, as well as to arrange an appropriate location for the meetings of the working group.

Moreover, and taking into account the scope and the horizontal character of a national immigration policy, which necessarily entails the creation of effective instruments to coordinate and monitor that policy at an interministerial level, the Government created, by means of Council of Ministers Resolution 14/2001 of 14 of February, the Interministerial Commission for the Co-ordination, Supervision and Evaluation of Immigration Policy, whose objective is to assure the global coordination, monitoring and assessment of the immigration policy.

## **6.4. RESEARCH**

Within the scope of a research and data collection project developed by the Department of Studies, Prospective and Planning of the Ministry for Social Security and Work, a compilation of several articles dealing with different aspects of the immigration question and its relations to the labour market, written by a number of different Portuguese and

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<sup>12</sup> Tr.: This law dates from 2000, and, given that the Government has since changed, some of these Ministers (and their respective Ministries) no longer have the same name, or have ceased to exist altogether: the Ministry for Social Infrastructure is now the Ministry for Public Works, Transport and Housing; the Ministry for Work and Solidarity became the Ministry for Social Security and Work; and the Ministry for the Reformation of State and Public Administration has been converted into the State Department for Public Administration and Administrative Modernisation.

foreign authors, between politicians and academics, was published in 2002<sup>13</sup> in the series *Cadernos Sociedade e Trabalho (Notebooks on Society and Labour)*. This book aims to be an authoritative contribution to the promotion of different outlooks on the realities of the labour market, a field which is hugely relevant to immigration..

With the support of the ACIME, Dr José Manuel da Costa Meireles put together the *Guia Prático Jurídico do Cidadão Imigrante (Não Comunitário) (Practical Legal Guide for the Non-EU Immigrant Citizen)*<sup>14</sup>, which is an attempt to arrange all existing legislation on the subject of immigrants, their rights and duties and on immigration as a whole, in a single research volume. Among other matters at issue, the following are deserving of particular consideration: the legal status of foreigners and immigrants; labour and social security; family and inheritance law; access to professional and/or entrepreneurial activity; housing and the right to private property; health; justice, criminal Law and contraventions applicable to illegal immigration; prevention, prohibition and sanctions to discriminations in the exercise of rights; consumer rights; taxation; and a vast array of forms.

‘*Dos Estrangeiros — O Novo Regime Jurídico de Entrada, Permanência, Saída e Afastamento de cidadãos estrangeiros do território nacional*’ (‘*On Foreigners — The New Legal Regime Controlling the Entry, Permanence, Departure and Removal of Foreign Citizens from the National Territory*’)<sup>15</sup> was published in 2003, and is a compilation of Foreigners Law, encompassing a variety of relevant legislation for immigrants, foreigners and refugees, amongst it the latest changes to the Law of Entry, Permanence, Departure and Removal from Portuguese territory. Some case-law relating to the question of foreigners and discrimination is also introduced.<sup>16</sup>

We are not aware of any other research projects conducted in 2002 in the areas under discussion here. It is safe to assume, however, that other projects may actually be in progress, and that only the fact that they are in their initial stages prevents them from reaching the public domain.

## **6.5. NON-EXISTING DATA, ‘GAP ANALYSIS’, DESCRIPTION OF NON-EXISTING LEGISLATION.**

As mentioned above, and in line with article 13 of the CRP, which establishes the principle of equality, paragraph 3 of article 35 determines that computerised storage cannot be used for information concerning a person’s ideological or political convictions, party or trade union affiliations, religious beliefs, private life or ethnic origin, the same applying to the case of statistical data that is based on ethnic and racial factors.

As a result, it is not possible to obtain dependable demographic data regarding the weight of ethnic groups in the composition of the population. This is a difficult problem to

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<sup>13</sup> Published by the Department of Studies, Prospective and Planning of the Minister for Social Security and Work, 1<sup>st</sup> ed. (October 2002).

<sup>14</sup> Published by *Associação Famílias*, 1<sup>st</sup> ed. (December 2002).

<sup>15</sup> Published by *Edições Dislivro* (Lisbon: 2003).

<sup>16</sup> See Templates PUB/PT/0003.

tackle, because, on the one hand, it is not possible to achieve a precise and definite knowledge of Portugal's demographic composition, something which would be extremely valuable for the carrying out of social studies, whose results would be of undeniable significance to the implementation of projects and programmes concerning the integration (social, economic, cultural, religious, etc.) of immigrants and ethnic minorities. On the other hand, this constitutional provision establishes an important anti-discriminatory guarantee, and reinforces the principle of equality, for the importance of the protection of human rights and fundamental freedoms is absolutely indisputable, and any impediment to it should be avoided.

Decree-Law no. 34/2003 of 25 of February, by means of which the regime of entry, removal, departure and expulsion of foreign citizens from Portuguese territory is changed, repeals the regime governing Permanence Permits and allows for the stay in Portugal to hinge exclusively on the granting of visas or permits of residence. None the less, an alternative or measure relative to immigrants who are holders of Permanence Permits but do not fulfil the criteria to request a Residence Permit was not contemplated. A legal gap was therefore created, and it is as yet unknown what will happen to those immigrants when the validity of their permits expires. This a very pressing question at the moment, as there are currently about 190,000 immigrants in Portugal who are holders of Permanence Permits.

As seen before, a mandatory upper limit on entries into Portuguese territory by third-country nationals, with the aim of promoting legal immigration, has to be imposed by the Government on a multiannual basis, following the IEFP's Opinion and after consultation with the Autonomous Regions, the IGT (General Labour Inspectorate), the National Association of Portuguese Municipalities, with trade unions' and employers' confederations and with the ACIME. This imposition, again, will also define the economic and social criteria which infer the determination of the labour needs and of the reception capacity of each region, ensuring the participation of local government in the entire process.

This measure, which came under heavy criticism from immigrants' associations, is none the less not a novelty, as Decree-Law no. 4/2001 of 10 of January already stipulated the release of a report on labour needs. This report, however, having been produced only in 2001, was neither produced nor released in the following years, i.e. after November 2001 the possibility for the legalisation of immigrants ceased to exist, and this option only remained in effect for requests for family reunions which satisfy the legal requirements. If, with that purpose in view, measures that may impair the economic survival of a particular population sector are undertaken (for instance, excessive or discriminative taxation of the commercial activities of a particular ethnic or religious group), victims may be entitled to the status of refugees, depending on the circumstances.

The Legal Framework in Matters Regarding Asylum and Refugees (Law no. 15/98 of 26 of March) also faced some criticism. Already to begin with, its article 1, which indirectly defines the concept and the range of the concept 'refugee', draws on several imprecise concepts and raises dubious questions.<sup>17</sup> One of them, for instance, relates to the fact that there is no universally accepted definition of persecution.

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<sup>17</sup> Francisco Maria D'Orey de Oliveira Pires, '*A lei do Asilo em Portugal — Alguns aspectos da interpretação do art. 2.º da Lei n.º 70/93, de 29 de Setembro*' ('The Asylum Law in Portugal - Some considerations on the interpretation of paragraph 2 of Law no. 70/93 of 29 of September), in

One can infer from article 33 of the 1951 Geneva Convention that any threat to life or freedom on account of race, religion, nationality, membership of a particular social group or political opinion must always be considered persecution. Any other serious human rights' violations on identical grounds should also be considered persecution. Whether other harmful acts or threats are or not persecutory depends on the particular circumstances of each case.

Another question regarding the interpretation of article 1 is the identification of the agents of persecution. Persecution is usually associated with acts carried out by the authorities of a given country. None the less, it can come from sectors of the population which do not respect the legal principles and frameworks of the country in question. Offences committed by groups of the population should only be seen as persecutory if they are tolerated by the authorities of a given country, or if these same authorities refuse or prove to be incapable of ensuring effective and adequate protection.

Another important question has to do with the definition and verification of whether there is a well-founded fear of persecution or not, as of paragraph 2 of article 1, which is the keystone of the whole system. Since fear is always a relative concept, the definition involves a subjective impression on part of the person seeking to be recognised as a refugee.

The effective confirmation of the fear of being persecuted on grounds of political opinions is another contentious issue. Clearly, it is not enough for the asylum seeker to be of a different political persuasion from his country's Government. The asylum seeker will have to demonstrate that he fears being persecuted by reason of his political opinions, which assumes that the authorities are well aware of those opinions and do not tolerate them.

Finally, one has to distinguish between the refugee and the "economic immigrant". The "immigrant" is someone who voluntarily leaves her or his country, for reasons other than those contained in the description of refugee.

This distinction, however, is not always that clear-cut, as it happens, since political or religious intents or objectives against a particular group of persons may be concealed behind economic measures which affect someone's possibilities of obtaining subsistence. If, for that purpose, measures likely to result in the economic destruction of a certain sector of the population (like the excessive or discriminatory taxation of a trade carried out by a particular ethnic or religious group) are taken, then the victims may, depending on the circumstances, be recognised as refugees.

Article 3 of the Legal Framework in Matters Regarding Asylum and Refugees further establishes the conditions of exclusion from and refusal of asylum, the following persons not benefitting from asylum: those who have performed any acts that are contrary to Portugal's fundamental interests or sovereignty; those who have committed crimes against peace, war crimes or crimes against humankind, as defined in the international instruments aimed at preventing them; those who have committed felonious common Law crimes punishable with more than three years of imprisonment; and those who have

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<http://www.cidadevirtual.pt/cpr/asilo1/fmdop.html>.

performed any acts contrary to the purposes and principles of the United Nations. As per paragraph 2 of the same article, asylum may also be refused in case its granting causes demonstrated danger or well-founded threat to the internal or external safety, or to public order.

None the less, article 33 of the CRP, entitled 'Deportation, extradition and right to asylum', stipulates, in paragraph 2, as a form of guarantee), that the '*deportation of persons who have entered, or are permanently resident in, the national territory who have obtained a residence permit, or who have lodged an application for asylum that has not been refused, shall be determined by a judicial authority only [and that] the law shall provide for the expeditious decisions of these matters.*'

Another noticeable gap is the non-transposition of Council Directive 2000/43/EE, which should have been transposed by all Member States until the 19<sup>th</sup> of July 2003, something which Portugal still has not done. It would be important for Portugal to do so, in order for the Directive to be actually implemented, both in the revision and production of legislation and in programmes and activities of practical direct application.

## **7. Legislation against discrimination on racial, ethnic, religious or cultural grounds**

### **7.1. DOCUMENTS RELATED TO ARTICLE 13, ACTION PROGRAM**

In the context of the reinforcement of its social dimension, the European Union (EU) has devoted considerable attention in the last few years to the fight against all forms of discrimination.

This process gained considerable momentum in 1999, when the Amsterdam Treaty took effect and article 13 was added to the Treaty Establishing the European Community (EC Treaty), in which it is stated that the Council of the European Union has the authority to, *'act[ing] unanimously on a proposal from the Commission and after consulting the European Parliament, [...] provide for the possibility of appropriate action to be taken [...] to combat discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation'*; and in 2000, when a number of anti-discriminatory measures was agreed to and solemnly proclaimed in the Charter of Fundamental Rights of the European Union, prohibiting *'any discrimination based on any ground such as gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.'*

For that reason, Council Directive 2000/43/EC of 29 June, which establishes the principle of equal treatment among persons, irrespective of their racial or ethnic origin and which aims to establish a legal framework for combating discrimination, was approved.<sup>18</sup>

This Directive should have been transposed by all Member States until the 19<sup>th</sup> of July 2003, however it has not been transposed to the domestic legal order until the present date.

In November 27<sup>th</sup> 2000, taking into account the Treaty Establishing the European Community (EC Treaty), namely art. 13, the Council established a Community action programme directed to fight indirect or direct discrimination<sup>19</sup>, on the ground of race or ethnical background, religion and convictions, of having some handicap, age or sexual preference, for the period comprised between January 1<sup>st</sup> 2001 and December 31, 2006. However, until now, there is no sistematized information on the action programme implementation in Portugal.

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<sup>18</sup> For a detailed review of this Directive please see below, pp. 37-39.

<sup>19</sup> Council decision of November 27th 2000, 2000/750/CE, JOL 303, of 02/12/2000, pag. 23-28.

## 7.2. LEGISLATION FOR SPECIAL AREAS (SUCH AS DISCRIMINATION IN EDUCATION, EMPLOYMENT, HOUSING, HEALTH AND RACIST VIOLENCE)

There are several criminal, civil and administrative norms among existing legal instruments in Portugal which are aimed at combating racism and racial or ethnic discrimination, as well as international and European regulations that have either been transposed to the domestic legal order or may be directly applied.

The methodology used in the writing of this report is based on the listing of all existing legal instruments in Portugal aimed at combating racism, xenophobia and racial discrimination, and which may be employed by groups that are most vulnerable to this kind of threats.

### 7.2.1. General:

#### 7.2.1.1. International Legislation

**1) International Convention on the Elimination of All Forms of Racial Discrimination** — Portugal ratified this Convention, for accession, by means of Law no. 7/82 of 29 of April; the Convention may be directly applied in Portugal.

Notice no. 95/2001 of 24 of August makes public that Portugal submitted a declaration stating its agreement with the legal instruments provided by in the International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature in New York on the 7<sup>th</sup> of March 1966.<sup>20</sup>

The Government of Portugal thus recognises the competence of the Committee, established by Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, to receive and consider communications from persons or groups of persons within its jurisdiction claiming to be victims of a violation by the Republic of Portugal of any of the rights set forth in that Convention.

Portugal recognises the Committee's jurisdiction, provided that the latter does not consider any communication unless it is satisfied that the matter has neither been examined nor is it subject to appreciation by any other international body with powers of inquiry or decision.

The Portuguese State indicates the High Commissioner for Immigration and Ethnic Minorities as the competent body to receive and consider petitions from persons and groups of persons who claim to be victims of violation of any of the rights set forth in the Convention.

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<sup>20</sup> Portugal is a Party to the Convention, which was approved for accession by means of Law no. 7/82 of 29 of April and published in the *Diário da República* (Official Journal of the Portuguese Republic), II series, no. 99 (29 of April 1982). Portugal furthermore submitted a confirmation and accession letter on the 24<sup>th</sup> of August 1982, as published in the *Diário da República*, I series, no. 233 (8 of October 1982). The Convention entered into force for Portugal on the 23<sup>rd</sup> of September 1982.

It would be excessively painstaking to list all the Conventions, Treaties, Pacts, Charters and Agreements which directly or indirectly refer to these matters, yet one should mention that all principles mentioned above are and have been the foundation of all international, European and domestic legislation in force. We will therefore merely list some of the most relevant documents which concern these matters: the Universal Declaration of Human Rights; the Treaty on European Union; the **Convention for the Protection of Human Rights and Fundamental Freedoms**; the European Convention on Extradition; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the European Social Charter; the Convention relating to the Status of Refugees; the Convention Determining the State Responsible for Examining Applications for Asylum; the European Agreement on the Abolition of Visas for Refugees; the European Agreement on Transfer of Responsibility for Refugees.

**2) Council Directive 2000/43/EC of 29 of June** (*published in the Official Journal of the European Communities, L 180/23, 19.07.2000*) — Establishes the principle of equal treatment among persons, irrespective of their racial or ethnic origin, with the aim of laying down a legal framework for combating discrimination.<sup>21</sup> Equal treatment must be guaranteed, be it in the access to employment, training, education, working conditions; in the possibility of becoming a member of professional organisations; in social protection and security; in social benefits; in the access to goods and services. The only exception allowed shall occur only when the race or ethnic origin constitutes an essential occupational requirement (as can happen in the case of artistic activities, in social service which directly involves persons of a specific ethnic group, etc.).<sup>22</sup>

“The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic discrimination, with a view to putting into effect in the Member-States the principle of equal treatment” (art. 1).

In article 2, the Directive spells out the concept of discrimination, and defines the «principle of equal treatment» as the absence of any direct or indirect discrimination based on racial or ethnic origin.

Within the concept of discrimination, the diploma distinguishes between direct and indirect discrimination, which is a novelty, and defines them thus (art. 2, no.2):

*“a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;*

*b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is*

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<sup>21</sup> see Chapter 4, Title 7

<sup>22</sup> Published in the Official Journal of the European Communities (OJEC) L 180/22/PT. The Directive must be transposed by the Member States until the 19<sup>th</sup> of July 2003. available at <http://dspace.dial.pipex.com/town/pipexdsl/o/aozz92/www/EC%20Directive%20on%20Racial%20and%20Ethnic%20Discrimination.pdf>

*objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”*

Nº. 3 of art. 2 further introduces a new concept, that of “harassment”:

“3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

Within the limits of the powers conferred upon the European community, this Directive applies to all persons, in both the public and private sector, including public bodies (art. 3)

The Directive foresees the possibility of Member-States undertaking positive action (positive discrimination), so as to prevent or compensate for disadvantages linked to racial or ethnic origin (art. 5).

A further novelty introduced by the Directive is the inversion of the burden of proof: it will be up to the respondent “to prove that there has been no breach of the principle of equal treatment (art. 8, no.1), with the exception of criminal procedures (no. 2) and “proceedings in which it is for the court or competent body to investigate the facts of the case” (no.5).

This directive had to be transposed by Member States until the 19<sup>th</sup> of July 2003, but that has yet to occur.

**3) Council Directive 2000/78/EC of 27 of November** (*published in the Official Journal of the European Communities, L 303/16, 02.12.2000*) — Lays down a general framework for the equal treatment in employment and occupational activities.

**4) Council Decision 2000/750/EC of 27 November** (*published in the Official Journal of the European Communities, L 303/23, 02.12.2000*) — Sets down a Community action programme for combating direct or indirect discrimination (2001/2006) based on racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation.

Within the limits of EU powers, the programme should support and supplement efforts undertaken by the Community and by Member States to promote preventive measures and to combat simple and multiple discrimination, taking future legislative initiatives into account. The programme has the following objectives: to improve the understanding of issues related to discrimination through both improved knowledge of this occurrence and evaluation of the effectiveness of policies and practices; to develop the ability to prevent and fight effectively against discrimination, namely by reinforcing organisations' means of action and by supporting the exchange of information and good practice and networking at European level, whilst always taking into account the specific characteristics of different forms of discrimination; and to promote and disseminate the values and practices underlying the fight against discrimination, including through the use of awareness-raising campaigns.

**5) Council Decision 2002/494/JAI of 13 of June** (*published in the Official Journal of the European Communities, L 167/01, 21.10.2002*) — Creates a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes.

**6) Council Regulation (EC) no. 343/2003 of 18 February** (*published in the Official Journal of the European Communities, L 50/01, 25.02.2003*) — Establishes the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

#### 7.2.1.2. National Legislation

##### 1) Constitution of the Portuguese Republic (CRP):

a) Article 13, no. 2: this constitutional principle establishes that no person can be privileged, favoured, injured, deprived of any right or exempted from any duty, by reason of ancestry, gender, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social situation.

b) Art. 15, no. 1: concedes the same rights and duties bestowed upon Portuguese citizens to all foreigners and stateless persons, be they temporarily or habitually resident in Portugal.

c) Art. 26, no. 1: establishes that every person has the right to her/his personal identity, personality development, civil capacity, citizenship, good name and reputation, image, the right to speak out and the right to the protection of the privacy of her/his personal and family life and to legal protection against any forms of discrimination.

d) Art. 35, no. 3: establishes that computerised storage shall not be used for information concerning a person's ideological or political convictions, party or trade union affiliations, religious beliefs, private life or ethnic origin. The same applies to the case of statistical data that is based on ethnic and racial factors.

e) Art. 46, no. 4: prohibits the creation of armed, quasi-military, militarised or paramilitary associations, or organisations that adopt fascist ideology.

f) Art. 59, no. 1: defines equal rights to all workers, regardless of age, gender, race, nationality, place of origin, religion or political or ideological convictions.

According to the constitutional principle of equal rights to national and foreign citizens (art. 15 CPR), the rights, liberties and guarantees laid down in the Constitution should be granted to all foreign citizens legally residing on national territory. In some cases, this principle is valid even for foreign citizens in irregular situation, given the universal scope of Human Rights.

Art. 15 of the CPR establishes as a general principle the equatibility of rights and duties between, on the one hand, Portuguese citizens, and, on the other, foreigners and stateless persons, whether they are settled or merely are in Portugal at the moment. This equatibility is the corollary of the principle of equality and of the universal vocation of

the CPR with regard to fundamental rights. This is made plain, among other references to the matter, by the reception by art. 16, no. 2, of the Universal declaration of Human Rights (UDHR).

This equatibility, in truth, is rooted in the dignity of the human person – one of the structuring core values upon which the Portuguese Republic is grounded, as stated by no.1 of the CPR –, which is independent of any considerations resulting from the individual's nationality. Equatibility thus presents itself as the Constitution's grounding principle: this clause, in truth, extends constitutional rights to all foreigners and stateless persons. In parallel, it operates as a deciding and interpretative criterion with regard to subjective juridical positions of foreigners and stateless persons<sup>23</sup>.

Therefore, the fundamental rights of foreigners and stateless persons, recognised by the principle of equatibility, are also subject to the regime of restrictions covered by no. 2 and 3 of article 18 of the CPR. The right to access courts of law, of which the judicial aid is a key element, is guaranteed to all persons by art. 20 of CPR, which is revealing as to the universality of this recognition, leaving no room for doubt as to its inclusion among the traditional fundamental rights. With regards to this issue, no distinctions between resident and non resident, legal and illegal foreigners are allowed in Portugal.

**2) Law no. 134/99 of 28 of August** — Prohibits discrimination in the exercise of rights on grounds of race, colour, nationality or ethnic origin. Any distinction, exclusion, restriction or preference in the exercise of rights based on race, colour, ancestry, nationality or ethnic origin will be considered discrimination.

The objective of this law is to prevent and prohibit all forms of racial discrimination and punish the practice of acts that represent a breach of any economic, social or cultural rights on grounds of race, colour or ethnic origin. As an example, this law includes a list of discriminatory practices (art. 4)<sup>24</sup> that are regarded as misdemeanours and punishable with fines and other adequate sanctions.

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<sup>23</sup> António Payan Martins, "Asilo Político – Apoio Judiciário" [Political Asylum – Judiciary Support] (available at [www.cidadevirtual.pt/cpr/asilo/2/2apm.html](http://www.cidadevirtual.pt/cpr/asilo/2/2apm.html)).

<sup>24</sup> '1. All actions or omissions which violate the principle of equality of any person, be they based on race, colour, nationality or ethnic origin, shall be considered discriminatory practice, specifically: a) the adoption of any procedure, measure or criterion, directly on part of the employer or by means of instructions given to its workers or to an employment agency, which causes an employment offer, a contract termination or a refusal to take someone into service to be contingent on issues of race; b) the production or dissemination of advertisements containing job offers, or any other form of public notices relating to pre-selection or recruitment, which directly or indirectly contain any type of specification or preference based on factors that are racially discriminatory; c) the refusal of supplying or the impediment of benefiting from goods and services on part of any person or group of persons; d) the impediment or limitation to the access and normal practice of an economic activity by any person or group of persons; e) the refusal or constraint on the selling, letting or sub-letting of property; f) the refusal to allow right of entry to places which are either public or open to the public; g) the refusal or limitation to access to healthcare provided in public or private medical institutions; h) the refusal or limitation to access to public (state) or private educational institutions; i) the formation of classes or the adoption of other measures of internal organisation in public or private educational institutions according to criteria which are racially discriminatory, unless if such criteria are consistent with the objectives present in art. 3, no. 2; j) the adoption of any practice or measure on part of any body, civil servant or agent directly or indirectly associated with the State, Autonomous Regions or local government that hinders or restricts the practice or exercise of any right; l) the adoption by the employer of a practice which, in the context of a labour relation, is effectively discriminating against

Law No. 134/99, August 28, governed by Decree-Law No 111/2000, July 4, clearly indicates the social target groups it addresses in the areas of prevention and prohibition of discrimination in the exercise of rights due to race, colour, nationality or ethnic origin. It applies both to individuals and to collective bodies, the latter being either those of private law and public law.

It lists, as examples, the discriminatory actions, which, if practised, constitute misdemeanours that can be punished with appropriate fines or sanctions. The fact that the list is not comprehensive clearly shows how wide its scope is in covering the reality of discriminatory practices.

In art. 3, no.2, it establishes that “Racial discrimination means any distinction, exclusion, restriction or preference due to race, colour, ancestry, national or ethnic origin aiming at, or resulting in, the denial, or restriction, of recognition, fruition or exercise, on equal conditions, of rights, liberties and guarantees, or economic, social and cultural rights.”

Thus, actions or omissions, due to a person’s race, colour, nationality or ethnic origin, violating the principle of equality are considered discriminatory practices. In chapter II of this law, the following situations are typified as discriminatory practices:

- “Adoption of a procedure, measure or criterion, either by the employers themselves or through instructions given to their workers or the employment agency, that makes a job offer, cessation of a work contract, or refusal to hire a worker depend on factors of a racial nature;
- Production or publication job offer advertisements, or any other form of advertising linked to pre-selection or recruitment, directly or indirectly containing any specification or preference based on factors of racial discrimination;
- Refusal to provide, or prevention of fruition of, benefits or services to any person or group.
- Prevention, or limitation, in the access to, and normal exercise of, an economic activity by a person or group;
- Refusal or conditioning in selling, renting or subletting dwellings;
- Refusal of access to public places or places open to the public;
- Refusal or limitation in access to health care provided by public or private health institutions;
- Refusal or limitation in access to public or private educational institutions;
- Creation of classes, or adoption of other internal organizational forms in private educational institutions based on racial discrimination criteria, except in the cases when such criteria are justified by the objectives mentioned in art.3, no. 2.
- Adoption by any organ, official or agent of the state, Autonomous Areas or local government of a measure or practice that conditions or limits the exercise of any right;

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*one of its employees; m) the adoption of an act by means of which a person or a group of persons, either publicly or with the intent of making it extensively known, issues a statement or releases information which causes a group of people to feel threatened, insulted or demeaned because of racial discrimination.’*

- Adoption by an employer of any practice in the context of the working relationship that discriminates any employee;
- Adoption of acts in which a person or group, publicly or with the intention of wide divulgence, makes a statement or transmits information causing a group of people to be threatened, insulted or slandered for racial discrimination reasons.”

This enumeration is not comprehensive and the law admits that there are other situations considered undesirable that may be punished under this norm. Law No. 134/99 also contains protection measures against “retaliation,” by forbidding dismissal, application of punishment or by any other means harming of a worker due to his exercise of legal action or resorting to penal action against discriminatory practice (art. 4, no. 2).

This law also institutes the Commission for Equality and Against Racial Discrimination, whose mission is to assist the application of Law no. 134/99 in the fight against racial discrimination and constitutes a protection, as it is supposed to ensure that that law and other related legislation is obeyed.

It is a specialized national and independent institution with competence to collect all information related to the practice of discriminatory acts and apply the corresponding sanctions; make recommendations concerning the adoption of legislative, regulating or administrative measures deemed appropriate to prevent the practice of discrimination based on race, colour, nationality or ethnic origin; promote studies and research work on racial discrimination; publicize, by any means available to it, cases of effective violation of the law; compose and publicize an annual report on the situation of racial equality and discrimination in Portugal.

The Commission for Equality and against Racial Discrimination is formed by the president – ACIME, two elected representatives of the Parliament, government representatives appointed by the Ministries of Employment, Solidarity and Social Security and Education, a representatives of the immigrants’ associations, a representative of the association for human rights defence, a representative of the anti-racism associations and another three people chosen by all the other members.

**3) Decree-Law no. 111/2000 of 4 of July** — Regulates Law no. 134/99 of 28 of August, and identifies which bodies have the competence to launch legal proceedings concerning misdemeanours, as well as the administrative body which will be responsible for implementing fines and other appropriate sanctions concerning the practice of discriminatory acts.

The information about a discriminatory situation may be transmitted to the government member responsible for issues of equality, to ACIME, to the Commission for Equality and Against Racial Discrimination or to the General Inspection with competence in this issue.

Once informed about the situation, the case is sent to the General Inspection with competence in this issue, by any of the aforementioned institutions, so that it may be organized.

After that, the process is sent to the Commission, and it is the High Commissioner for Immigration and Ethnic Minorities who is responsible for establishing the sentence, fines

and additional punishments, after consulting the Commission for Equality and Against Racial Discrimination.

The applicable sentences are established by Decree-Law No. 111/2000, July 4, and can be summarized as:

- Discriminatory act by any person – one to five times the highest amount for the minimum national salary,
- Discriminatory act by a collective body public or private – two to ten times the highest amount for the minimum national salary,
- In case of repeated offence – the amounts to be paid double;
- Serving the sentence or paying the fine does not exempt the persons of doing their duty, if that is possible.

As for the additional sentences, they may assume different forms, depending on how serious the offence has been and on the offender's guilt:

- a) Dispossession of objects;*
- b) Prohibition of performing activities or jobs in which authorization by a public authority is essential;*
- c) Deprivation of payment or benefit by a public authority;*
- d) Prohibition of participating in fairs and markets;*
- e) Prohibition of participating in auctions or public contests aimed at contracting or concession of public works, provision of public benefits and services, and granting of authorizations and licences;*
- f) Compulsory closing down of business premises whose functioning depends on authorization or licence by an administrative authority;*
- g) Suspension of granting of authorizations and licences.*

The punishments in b) and g) have a maximum duration of two years beginning on the date of the sentence. The Commission has a file with the sentences and fines applied. The general regime for misdemeanours is applicable to sentence procedures.

**4) Art. 5 of the Code of Administrative Procedure<sup>25</sup>** — It is established by no. 1 that the Public Administration, when dealing with private parties, shall adopt the principle of equality, and thus not privilege, favour, cause harm or deprive of any right or exempt from any duty any person by reason of ancestry, gender, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social circumstances.

**6) Art. 7 of the Political Parties Law<sup>26</sup>** — This article establishes which conditions have to be met by the internal organisation of each party, and determines in a) that no one can be denied admission to or be excluded from a party by reason of race or gender.

**7) Art. 7 of the Advertising Code<sup>27</sup>** — Establishes in d) that advertising and other any form of promotion which contains discrimination on grounds of race or gender is prohibited.

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<sup>25</sup> Approved by means of Decree-Law no. 442/91 of 15 of November.

<sup>26</sup> Approved by means of Decree-Law no. 595/74 of 7 of November.

**8) Art. 6 of the Law of International Judicial Co-Operation in Criminal Matters** — Establishes that a request for co-operation is to be rejected when there are compelling reasons to assume that co-operation is being solicited with the aim of persecuting or punishing a person on grounds of race, religion, gender, nationality, language, political or ideological convictions or membership of a certain social group (no. 1, b).

## 7.2.2. Racial Violence:

### 1) Criminal Code:

**a) Art. 132, no. 2 e)<sup>28</sup>** (*introduced by Law no. 65/98 of 2 of September*) — Identifies any murder instigated by racial, religious or political hatred as aggravated homicide, whilst considering this kind of motivation to involve particular severity and viciousness. This kind of crime carries with it a sanction ranging from 12 to 25 years in prison.

**b) Art. 146, no. 2<sup>29</sup>** (*introduced by Decree-Law no. 48/95 of 15 of March*) — Referring to article 132, no. 2, it identifies any offence determined by racial, religious or political hatred as a serious offence against physical integrity. This kind of crime carries with it the sanction ascribed to the particular crime, increased by a third in its minimum and maximum limits.

**c) Art. 239<sup>30</sup>** (*introduced by Decree-Law no. 400/82 of 3 of September*) — Covers the crime of genocide.

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<sup>27</sup> Approved by means of Decree-Law no. 330/90 of 23 of October.

<sup>28</sup> Art. 132 of the Criminal Code — Aggravated Homicide: ‘1. If death is caused in circumstances revealing particular reproachfulness or malice, the agent will incur a prison sentence of 12 to 25 years. 2. Particular severity or viciousness, as referred to in the above, are liable to be caused, among others, by the circumstance that the agent: [...] a) is motivated by racial, religious, or political hatred.’

<sup>29</sup> Art. 146 of the Criminal Code — Offence Causing Serious Bodily Harm: ‘If any of the offences indicated in articles 143, 144 or 145 are caused in circumstances which reveal particular reproachfulness or malice on part of the agent, the latter shall receive the punishment ascribed to the particular crime, increased by a third in its minimum and maximum limits.’

2. Particular reproachfulness or malice are liable to be caused, among others, by the circumstances designated in article 132, no. 2.’

<sup>30</sup> Art. 239 of the Criminal Code — Genocide: ‘1) Any person who, with the specific intent to destroy, in whole or substantial part, a national, ethnic, racial or religious group as such, is guilty of:

a) the murder of members of the group;

b) an offence causing serious bodily harm to any of the members of the group;

c) subjecting the group to cruel, degrading or inhuman treatment, intended to cause the destruction of the group in whole or in part;

d) transferring by force children of the group to another group;

e) the imposition of measures intended to prevent procreation or births within the group, shall incur a prison sentence of 12 to 25 years.

2. Any person who, publicly and directly incites to genocide shall incur a prison sentence of 2 to 8 years. 3. The agreement to perpetrate genocide shall be punished with imprisonment of 1 to 5 years.’

**d) Art. 240**<sup>31</sup> (introduced by Decree-Law no. 65/98 of 2 of September) —Defines the crime of racial or religious discrimination:

‘1. Any person who:

- creates or establishes an organisation or carries out activities of organised propaganda which incite discrimination, racial or religious hatred; or
- participates in the organisation of or in the activities mentioned above or supports them, including financially;

*shall incur a prison sentence of 1 to 8 years.*

2. Any person who, in a public meeting, or in writing with the intent of disclosing it or by using of the media:

- a) causes acts of violence against a person or a group of persons on grounds of race, colour or national or ethnic origin and religion;
- b) slanders or insults a person or a group of persons because of their race, colour, national or ethnic origin or religion, namely by the denial of war crimes or against peace and humanity,

*with the intent of inciting or encouraging racial discrimination is sanctioned with imprisonment for a period of 6 months to 5 years.’*

This does not mean that racism and discrimination was not previously recognised by Portuguese Law. Rather, the Criminal Code had a provision enacted since 1983 that ascribed penalties for both as for genocide and discrimination. The Criminal Code revision took place in 1995; this provision gave place to the separation of genocide from anti-discrimination that was previously gathered in the same article (189). This change followed the Portuguese adoption of the International Convention on the Elimination of all Forms of Racial Discrimination, and the need felt thereafter to establish new dispositions concerning racial discrimination.

Therefore, in the revision of the Penal Code through Decree-Law No. 48/95, March 15, the separation of the two issues gave rise to art. 240, concerning racial discrimination alone. In 1998 a new alteration in art. 240 occurred which, without affecting the typical definition of the crime which is racial discrimination, did nothing but “increase the range of factors of discrimination, by making discrimination based on religious factors a crime and considering the hypothesis of negation.”<sup>32</sup>.

Van Dunem stresses that since 1995, art. 240.<sup>o</sup> demands that two prerequisites must be observed for an offence associated with race, colour or ethnic origin to be considered racial discrimination: a) the action must take place in public or through a means that makes publicizing possible; b) the offender must act with the intention of inciting or encouraging discrimination. The interpretation of this article might lead to the conclusion that it does not cover the pejorative judgement which do not include the prerequisites

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<sup>32</sup> Van Dunem, Francisca (2001) *A Discriminação em Função da Raça na Lei Penal*, [Discrimination based on race in the Criminal Law] in *Estudos em Homenagem a Cunha Rodrigues* (org.) Jorge Figueiredo Dias (et. al.) Coimbra Editora, 2001, pp. 939-956, p.948.

imposed by the new law. These cases would, on the contrary, be covered by general dispositions related to crimes against the honour.

It is, in fact, worth noting that certain discriminatory acts, such as the refusal to provide goods or services, or work discrimination are not contemplated in the Penal Code. A large number of discriminatory behaviours are not, therefore, criminalized, but rather considered misdemeanours as defined in Law No. 134/99 (regulated by Decree-Law No. 111/2000, July 4).

In short, as the author seems to conclude, the fact that offence and slander are almost completely treated as crimes against the honour implies that they are considered a juridical issue of a specific kind. Consequently, it is the owners of the protected interest's responsibility to take penal initiative, so they must lodge a complaint.

**2) Law no. 20/96 of 6 of July** — Summoning to take part as an assistant in criminal proceedings for racist or xenophobic crimes.

The single article of this law establishes that immigrants' communities, anti-racist or human rights associations might be summoned to take part as assistants in a criminal process, in the case of crimes whose motivation is the result of discriminatory behaviour caused by race or nationality, unless the injured party, either requesting their summoning as assistants or not, strongly opposes it.

Under this legal disposition, the summoning of an assistant is exempt from the payment of any legal fees. This is a measure of particular consequence since, was that not the case, then many of these organisations would not have the resources to continue with this type of legal proceedings.

### **7.2.3. Participation:**

1) Law no. 115/99 of 3 of August — Establishes the legal framework of constitution and the rights and duties of associations which are representative of immigrants and their descendants, and provides for the official recognition of their representativeness, as well as the right to benefit both from the State's technical and financial support for their activities and from airtime in public radio and television services. Article 5 establishes that several formal requirements must be met before these associations can be officially recognised. The ACIME (High commissariat for Immigration and Ethnic Minorities) is responsible for the selection of the associations that will be entitled to financial support, in accordance with the criteria established by article 8 of Decree-Law no. 75/2000. The task of confirming the requirements is undertaken by the ACIME and the COCAI (Advisory Council for Matters of Immigration), which give final approval to the projects submitted by the associations. The most significant criteria are the technical excellence of the proposals, the scope (nationwide, regional or local) of the proposals and the correspondence between costs and benefits.

2) Decree-Law no. 75/2000 of 14 of April — Regulates Law no. 115/99 of 3 of August. This decree outlines the process of recognition of representativeness, determines the fields of activity and defines objective criteria of support to the activities carried out by

representative associations of immigrants and their descendants, so that the protection of their specific rights and interests can be assured more effectively, thus contributing to the upholding of dignity and the access to equal opportunities for all citizens legally resident in Portugal.

On the word of this decree, immigrants' associations have the following rights: to take part in the definition of the immigration policy; to participate in legislative processes which relate to immigration; to participate in advisory bodies; to be allocated, through relevant and representative national associations, airtime in public radio and television services; benefit from all rights and advantages granted by law to bodies with legal personality governed by public law; benefit from concessions on legal costs and procedures and on stamp duty; request and be given information and documentation by the proper authorities, in order to monitor the definition and execution of immigration policies; intercede with public authorities in support of immigrants' rights; join local government in the definition and execution of local policies directly involving immigrants; and benefit from the State's technical and financial support.

Public support involves the technical and financial assistance given to immigrants' associations developing programmes, projects and activities.

This decree also provides for three persons belonging to non-Portuguese-speaking immigrants' associations to be members of the COCAI, alongside a delegate from each Portuguese-speaking community.

3) Organic Law no. 1/2001 of 14 of August — Regulates the election of public office holders in local government. As per article 2, no. 1 b), c) and d), and according to the principle of reciprocity, the following persons have the active right to vote: foreign persons who are citizens of a Member State of the EU; citizens of Portuguese-speaking countries who have been residing legally in Portugal for at least two years; and all others who have been legally residing in Portugal for a period of more than three years, providing they originally come from countries in which, reciprocally, the active right to vote is granted to resident Portuguese nationals.

Article 5 awards the passive right to vote to electors of Member States of the EU in cases in which the same right is awarded in their countries of origin to Portuguese nationals; to electors of Portuguese-speaking countries who have been residing in Portugal for at least four years, providing the same right is awarded in their countries of origin to Portuguese nationals; and to other electors legally residing in Portugal for a period of more than five years, providing they originally come from countries where, reciprocally, the passive right to vote is granted to resident Portuguese nationals.

4) Declaration 10/2001 of 5 of September — Determines the countries whose citizens have been awarded the active and passive right to vote.

Among the citizens who have an active right to vote are the citizens of Member States of the EU, as well as citizens of Brazil, Cape Verde, Argentina, Chile, Estonia, Israel, Norway, Peru, Uruguay and Venezuela. Among the citizens who have a passive right to vote are the citizens of Member States of the EU, and the citizens of Brazil, Cape Verde, Peru and Uruguay.

#### 7.2.4. Health:

1) Regulation no. 25 360/2001 of 16 of November — Ensures the access to all National Health System centres to all foreign citizens in need of medical care, just as it happens with Portuguese citizens. To obtain a NHS user card, all foreign citizens must submit, depending on their situation, their permanence, residence or working permit to the healthcare services of their area of residence. Every person not holding these documents and who has been living in Portugal for a period over 90 days must ask their local Council for a certificate that must be presented to the healthcare services of their area of residence.

Any medical expenses undertaken by foreign citizens and their families who have paid their Social Security contributions are supported by the State, according to general terms. Foreigners who do not fall under the above-mentioned categories must pay for their own medical expenses, in agreement with legal prices, excepting when healthcare is provided in situations where there is a significant risk to public health.

#### 7.2.5. Education

1) **Normative Dispatch no. 5/2001 of 14 of December** — Created the Intercultural Secretariat, which operates under the authority of both the Education Minister and the member of Government who is in charge of matters concerning equality.

The Secretariat is responsible for developing, launching and coordinating interministerial projects and programmes, namely within the educational system, with the purpose of fostering the principles of social cohesion, tolerance, dialogue and solidarity and ensure specialised technical assistance in the creation of subject-specific educational projects and programmes, whenever these are requested by bodies reliant on the Education Minister, and which particularly concern the creation of multicultural educational programmes.

Within its general responsibilities, and among other activities to be submitted to the approval of both the member of Government responsible for matters concerning equality and the Education Minister, the Secretariat, working in partnership with parents' and student associations and local government, has to plan, launch and monitor programmes which include the promotion of initiatives contributing to the appreciation and recognition of cultural diversity in Portuguese society and thus lead to an increased awareness of the latter's manifold and open historical character; the endorsement of a scheme promoting intercultural dialogue and the appreciation of ethnical diversity in schools, in partnership with parents' and student associations and local government; the promotion of school competitions dealing with themes such as human rights and the principles of solidarity and tolerance; and the organisation of a national survey with the aim of assessing the attitudes of the Portuguese school population towards tolerance and a multiracial and multicultural society.

It is also, and especially, the Secretariat's responsibility to outline and set up intercultural educational and informative materials.

2) **Law no. 105/2001 of 31 of August** — Establishes the legal status of the so-called socio-cultural mediator. The socio-cultural mediator's task is to assist the integration of

immigrants and ethnic minorities, with the aim of reinforcing intercultural dialogue and social cohesion and fostering respect and awareness of cultural diversity and social inclusion. S/he shall specifically work in schools, social security centres, medical institutions, local government, in the Institute of Social Reinsertion, in the Foreigners and Borders Department (SEF) and in all public services and bodies in which the exercise of her/his function becomes necessary.

The socio-cultural mediator has the following competences and duties: to assist in the prevention and resolution of social and cultural conflicts and in the definition of strategies of social intervention; to work actively with all parties involved in processes of social and educational intervention; to facilitate communication between professionals and users from different cultural backgrounds; to assist users in their dealings with professionals and with public and private services; to promote equal opportunities for the inclusion of citizens from different social and cultural backgrounds; and to respect the confidentiality of all information concerning the families and communities affected by her/his activities.

Socio-cultural mediators shall attend training courses to which specific learning syllabuses that take the particular specificities of each community into consideration will be added, with the purpose of making the intrinsic relation between training, qualifications and labour market viable. All qualifications obtained must be approved by the ANEFA (National Agency for Adult Education and Vocational Training).

## 7.2.6. Labour

**1) Convention concerning Migration for Employment<sup>33</sup>** — The ratification of this Convention requires that Portugal, together with all other signatory states, makes available on request to the International Labour Office and to other Members all information on national policies, laws and regulations relating to emigration and immigration; information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment; and information concerning general agreements and special arrangements concluded on these questions.

Portugal furthermore agreed to maintain, among others, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information; to take all appropriate steps against misleading propaganda relating to emigration and immigration; ensuring that migrants for employment and members of their families enjoy adequate medical attention, etc.

**2) Convention 143 of the IOL<sup>34</sup>** — Each state for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international instruments or agreements.

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<sup>33</sup> Convention 97 of the ILO (International Labour Organisation). Approved for ratification by Portugal by means of Law no. 50/78 of 25 of July.

<sup>34</sup> 'Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers'. Approved for ratification by Portugal by means of Law no. 52/78 of 25 of July.

Each state shall adopt all necessary measures to suppress clandestine movements of migrants for employment and illegal employment of migrants, as well as to combat the organisers of illicit or clandestine movements of migrants for employment, including the definition and application of administrative, civil and criminal sanctions.

**3) European Convention of the Legal Status of Migrant Workers<sup>35</sup>** — For the purpose of this Convention, the term ‘migrant worker’ shall mean a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment.

This Convention aspires to regulate the legal status of migrant workers who are nationals of Member States of the Council of Europe, so as to ensure that as far as possible they are treated no less favourably than workers who are nationals of the receiving State in all aspects of living and working conditions.

**4) Art. 222 of the Criminal Code, no. 2** — Under the designation ‘fraud concerning work or employment’, this article establishes that any person who, having the intention of obtaining illegitimate profit for her or himself or for a third party, entices or promises work or employment in Portugal to a person residing abroad, and by so doing deprives her/him of money or property, shall incur a prison sentence of up to 5 years or a fine of up to 600 days. Article 222, no. 3 refers to article 218, no. 2 for matters concerning aggravated fraud<sup>36</sup>, and increases the limits of the criminal frame.

**5) Law no. 20/98 of 12 of May** — Establishes the legal framework regulating work undertaken by foreign citizens in Portuguese territory.

The specific aims of this law are the abolition of all quantitative restrictions on the employment of foreign workers; the progression, based on the principle of reciprocity, towards the constitutional principle of equality of rights and duties for all foreign workers residing in Portugal; the fight against illegal employment.

This law establishes that foreign citizens who are resident or legally staying in Portuguese territory benefit, within the scope of their employment, from the same working conditions and terms of employment as Portuguese workers. The employer should submit the employment contract to the IDICT (Institute for the Development and Inspection of Working Conditions) before the date in which the foreign worker is set to initiate her/his employment. Listings containing the names of all foreign employees should be submitted to the SEF on a yearly basis.

As per Decree-Law no. 244/98 of 8 of August, and consistent with the changes introduced by Decree-Law no. 4/2001 of 10 of January, the Interministerial Commission for the Co-ordination, Supervision and Evaluation of Immigration Policy, created by the Council of Ministers Resolution 14/2001 of 14 of February, has the task of approving, after the mandatory consultation between all social partners, both the report jointly

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<sup>35</sup> Signed in Strasbourg on the 24<sup>th</sup> of November 1977, and approved for ratification by Portugal by means of Law no. 162/78 of 27 of December.

<sup>36</sup> Art. 218, no. 2 — ‘The prison sentence shall range from 2 to 8 years if:

a) patrimonial damages are of considerably high value;

b) the agent makes a living out of fraud;

c) the injured party suffers financial hardship as a result.’

produced and proposed by the ACIME, the SEF and the IGT (General Labour Inspectorate) and the annual report on the needs of the labour market produced by the IEFP (Institute of Employment and Vocational Training).

### **7.2.7. Social support:**

1) Art. 5 of the Statute of Private Institutions of Social Solidarity<sup>37</sup> — Establishes in no. 2 that the dignity and the confidentiality of the private life of all beneficiaries must be respected, and that no beneficiary can be discriminated on ideological, political, religious or racial grounds.

2) Law no. 19-A/96 of 29 of June — Established the Guaranteed Minimum Income scheme, which also applied to foreign citizens legally resident in Portugal, as long as their social and economic situation met the necessary requirements for its attribution. The Guaranteed Minimum Income was a measure aimed at assuring that individuals and their family units had an income that allowed them to cover their basic needs and promote a progressive social and economic insertion.

3) Law no. 13/2003 of 21 of May — Repeals the Guaranteed Minimum Income assured by Law no. 19-A/96 and institutes the Social Insertion Income.

The Social Insertion Income is a payment included in the subsystem of solidarity and in an insertion programme, and has the purpose of providing individuals and their families with support appropriate to their particular situations, thus contributing to the fulfilment of their basic needs and assisting their continuous professional and social insertion in the community. The programme of integration of the Social Insertion Income consists of several activities that aim to gradually facilitate the social insertion of the receivers of this scheme and their respective families.

The attribution of the right to the Social Insertion Income depends on the combined verification of the following conditions and requirements: that a person, being legally resident in Portugal, is not receiving social income or support, either personal or for any other member of the family unit, which is higher than the limit defined by the present law; that s/he agrees to the subscription and continuation of legally set insertion programmes, namely by showing an active availability for employment, training or other forms of insertion which are deemed appropriate; that s/he provides any evidentiary means requested during the investigation of the case; and that s/he grants access to all information relevant for the above-mentioned assessment to the competent Social Security body in the respective district.

The CNRSI (National Commission for the Social Insertion Income), appointed by a dispatch emanated from the Minister of Social Security and Labour, is a consultative body of the Ministry for Social Security and Labour, whose task is to monitor and assess the implementation of the Social Insertion Income. It brings together representatives of sectors of government such as social security, employment and vocational training, education, health, delegates of the Regional Governments of Madeira and Azores, local

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<sup>37</sup> Approved by means of Decree-Law no. 119/83 of 25 of February.

councils, private institutions of social solidarity and members of trade unions' and employers' confederations.

### **7.2.8. Access to Law and Effective Judicial Protection:**

1) CRP, art. 20 — This rule establishes that everyone is guaranteed access to Law and to the courts in order to defend her/his rights and legally protected interests, and that justice shall not be denied to a person for lack of financial resources. It also establishes in no. 2 that everyone has the right, in accordance with the Law, to legal advice and information, as well as to legal aid.

2) Law no. 30-E/2000 of 20 of December — Law of Legal Assistance for Access to Justice — Establishes the regime of access to Law and to the courts and that it is the responsibility of the Social Security to decide on all requests for legal assistance.

As per article 7, no. 1, the beneficiaries of legal protection are any Portuguese and EU citizens who demonstrate that they do not have sufficient financial means to pay the fees of the legal representatives and to pay, in full or in part, the normal costs of legal proceedings. No. 2 determines that foreigners and stateless persons habitually resident in Portugal shall also benefit from legal protection. The right to legal protection is also granted to foreigners not resident in Portugal, to the extent that legal protection is also granted to Portuguese nationals by the laws of the respective States.

### **7.2.9. Religion**

1) Law no. 16/2001 of 22 of June — Law on Religious Freedom — establishes that the freedom of belief, religion and worship is inviolable and guaranteed to all, in accordance with the Constitution, the Universal Declaration of Human Rights, the applicable international law and the present law.

Aside from defining several principles, like the principles of equality, non-discrimination, tolerance and cooperation between the state and religious communities, it also establishes a set of common rights for all religious beliefs and defines the status of religious convictions and communities.

## **7.3. LEGISLATION DEVELOPMENTS IN 2003**

**1) Decree-Law No. 34/2003, February 25<sup>38</sup>** – This Decree-Law has introduced changes in the regime of entry, permanence, exit and expulsion of foreigners from the country. It establishes a number of changes with a view only to reducing bureaucracy in the Foreigners and Borders Service acting but also to introducing a criminal penalty regime which is more efficient in preventing and repressing illegal acts connected with illegal immigration and the exploitation of foreigners' labour whose situation has not yet been made completely legal. Finally, it has introduced into the Portuguese law the principles of

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<sup>38</sup> See Templates – Publications, PUB/PT/0008

the Council's Directive No. 2001/51/CE, June 28, concerning transporters' responsibility, thus completing the demands of Art. 26 of the Convention for the Application of the Schengen Agreement, June 14, 1985, and also what is prescribed by the Council's Directive No. 2002/90/CE, November 28, concerning illegal entry, transit and residence and the Council's decision of November 28, 2002, concerning the strengthening of the penalty framework for the prevention of assistance in illegal entry, transit and residence. The government organs of the Autonomous Regions, the National Association of Portuguese Municipalities, employers' and trade unions' associations, several non-governmental organisations and the Consulting Council for Immigration Issues, which represents immigrants' associations, were consulted.

**2) Resolution No. 33/2003**, May 3<sup>39</sup> – This Parliament Resolution establishes the election of two members for the Commission for Equality and Against Racial Discrimination. The parliament agreed on the election of Maria Celeste Lopes da Silva Correia and Maria Natália Guterres Viegas Carrascalão Conceição Antunes. This Resolution was approved on April 10, 2003.

**3) Law No. 13/2003**, May 21<sup>40</sup> – This Law establishes the Social Benefit for Integration, which consists of financial support included in the subsystem of solidarity and in an integration program with a view to granting people and their families adequate support according to their situation, aimed at contributing to meeting their basic needs and promoting their gradual working, social and community integration. Granting of the Social Allowance for Integration depends on all the following prerequisites and conditions: legally residing in Portugal; receiving no social allowance himself/herself or any other family member higher than the one defined in the current law; formally and expressly evidencing a commitment to enrol in and pursue the integration program legally defined, namely through active willingness for working, training or accepting any other kind of integration deemed appropriate; presenting all documentation requested in order to complete the person's file, namely data concerning economic situation of the individual and their family; granting the district social entity full access to all information relevant for the aforementioned evaluation.

It is the Social Security and Labour Ministry's responsibility to link the social allowance for integration with other social benefits existent, particularly those related to the solidarity subsystem and to the social security system.

**4) Resolution No. 43/2003**, May 23 and Resolution No. 46/2003, May 23<sup>41</sup> – These Parliament Resolutions second agreements, respectively, between the Portuguese Republic and the Romanian Republic and between the Portuguese Republic and the Estonian Republic on Readmission of People in an Irregular Situation.

According to this agreement, and with no further formality, each party shall readmit its citizens who do not fulfil the conditions for entry into the territory of the other party, as long as the nationality of the person in question can be ascertained or considered as clearly presumed.

The requiring party must readmit in its territory any foreigner who, when leaving the requiring party, after having been readmitted by the required party, does not fulfil the conditions mentioned in the previous articles.

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<sup>39</sup> See Templates – Publications, PUB/PT/0015

<sup>40</sup> See Templates – Publications, PUB/PT/0021

<sup>41</sup> See Templates – Publicações, Entries 29 and 22

**5) Parliament Resolution No. 45/2003, May 23<sup>42</sup>** – Seconds, for ratification, the Treaty between the Portuguese Republic and the Brazilian Federative Republic concerning the transfer of condemned people, signed in Brasilia on September 5, 2001.

They agree to mutual cooperation with a view to enabling the transfer of a person condemned in the territory of one of them into the territory of the other in order to serve the sentence or go on serving the sentence imposed on him after trial. The transfer may be requested by any of the parties or by the condemned person.

The transfer may happen when: the person condemned in one of the parties' territory is a citizen or habitually resides in or has a personal tie to the territory of the other party that justifies the transfer; the final sentence has been established; the duration of the sentence to serve, or what is still left to serve, is of at least six months at the time the request is made to the State where the person was condemned; the facts leading to condemnation are considered illegal according to the law of both parties; the condemned person, or his/her representative (in cases where one of the parties deems that necessary due to his/her age or physical or mental condition) agrees to the transfer; both parties agree to the transfer.

## **7.4. RELATED RESEARCH**

Concerning research, still another studies and initiatives, though not directly related with the legislation sector, should be point out. In this sense, 2002 saw the creation of the Monitoring Centre on Immigration by the High Commissariat for Immigration and Ethnic Minorities with the aim of improving the knowledge on the phenomenon of immigration in Portugal or provide a basis for implementing policies. This Centre has already sponsored three studies who where made public thus contributing to a greater sensibilisation of the public opinion to these issues.

More recently, two broad works on the attitudes of Portuguese towards immigrants and ethnic minorities appeared recently, both promoted by the Immigration Monitoring Centre<sup>43</sup>. One of them was targeted to the Portuguese population, whilst the other was directed to the Immigrant population presently in Portugal. The Survey Centre of the Catholic University conducted both studies during the 19th and 20th of October 2001. Despite the fact that none of the studies were focused on racism and xenophobia, these studies are relevant as ways of measuring trends on immigrants' reception by host population. Regarding methodology, the survey to the Portuguese population encompassed 1419 questionnaires.

From the first survey we should stress that a majority of Portuguese don't agree with the coming of more migrants. When divided by different communities we can verify that answers were slightly nuanced. The inquired were asked to rank three communities for order of preference: Africans, Brazilians and Eastern European. The results showed that

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<sup>42</sup> See Templates – Publicações, Entry 33

<sup>43</sup> The Monitoring Centre on Immigration was created in 2002 by the High Commissariat for Immigration and Ethnic Minorities with the aim of improving the knowledge on the phenomena of immigration in Portugal and provides a basis for implementing policies. The High Commissariat is dependent on the Minister of the Presidency.

Africans were the most rejected (74,4%), followed by Eastern European (73,4%) and finally Brazilians (71,7%). Only a minority of respondents agreed with the incoming of more immigrants. On the other hand, age and level of instruction influence this variable. According to the study, we can verify a clear correlation between instruction and the degree of acceptance of immigrants. In fact, more instruction corresponds to more tolerance, whilst age correlates negatively with the expressed agreement with the incoming of more immigrants.

One important initiative destined to raise the awareness to matters related to immigration and ethnic minorities was the award “Immigration and Ethnic Minorities”, journalism for tolerance. This award is destined to journalist working on the press, internet, television, radio but also to academics. The aim is to promote tolerance and integration, to fight all forms of racism and discrimination and contribute to the understanding of cultural difference.

The media have also been the object of a survey on the images they transmit of immigrants and ethnic minorities. In November 2002, a study was presented with the title of “Representações (imagens) dos Imigrantes e das Minorias Étnicas nos Media” [Representations (images) of immigrants and ethnic minorities in the media] made by OBERCOM (monitoring centre on communication) and promoted by the High Commissioner for Immigration and Ethnic Minorities (ACIME) with the objective of analysing the treatment given by the press to the subject of immigration and ethnic minorities between January 2001 and March 2002. In this period we can observe an increase in the number of news related to the hosting of immigrants by the Portuguese society but, on the other side, an even bigger growth in the news who reporting offences committed by immigrants and ethnic minorities.

As the authors of the study put it, media are strong conditioners of the images of the other widely shared in society. This, and its pioneering attitude, makes for the importance of this study. In fact this is the first comprehensive study on the images that the press transmits on immigrants and ethnic minorities. Unfortunately, the document stops at the presentation (which is very complete) of the results and no general conclusions are given on the social representations of immigrants and ethnic minorities the press is helping to build. We hope that the future will bring further studies on this matter, namely on the representations of ethnic minorities in television, the media with the greater capacity to construct widely shared societal images.

Also one of the issues of the Obercom journal ‘Observatório’<sup>44</sup> examines several questions dealing with a common problem — which can be identified by and large as media, politics and discrimination. This issue compiles several articles by a number of different authors, like Rogério Santos, Isabel Ferin Cunha, Manuel Antunes da Cunha, to name but a few.

One should draw particular attention to the article edited by Dr. Isabel Ferin Cunha, the result a joint endeavour with Verónica Policarpo, Teresa Líbano Monteiro and Rita Figueiras, and which is called ‘Media and Discrimination: An Exploratory Study of the

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<sup>44</sup> Journal ‘Observatório’, no. 5 (May 2002), published bi-annually by Obercom. (Tr.: Obercom is an acronym of ‘Observatório da Comunicação’ and is a Portuguese Media Observatory, a non-profitable private organization that conducts research in the area of communication. For more information, please see [www.obercom.pt/01obercom/01\\_english.htm](http://www.obercom.pt/01obercom/01_english.htm)).

Portuguese Case'. This article presents the preliminary results of an experimental project about instances of ethnic and gender discrimination in the Portuguese media, namely on television and in the press. This study is part of a European research network called 'Observatory Against Ethnic and Sexual Discrimination', which includes three other countries: Italy, Spain and Denmark. The preliminary results of this project indicate two kinds of conclusions: the first concerns the interdependence between the thematic manifestations of discrimination which exist in the public sphere and the relations that are established between political, public and media agendas; the second conclusion reveals that the perception of the media as being a 'mirror of reality' is an erroneous one.

We are not aware of any other research projects conducted in 2002 in the areas under discussion here. It is safe to assume, however, that other projects are actually in progress, and that only the fact that they are in their initial stages prevents them from reaching the public domain.

## **7.5. NON-EXISTING DATA, 'GAP ANALYSIS', DESCRIPTION OF NON-EXISTING LEGISLATION.**

The Portuguese legal order comprises a vast array of legal instruments that aim to prevent, prohibit and penalise discriminatory acts on grounds of race, ethnic origin and nationality, as well as due to gender, age, disability, religious, political and ideological convictions, etc.

In almost all legal documents of significance, whether relating to the criminal, the civil or the administrative spheres, regulations against discrimination in the broad sense are provided for. The problem arises, however, when it comes to the application of these norms, which are normally mere general principles, allowing for prediction, but not for provision.

The norms which provide for sanctions are many times criticised for the infrequency with which they are used, and it is often accepted as true that the reason for this is the difficulty involved in providing evidence of discriminatory acts and consequently in bringing legal action which involves discriminatory practices to a successful end.

One can take the sanctions applied by the Commission for Equality and Against Racial Discrimination, within Law 134/99, as an example: until the present date, only one sanction has been applied, and the Commission did not demand its execution, perhaps because the Law does not establish any form of coercive execution. This is just an example, but it demonstrates the inefficiency of some of the existing legal mechanisms and confirms the misgivings that many persons — especially the victims of discrimination — have about the effectiveness of these norms and of the institutions whose task is to apply them.

All the norms and legal regulations that have been mentioned throughout this report acknowledge that both members of ethnic minorities and immigrants have rights and duties, but they only make reference to legal immigration. Yet it also seems important to secure some basic rights for illegal immigrants (like the access to healthcare, and to education for underage children). The idea is not to make changes to the immigration

policy, but rather to tackle issues that relate directly to questions of human dignity and respect for Human Rights.

Despite the proliferation of legal provisions in the last few years, which resulted in a vast and significant reinforcement of the rights and guarantees of immigrants and ethnic minorities, the problem of discrimination does not seem to have disappeared. In order for that to happen, it would be necessary to establish a sound legal framework, as well as, evidently, to provide more incentives to associativism and to the development of more and better projects, in order to directly support these communities and assist and stimulate their integration. It would be necessary, in addition, to carry out research in these areas and to run both training programmes for nationals and foreigners and nationwide campaigns to increase the receptivity to and awareness of issues which relate to immigration and ethnic minorities, bringing the problems these face to light and showing us how the contact with other cultures can enhance our own experiences.

## **8. Impact of legislation against discrimination**

### **8.1. CREATION OF INSTITUTIONS**

#### **1) High Commissariat for Immigration and Ethnic Minorities (ACIME)**

Decree-Law No. 296-A/95, November 17 – the 13th Constitutional Government’s Organic Law – created the High Commissariat for Immigration and Ethnic Minorities (art. 6, no. 7) under the Cabinet’s tutelage in order to ensure the inter-ministerial monitoring of the support to immigrants’ integration. It is a national entity working under the cabinet’s tutelage and it enjoys a special authority due to its direct relationship with the Prime Minister.

Decree-Law No. 3-A/96, January 26<sup>45</sup> establishes the High Commissariat for Immigration and Ethnic Minorities’ statute and competences. Its main responsibility (art. 3) is to contribute to the improvement of immigrant and ethnic minorities’ living conditions in Portugal with a view to enabling their integration in society, with respect for their identity and culture, in order to ensure that all immigrants legally living in the country are entitled to identical dignity and opportunities, thus eliminating marginalizing situations likely to cause racism and xenophobia; to monitor the various departments of Public Administration with some say in entry, exit and permanence of foreign citizens in Portugal; to cooperate in defining and ensure monitoring and implementation of active policies of combat of exclusion; to propose measures, namely normative measures, to support immigrants and ethnic minorities.

In order to fulfil its duties, it promotes consultation and dialogue with organisations representing immigrants or ethnic minorities in Portugal, as well as research on immigrants and ethnic minorities’ integration, together with the social partners, institutions of social solidarity and other public or private entities with some say in this matter (art.2).

Public Administration services acting in the areas of intervention of the High commissariat provide any requested cooperation and implement its initiatives (art. 3).

#### **2) Consulting Council for Immigration Issues (COCAI)**

According to art.2 of Decree-Law No. 3-A/96, January 26, “in order to fulfil its duties, the High commissariat promotes consultation and dialogue with organisations representing immigrants or ethnic minorities in Portugal, as well as research on immigrants and ethnic minorities’ integration, together with the social partners, institutions of social solidarity and other public or private entities with some say in this matter”.

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<sup>45</sup> Published in Diário da República I-Série A, no. 22, 1º Suplemento (the official gazette)

Consultation and dialogue have been conducted informally, as there has been a policy of hearing what every entity has to say about the main measures aimed at ensuring a harmonious integration of immigrants and ethnic minorities in the Portuguese society.

Apart from maintaining informal kinds of consultation and dialogue, it has been deemed necessary to resort to institutional consultation and dialogue and to ensure the participation in it of representatives appointed by the various organisations. This measure represents a response to concerns often voiced by the Council of Europe aimed at ensuring the necessary existence of mechanisms of consultation of and participation by immigrants in actions designed to promote integration and inter-community relationships.

Based on this understanding, Decree-Law No. 39/98, February 27, establishes the consulting Council for Immigration Issues, with a view to ensuring the participation and cooperation of immigrants' associations, social partners and institutions of social solidarity in the designing of policies of social integration and fight against exclusion.

This organ is made up of the High-Commissioner for Immigrants and Ethnic Minorities' Integration (president); a representative of every one of the communities of Portuguese-speaking countries (designated by their respective associations and federations); a representative of the associations representing other communities with a large representation in Portugal and with a relevant action in this area; a representative of private associations of social solidarity working with immigrants; three representatives of employers' associations and trade unions federations who take part in the Economic and Social Council; two representatives of associations or institutions working with immigrants; a representative of the Cabinet member with tutelage of matters related to immigrants and Portuguese communities; and two citizens of recognised merit appointed by the High-Commissioner. The institutions, associations and communities represented in the Consulting Council must appoint a permanent and a substitute member.

Representatives and experts from government departments, other institutions, public or private, associations or citizens may be invited by the president to participate in the Consulting Council's meetings when their opinion or contribution is considered relevant for the Consulting Council's activity.

It is its responsibility to give opinions on drafts of legal documents submitted by the High-Commissioner and related to immigrants' rights, to cooperate in enforcement of policies of social integration aimed at eliminating discrimination and promoting equality; to contribute to the definition of measures aimed at improving immigrants' living conditions and monitor their enforcement; and to participate in the defence of their rights, respecting their identity and culture, by putting forward proposals aimed at their promotion.

### **3) Commission for Equality and Against Racial Discrimination**

Law No. 134/99, August 28, governed by Decree-Law No. 111/2000, July 4, establishes the Commission for Equality and Against Racial Discrimination, responsible for monitoring the enforcement of the law related to racial discrimination.

It is the Commission's particular responsibility to draw its internal regulation; to gather all information concerning instances of discrimination acts and enforce the appropriate penalties; to recommend the adoption of legal, regulating and administrative measures deemed appropriate to prevent actual discrimination based on race, colour, nationality or ethnic origin; to promote research concerning racial discrimination; to publicise, through all means available, any case of actual violation of the current law; and to draw and publicise an annual report on the situation concerning equality and racial discrimination in Portugal – art. 5.

The Commission for Equality and Against Racial Discrimination is made up of the following: the High-Commissioner for Immigration and Ethnic Minorities (the president); two Parliament-elected representatives; two representatives of the Government, designated by the government departments responsible for employment, solidarity and social security, and education; two representatives of anti-racism associations; two representatives of trade unions' federations; to representatives of employers' associations; two representatives of human rights associations; and three people appointed by all the other members (art. 6). The Commission has a permanent committee made up of the president another two members elected by the others. All public institutions must cooperate with the Commission in its activities, namely by providing data required for completing its annual report.

According to Decree-Law No. 111/2000, the Commission for Equality and Against Racial Discrimination, established by art. 5 of Law No. 134/99, August 28, works under direct tutelage of the government member responsible for equality. And it is the responsibility of the High-Commissioner for Immigration and Ethnic Minorities' Cabinet to ensure the coordination and guarantee the technical and administrative support, as well as the necessary infrastructures necessary for the working of the Commission for Equality and Against Racial Discrimination (art. 11).

#### **4) Inter-ministerial Commission Monitoring the Immigration Policy**

The Resolution Taken in Cabinet No. 14/2001, February 14, establishes the Inter-ministerial Commission Monitoring the Immigration Policy, with a view to ensuring the coordination, monitoring and assessment of the immigration policy on a global level.

It is the Inter-ministerial Commission's main responsibility to ensure the coordination of the various measures adopted, on a political level, in connection with the government's immigration policy; to promote information and sensitising actions; to monitor measures to control of existing legislation related to immigration and use of immigrant labour; to promote coordination and cooperation among the various departments, as well as to monitor measures aimed at the adaptation of the consular network; to sanction an annual report on the evolution of the migratory phenomenon made and proposed by the High-Commissioner for Immigration and Ethnic Minorities, the Foreigners and Frontiers Service and the General Labour Inspection; to sanction the report concerning the yearly prevision of job opportunities according to art. 36 of Decree-Law No. 244/98, August 8, in the wording of Decree-Law No. 4/2001, January 10, drawn under the tutelage of the Institute for Employment and professional Training, following consultation of the social partners.

The Inter-ministerial Commission, presided over by the Minister of Internal Administration, includes:

- A Secretary of State of the Ministry of Internal Administration, designated by its Minister;
- A Secretary of State of the Ministry of Social Equipment, designated by its Minister;
- A Secretary of State of the Ministry of Economy, designated by its Minister;
- A Secretary of State of the Ministry of Labour and Solidarity, designated by its Minister;
- A Secretary of State of the Ministry of Foreign Affairs, designated by its Minister;
- A Secretary of State of the Ministry of Education, designated by its Minister;
- The High-Commissioner for Immigration and Ethnic Minorities;
- The Director of the Foreigners and Frontiers Service;
- The Labour General Inspector.

The Ministry of Internal Administration will provide the logistic and administrative support needed for the working of the Inter-ministerial Commission.

In order to accomplish its goals, the Inter-ministerial Commission may ask the Public Administration departments and services for any information and cooperation deemed necessary; extend invitations to representatives of public administration, central or local, as well as private entities whose contribution is considered relevant; request cooperation by the consular offices in guaranteeing that all relevant information is provided and publicised in countries of origin of the migratory flows; to perform the legally demanded audits.

## Complaint-, Process- and Jurisprudence-related Data

Having presented and analysed the juridical instruments, as well as the basic principles underlying the adopted procedures, it is now important to analyse the juridical decisions, their practical effects and consequences, together with the measures aimed at integrating immigrants and ethnic minorities.

The Constitution of the Portuguese Republic establishes that access to justice and courts of law is guaranteed to all citizens in order to defend their legally protected rights, and justice cannot be denied due to insufficient economic means (art. 20, no. 1). This access to justice involves two distinct aspects: access to legal information and consultation and access to legal aid, that is, the exercising of justice.

As far as access to legal information is concerned, it is ACIME's responsibility, within its sphere of influence, to ensure that all citizens legally residing in Portugal are entitled to identical dignity and opportunities, in order to eliminate discrimination and combat racism and xenophobia (Decree-Law No. 3-A/96, January 26, Art. 2, no. 2, b).

Therefore, since 1996 ACIME has been informing immigrants, all associations working with immigrants and other institutions concerned, namely diplomatic representations and universities, about all legislation relevant to immigrants and ethnic minorities, thus becoming an important provider of relevant information.

Brochures<sup>46</sup> such as "Juridical Means to Combat Racism", "Law of Portuguese Citizenship," "Permanence Authorisation," "Foreigners' Labour in Portugal," "Electoral Roll," "Voluntary Return," "Access to Family Reunion," "Health," "Immigration's Legal Framework," "Access to Education by Immigrants' Children" contribute to better information concerning juridical instruments at citizens' disposal.

ACIME also has a counselling service aimed at helping immigrants, namely in the clarification of and information about their rights and duties, relevant juridical instruments and Public Administration services they may have to resort to.

Like any Portuguese citizen, immigrants can also resort to other public institutions which provide information on legal matters, such as the Prosecuting Counsel, the Attorney General's Bureau or the Legal Counsel Bureau of the Bar Association.

Apart from these support services, there are also immigrants', ethnic minorities' and human rights' associations which promote legal counselling, as is the case with SOS Racism, the House of Brazil, Immigrant Solidarity (SOLIM) and some trade unions.

As stated above, the Constitution of the Portuguese Republic guarantees access to justice and to courts of law, regardless of economic situation, and Law No. 30-E/2000, December 20, which alters the regime of access to justice and to courts of law, establishes that it is the Social Security's responsibility to decide on the demands for legal support. Access to justice and to courts of law involves expenses, so the situation of people with low incomes and unable to support them has been safeguarded.

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<sup>46</sup> Boletins Informativos[Newsletters] do ACIME. See [www.oi.acime.gov.pt](http://www.oi.acime.gov.pt)

Art. 7, no. 2, establishes that foreigners and stateless people habitually living in Portugal are entitled legal protection, and no. 3 establishes that foreigners who do not live in Portugal are entitled legal protection on a reciprocal basis.

This legal protection is granted for actual juridical matters or lawsuits or for those likely to come to pass, in which the claimant has a personal interest and which deal with rights directly harmed or threatened (art. 8). It consists of the total or partial exemption of legal taxes and other payments related to the lawsuit, a postponement in the payment of legal taxes and other payments related to the lawsuit and in the appointment of a lawyer and payment of his/her fees or, alternatively, payment of the fees of a lawyer chosen by the claimant (art. 15). These various forms of legal support may be granted together (art. 23, no. 4).

In the last decades some violent racist acts have happened in Portugal, most of them committed by individuals or groups of skinheads, who support neo-nazi ideologies, and their victims have been Black people.

These acts gave rise to a petition addressed to the President of the Constitutional Court aimed at illegalising the National Action Movement (MAN), a confessed fascist organisation responsible for many of these crimes. The Constitutional Court decided not to decree its extinction, as it no longer existed *de facto*<sup>47</sup>.

In 1995, perhaps the most violent racist act took place, which caused a wide social mobilisation. The Church, political parties, the Prime Minister, the President of the Republic, trade union federations, associations of immigrants, ethnic minorities and human rights, student unions, intellectuals, artists, etc. publicly manifested themselves against violent racist acts, there were demonstrations, press communiqués, signed petitions and all kinds of actions condemning such acts and demanding justice.

On June 10, 1995, the national day in Portugal, in which Camões and the Portuguese Communities are also celebrated, also known as the “race day,” a group of skinheads armed with knives went to an area in Lisbon famous for its night revelry and attacked all black people they came across with, violently killing a young black Portuguese man and wounded another twelve people.

Nineteen people were accused in this case, 13 of which were preventively arrested, 4 were freed and 2 are missing. However the Prosecuting Counsel proposed the arrest the other 6 convicts on grounds of “real danger of escape.”

All accused were charged with genocide, homicide and bodily harm.<sup>48</sup> This constituted a historical accusation, as it was the first time anyone in Portugal was accused of genocide.<sup>49</sup>

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<sup>47</sup> Decision no. 17/94, DR [Official Gazette], Series II, March 31, 1994

<sup>48</sup> Process of October 10, 1996: “*I hereby pronounce the accused guilty of the following crimes jointly committed:*  
- one crime of genocide foreseen and punishable by art. 189, no. 1 a) and b) of the 1982 Penal Code (currently foreseen and punishable by art. 239, no. 1 a) and b) of the Penal Code approved by Decree-Law No. 48/95, March 15);

The Prosecuting Counsel asked for the absolution of the 17 skinheads of the crime of genocide. The Attorney General justified the demand for absolution of genocide based on the fact that the skinheads had not even been accused of “criminal association.” The court agreed, considering that the intention of eliminating a race had not been established, but rather the intention of expelling Black people from Portugal. However, 15 skinheads were charged with homicide, bodily harm and participation in a brawl; 6 were condemned to 18 years in prison, the total amount of the sentences reaching 205 years in prison.<sup>50</sup>

These were the most serious cases that have happened in Portugal in the last years; however, several charges have been filed every year.

In March 2000, ACIME filed a complaint to the Attorney General against a mayor due a communiqué he had presented through the media that evidenced a crime of racial discrimination against members of an ethnic group, namely gypsies.

That communiqué, dated February 29, 2000, exhorts all the inhabitants to keep a healthy relationship with one another and to defend themselves at all costs against the attempt to infiltrate the community by elements exhibiting a total lack of proper conduct. They should be wary of all those who did not share the values defended by the whole population, particularly members of ethnic groups or nomads who have nothing in common with our way of living.

The municipal communiqué continues stating that “We must, therefore, take some measures aimed at preventing the presence of undesirables from being imposed on us, by using any means at our disposal, without fearing threats because in this way we will be defending ourselves...Selling or letting houses to people who do not guarantee a full integration in our ways should be avoided due to the harm it will cause to all our area. Therefore, the Municipality asks of everybody that, before considering selling or letting houses, try to ascertain the way of living of the candidates so that the style and way of living in our parish will not be significantly damaged. What is more, the Municipality is willing to help people interested in those transactions in identifying and characterizing whoever approaches them for them for those transactions.”<sup>51</sup>

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- ten crimes of bodily harm foreseen and punishable by art. 144, no. 2 of the 1982 Penal Code (currently foreseen and punishable by art. 146, no. 2 of the Penal Code approved by Decree-Law No. 48/95, March 15);

- one crime of homicide foreseen and punishable by arts. 131 and 132, no.2, d) and f) of the 1982 Penal Code (currently foreseen and punishable by arts. 131 and 132, no.2, d) and f) of the Penal Code approved by Decree-Law No. 48/95, March 15).

<sup>49</sup> *O Independente*, June 14, 1996: “It certainly is the first time such a thing happens in our country; as far as I can remember, no one has ever been accused of genocide in Portugal,” a judge from the Supreme Court told *O Independente*. Another magistrate explained that the accusation “could only be inspired by the example of Germany, a country where there is a large number of convictions of skinheads under the accusation of genocide.”

<sup>50</sup> “Portuguese Report on Racial Discrimination,” Documentation and Comparative Law, Attorney General, Documentation and Comparative Law Bureau, Lisbon, 1999, pp. 134-135

<sup>51</sup> “Poiaras Rejects the Unwelcome,” in *Diário de Coimbra*, March 15, 2000

Presuming that the legal prerequisites existed for considering this a crime of racial segregation under art. 240, no. 2 b) of the Penal Code, ACIME sent a complaint to the Attorney General.<sup>52</sup>

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The complaint did not develop into a lawsuit, as the Attorney General considered that there was no evidence of intention on the part of the mayor to incite to racial discrimination.

Another politician, a member of the Parish Council, was accused of racial discrimination after making this statement: *“The central government does not govern, rather they create chaos. I have been robbed of property worth about two thousand contos [€ 10,000] and I’m sure it was the gypsies (...) because the Socialist Party wanted the gypsies to live here and to be granted proper housing with electricity, running water, etc. Having accepted the gypsies has been terrible for Paredes and no one else in the country wants them. I’m not against gypsies but I know for certain they were born to rob honest working people.”*

On the same occasion, the same politician produced other comments of the same kind about the gypsies and ended by saying, *“If I were referring to Lisbon, I would mention the Black people, who are in large numbers there and everybody knows they are thieves.”* On February 14, 2002, the politician was condemned to nine months in prison for two racial discrimination crimes, according to art. 240, no.2, b) of the Penal Code.<sup>53</sup> This decision was based on strong evidence of the facts. Unlike proceedings usual in such cases, in order to prove “the intention to incite to or encourage racial discrimination,” the defendant and his witnesses were interrogated about his intention when he made that statement. It seems that in this case there has been an inversion in the obligation of evidence as it is established in Directive 2000/43/CE.

Decree-Law No. 111/2000, July 4, which governs Law No. 134/99, August 28, establishes proceedings and a punishing regime for criminal discriminatory acts, as it was above-mentioned. In 2002 ACIME handled two cases involving individuals, one of them related to discriminatory treatment in connection with security and the other related to discriminatory treatment in connection with career progress.

In 2001 ACIME received 12 complaints (4 by associations, 4 by individuals, 2 by the High Commissioner, 1 by a public institution and 1 by a court)<sup>54</sup>.

The kind of cases handled included: refusal to let flats; refusal of hotel services; job access; refusal of official documents by municipal authorities; discriminatory treatment by public services; refusal of car rental service; problems with neighbours / exercise of rights; aggression by police; refusal of admission to a public place; aggression; freedom of movement and permanence – police action; refusal of services.

Of these processes, 6 were sent to the appropriate institutions for investigation, 4 were handled by the appropriate inspection services and 2 are still being analysed by ACIME.

<sup>52</sup> Communication with the Attorney General, March 21, 2000, suggesting the possibility of starting criminal proceedings.

<sup>53</sup> Sentence of the 2nd Criminal Court, process no. 368/97.4T APRD

<sup>54</sup> High Commissioner for Immigration and Ethnic Minorities, “Minutes of the Technical Seminar on the Enforcement of the Law Against Discrimination, Lisbon, 2002.

Of the cases mentioned, 10 were of discrimination based on nationality, 4 on ethnic origin and 1 was classified as “other.”

The Permanent Commission of the Commission for Equality and Against Discrimination met in 2002 to decide on the cases handled by the general Inspections. They advised the application of a fine in one case and the closing of another two, which ACIME did, according to the law.

After analysing the cases and their outcomes, it can be said that for violent crimes of a racist or xenophobic nature Portuguese courts have already shown their capacity to punish them, but attention should be given to the problem of the proof regime in such cases, as courts can only condemn with proof, and if it is virtually impossible to produce it then it will be quite difficult to have similar outcomes.

To sum up, since 2000 ACIME has received 33 processes, 12 of which are being investigated, 3 await decision by the Competences Conflict concerning investigation, for 1 the fine has already been paid, 2 have been closed, 3 await opinion by the Permanent Commission for a final decision, 5 are the responsibility of the Prosecuting Counsel, 6 are being analysed for closing (they will be analysed by the Permanent Commission) and 1 is being prepared for a criminal process to be opened.

As far as distribution of processes among the competent General Inspections for investigation is concerned, the situation is that from these 33, 5 have been sent to the Prosecuting Counsel, 6 are the responsibility of IGT, 5 are the responsibility of IGAT, 5 are the responsibility of IGAI, 3 are the responsibility of IGAE, 1 is the responsibility of IMOPPI, 1 is the responsibility of IGOPTC, 1 is the responsibility of IGSJ and 6 have been assigned to no General Inspection.

As for causes for discrimination indicated, 16 complaints are related to race (14 black, 1 Asian, 1 Indian), 4 are related to ethnic group (gypsies) and 13 are related to nationality (3 Brazilians, 3 Ukrainians, 1 French, 1 Romanian, 5 non specified).

However, not all cases reach ACIME and the Commission, but the files of the immigrants’ associations, albeit usually not very well organised, can complete this list of complaints and accusations. Through the SOS Racism Association we have been made aware of 6 complaints from 2002:

- 1. August 2002 – a Brazilian citizen filed a complaint for racist abuse;
- 2. October 2002 – a Portuguese citizen of African descent living in Lisbon filed a complaint due to discrimination by a coffee shop waiter;
- 3. October 2002 – an Angolan citizen living in the Setúbal area filed a complaint due to physical aggression and intimidation by gypsy neighbours. According to the complainant, these aggressions aimed at expelling him from his home.
- 4. November 2002 – a citizen from Guinea-Bissau living in Lisbon complained that he was repeatedly refused jobs owing to racial discrimination.
- 5. November 2002 – two citizens from Guinea-Bissau living in Lisbon complained that their telephone contract had been cancelled due to their ethnic origin.

- 6. December 2002 – an African citizen living in Tavira was charged with corruption. According to the complainant, because he was black he was the only one accused in a group of various people involved. Also, according to him, during his trial he was abused.

We have also been informed that due to a complaint made to SOS Racism two criminal charges have been filed in 2003. One was lodged with the Sintra Criminal Court for racial violence against two black citizens by police officers. The case is being investigated and at the same time disciplinary action is being conducted by IGAI in order to ascertain possible responsibility on the part of the police officers. Another was lodged with the Vila Franca de Xira Criminal Court for racial discrimination by two companies, one a construction company, the other an estate agent, due to refusal to sell a flat to a gypsy couple. This process has recently reached the court and is being analysed by the Prosecuting Counsel for decision.

We may conclude that the number of complaints that become known does not in the least mirror the actual situation. On the one hand, many victims of discrimination never get to press charges, on the other hand, associations do not always inform ACIME and/or the Commission of complaints they have received. There is also the possibility that complaints directly presented to courts never get to be known by ACIME or the Commission.

## Reports on Racism and Discrimination

The Resolution taken in Cabinet No. 175/96, October 19<sup>55</sup>, established the Work Group for Gypsies' Equality and Integration. This work group's reports were sanctioned and made public by the Resolution taken in Cabinet No. 46/1997, March 21 and, later on, by the Resolution taken in Cabinet No.18/2000, April 13<sup>56</sup>, which not only made public the report of the work group for Gypsies' equality and integration, but also kept the work group working, albeit with some changes, in order to enable the monitoring of the new realities and challenges faced by Portuguese Gypsies.

The conclusions drawn by this report point in the direction of exclusion of the Gypsy community by the non-Gypsy community. This fact results from a gap in this community's social integration, namely concerning jobs and education.

The Resolution taken in Cabinet No.18/2000, April 13 established a work group with these objectives: giving opinions on situations and problems hindering immigrants' integration in the Portuguese society; promoting links at a national and local level in the response to concrete problems; drawing an annual report that ensures the assessment of the level of effectiveness of the immigrants' integration policy.

There is, however, no record of this work group's working or any of its reports. In its 2002 Activity Report<sup>57</sup>, the Human Rights Commission of the Bar Association emphasised the immigrants' problems, stating that many of them in fact are the victims of robberies unscrupulous employers, namely in the area of building construction, and also constant targets for extortion by criminal associations of a mafia-like nature. Here, too, criminals take advantage of the fact that their victims cannot defend themselves, as many of them are illegally staying in Portugal and will not file charges in connection with the crimes they are the victims of, for fear of being expelled.

This report also states that lawyers intervene in all the steps of the processes leading to expulsion of foreign citizens, so that the legitimacy of those decisions can be closely watched in an independent way. The Human Rights Commission of the Bar Association had a meeting with the Director-General of the Foreigners and Frontiers Service and alerted him to that need. They emphasised the fact that Portugal is still a country that owes a great deal of its development to Portuguese emigrants scattered all over the world, and so *“Portugal's responsibility is even greater concerning immigrants, not only those coming from our former colonies, but also those coming from other countries, as part of our current development is happening due to immigrants' cooperation. Therefore, the minimum they are entitled to is being treated with dignity in our country.”*

The Human Rights Commission of the Bar Association has stated that they do not endorse the massive disorderly influx of immigrants into Portugal, particularly when it is organised and masterminded by international criminal organisations. But they demand that immigrants entering Portugal be granted basic conditions of human dignity, which is a responsibility of the Portuguese State from which it cannot be exempted.

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<sup>55</sup> Official gazette [DR], I Series-A, October 19, 1996

<sup>56</sup> Official gazette [DR], I Series-B, no. 88, April 13, 2000

<sup>57</sup> Human Rights Commission of the Bar Association, 2002 Activity Report, [www.oa.pt](http://www.oa.pt)

The Bar Association has established cooperation with members of the Brazilian Bar Association, namely from Baía, with a view to devising forms of cooperation in protecting human rights of Portuguese emigrants in Brazil and of Brazilian immigrants in Portugal. The goal is to be able to propose concrete cooperation plans by the end of the year 2002 and in 2003 those contacts include lawyers' organisations from other countries where there are Portuguese communities.

In 2003 Amnesty International presented its annual report covering January to December 2002<sup>58</sup>. In the section covering Portugal, A. I. presents reports of abuse by the police both at the time of arrest and inside police stations. Allegedly victims have included children, women and members of ethnic minorities. In some cases difficulties were raised for victims attempting to file charges against the police.

In December 2001, 17-year-old Ângelo Semedo, born in Cape Verde, was killed under suspicious circumstances. In October, A. I. wrote the Portuguese government asking for an explanation and were informed that Ângelo Semedo had been hit in the abdomen by a bullet shot by the police officer who was pursuing him on foot, following a complaint related to a car robbery in which the driver had been threatened with violence. After disciplinary proceedings, IGAI condemned the officer involved to a 75 days' suspension based infraction of the rules applicable to the use of a firearm. The penalty, however, was suspended and by the end of the year an inquest was still going on.

António Pereira, a building construction worker and a member of the African Cultural Centre in Setúbal, south of Lisbon, was shot to death in June 2002, in the Bela Vista quarter of that city. According to reports, he had tried to intervene in a quarrel between two men. When police officers arrived they fired their arms killing António Pereira and wounding another man. Due to António Pereira's death, social tension in the quarter rose, which contributed to the strengthening of the feeling of exclusion within that minority community.

Still according to A.I.'s report, between December 2001 and January 2002 alone, 3 Ukrainians committed suicide while under police custody. According to reports, two of them had been arrested for causing disturbance in public places, while they claimed they were being threatened by criminals. At least one of them had asked for police protection.

In November 2002, The European Commission against Racism and Intolerance (ECRI) published its second report on Portugal<sup>59</sup>. The Commission recognised a series of positive measures taken by the authorities to combat racism. However, it pointed out the persistence of problems, namely: the opening of few processes based on art. 240 of the Penal Code (which punishes activities aimed at inciting to or encouraging racial violence, hatred or discrimination); the fact that racism is not considered an aggravating circumstance for all crimes; the economic and social situation of those seeking asylum and waiting for the decision for their processes; lack of reliable information on the situation of the various minority groups living in the country.

ECRI also noted that there was "*reports concerning law agents who tend to use excessive force on prisoners or in fights with other people, mostly immigrants or gypsies;*"

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<sup>58</sup> Amnesty International 2003 Report, Amnesty International – Portuguese Section, Lisbon, May 2003, pp. 142-144

<sup>59</sup> European Commission against Racism and Intolerance, "*Second Report on Portugal,*" adopted on March 20, 2002, Strasbourg, November 4, 2002.

according to information, gypsies have been subjected to *“frequent controls of identity, humiliating treatment and even aggression by the police.”*

The Commission was particularly concerned about the alleged impunity of police officers responsible for such acts and insisted that Portuguese authorities combat it, by ensuring that in-depth investigation is conducted concerning acts of abuse of immigrants and members of the gypsy community in order to identify and punish the guilty ones.

In one of the final chapters of the Report, dedicated to worrying problems, ECRI raises a number of questions to be taken into consideration by the Portuguese government. Among them is the concern about too long time taken by SEF in responding to issuing documentation. The response to requests for renovation of permits may take a year or even longer, which causes insurmountable difficulties for those who need them. Thus, ECRI recommends that Portuguese authorities urgently do their utmost to improve SEF services by endowing them with, among others, the human and financial resources necessary to fully ensure their functions. Training of SEF officials in the area of Human Rights and matters related to foreigners might constitute a means to a better relationship between the services and their users.

Concerning testimonials stating that immigrants from African countries tend to be neglected and disregarded, namely by the civil society, in favour of immigrants from Central and Eastern Europe, which may lead to frictions among immigrant communities, ECRI encourages Portuguese authorities to ensure that there is not a dual-criteria immigration, which might give rise to a feeling of exclusion among some immigrants. To attain their goal, educational sessions and cultural activities involving the various communities might be organised. ECRI recommends that Portuguese authorities make public opinion aware of the need to fight against stereotypes and prejudice. ECRI considers that the awareness that Portugal's is a multi-cultural society might increase the possibility for all immigrants to enjoy a true equality of opportunities in the area of social life, whatever their origin.

ECRI elected among the worrying situations the gypsy community's condition. It showed its concern for the fact that the gypsy community is the victim of prejudice, namely of the civil society and some local and administrative authorities. Therefore, ECRI recommends that Portuguese authorities take the necessary measures to fight against this kind of discrimination and hopes that to that effect Law No. 134/99 is fully enforced.

The CPR report, “Studies for the diagnosis and assessment of the reception of processes of asylum-seekers in Portugal,” analyses the legal framework and the institutional process concerning the granting of asylum in Portugal. Following this analysis and assessment a number of general and specific recommendations are made.

Among the general recommendations, the report stresses the need to intensify the development of programs that prevent the risk of social exclusion, as well as the need to implement efficient and integrated measures to promote economic and social integration of the minority groups in order to prevent cultural differences from becoming a motive for conflict and discrimination.

As for specific measures, the report lists the following as possible short- and longer run:

- raising the awareness of officials in services dealing with asylum seekers, so that a more humane personal service and a regular monitoring exists in order to avoid social exclusion. This could be achieved through information and training courses;
- divulging information about the foreign communities in the media, schools, churches, local administration departments and the internet;
- providing independent legal support at, for example, SEF, NGO's, etc.;
- distribution by SEF of booklets in different languages about the process of getting asylum;
- creating a quicker appeal system;
- creating a database of interpreters;
- creating a support centre for victims of torture, and a database with psychologists willing to assist asylum seekers at the various reception sites;
- promoting the creation of welcoming centres with several support services for asylum seekers at the time of transition to integration;
- promoting the creation of a system of certification of prior studies to be done by universities.

## Trends and recent developments

As far as complaints about racial discrimination are concerned, according to ACIME 29 cases were presented until 2002, under the Racial Discrimination Law. While the previous High Commissioner<sup>60</sup> was in office there were 16 complaints and since the current<sup>61</sup> High Commissioner has been in office 17 complaints have been made.

Bearing in mind that the current High Commissioner has been in office since July 2002 – after a period of time for the government change – we may conclude that the number of complaints has risen.

In 2000 the number of complaints known was 2, in 2001 the number rose to 12 and in 2002 there were 15. However, despite this increase in the number of complaints, we know this figure is very far from reality. Many cases never reach the institutions and there are complaints known only by associations, on the victims' request.

So far in 2003, 4 complaints have been presented to ACIME. General Labour Inspection, the institution with competence to investigate the process, is dealing with three of them. Two are at investigation stage and the other one awaits the High Commissioner order so that charges are made, as the employer has been notified to be interrogated. In the aforementioned situation the complainants are an African, a Brazilian and a Ukrainian.

The General Inspection of Territorial Administration is investigating the fourth complaint, which involves a Municipality that has acted in such a way as to condition exercise of rights through possible discrimination, as the complainant is a gypsy.

Concerning the immigration policy, the government currently in office has introduced substantial changes in the law regulating entry, permanence, exit and expulsion of foreign citizens from the country, which has resulted in a situation of some uncertainty concerning the integration of foreign citizens in Portugal.

Through an agreement signed in July 2003 between Portugal and Brazil, the Portuguese government has pledged to promote an extraordinary legalising process for all Brazilian citizens working in Portugal without legal documents. This process is scheduled to start on September 15.

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<sup>60</sup> Dr. José Leitão

<sup>61</sup> Father Vaz Pinto

## **9. Strategies, initiatives and good practices**

### **9.1. COMMISSIONS**

At a meeting with the SEF Director-General, the Human Rights Commission of the Bar Association mentioned problems connected with immigration, particularly the situation of illegal immigrants. The Bar Association voiced their preoccupation concerning administrative expulsion processes, stressing once again the need for those people to be represented by a chosen or appointed lawyer. According to the Commission's report, the SEF Director-General manifested his willingness to cooperate with the Bar Association.

The Bar Association's support translates into an initial technical-judicial help to be granted to immigrants and the denunciation of the cases involving exploitation and extortion against immigrants.

Together with the Association Against Exclusion and for Development (ACED), the Human Rights Commission of the Bar Association, in their 2002 report, announced some progress in the area of creating juridical advice bureaus inside prisons and supporting the officious appointment of lawyers to provide legal help to citizens detained by SEF, and explained the need for the Institute for Access to Justice. Despite all these statements, so far nothing has been decided concerning these forms of legal support and advice.

### **9.2. LOBBYING**

The Bar Association, through its Human Rights Commission, has demonstrated its preoccupation concerning the problems faced by immigrants and ethnic minorities.

In 2002, the Bar Association informally created the "Informal Commission for Debate and Analysis concerning Immigration Issues," which met with several immigrant associations to discuss immigrants' main problems and the Bill which was then being drafted by the government and later became the Decree-Law No. 34/2003, February 25. The Bar Association lodged an appeal to the Constitutional Court, requesting that the Law for Legislating Authorisation was considered unconstitutional because it did not contain any specification about its contents and scope.

Following this argument, and still led by the Bar Association, other actions followed, several non-governmental organisations and about 500 people, including several outstanding personalities from the Portuguese civil society and the church, signed a petition to the President, Jorge Sampaio, requesting him to suggest the unconstitutionality of the Immigration Law the government about to approve. The petition, which was initially devised by the Immigrant Solidarity Association, considered that the legal document mentioned above "proposes a restrictive immigration policy that limits access to rights, freedoms and guarantees" by foreigners, which may result in "a dramatic increase of cases where human rights are ignored." The petition criticises the introduction of a rule (art. 93, no. 5) establishing the denial of residence permit whenever "the motives for granting or extending it have ceased to exist." Motives like unemployment, albeit temporary, change in marital status, changes in family

relationships, coming of age or recovering from an illness “may, under this law, give rise to losing the residence permit and subsequent expulsion.” This petition to the President increased the criticism which had been voiced, namely by the Catholic Church and the Bar Association, in connection with the proposed Immigration Law.

The Coordinating Secretariat of Immigrants’ Associations (SCAI), established in 2002, includes the most representative associations of immigrants in Portugal. It is a forum of debate on immigration policy, frequently meeting with government representatives in order to discuss the proposed immigration law and suggesting alternative proposals. It has often publicly voiced its disagreement concerning the immigration law.

The Anti-Racist Network (RAR), a federation of anti-racism associations which monitors the evolution of the situation of immigrants and ethnic minorities in Portugal, has regularly promoted meetings for analysis and discussion. However, RAR has no public expression in the discussion around these issues and it is some associations that constitute it that promote some activities of a cultural nature and publish communiqués in the press.

### 9.3. GOOD PRACTICES

The ‘*Portugal acolhe*’ (‘Portugal welcomes’) initiative aims to create conditions for an effective integration of immigrants into the Portuguese community. This programme, which is sponsored by the IEF, has the following goals: to promote the socio-economic and cultural integration of immigrants; to create conditions for a more successful integration into the labour market; to ensure that the labour market is properly regulated, by promoting the exercise of labour rights and duties; to adjust the qualifications of immigrants to the needs of the labour market; and to promote a better social and professional integration of immigrants by ensuring that they gain a basic understanding of important issues, namely the knowledge of the Portuguese language and of the rights and duties guaranteed by the Portuguese Constitution and additional legislation. The former is a matter of particular importance, since the majority of present migration flows into Portugal are by groups of persons who have very few cultural and linguistic affinities with the Portuguese population.

On the 21<sup>st</sup> of February, the General Confederation of Portuguese Workers — National Inter Trade Union (CGTP-IN) organised a cycle of annually-held conferences, under the title ‘*Semear para Unir*’ (‘Sow to Unite’), with the purpose of debating the issues surrounding immigration and citizenship rights, particularly the implementation of Residence Permits and their consequences for the employment of immigrants.

The CGTP-IN furthermore organised, in May 2002, a Seminar whose aims were to elucidate immigrants about their labour rights and about which procedures they should adopt in their legalisation processes.

In the same way, the UGT (General Workers’ Confederation), in partnership with the *Projecto EQUAL*, organised a seminar under the title ‘*Imigrante Legaliza-te*’ (‘Immigrant Legalise Yourself’) in September 2001; and another one a year later, again in September, this time intended for the professional training of immigrants. The objective of this seminar, in which several official and non-official institutions took part, was to explain to migrant communities how they can request their legalisation and which documents are

required for that purpose. Questions concerning the professional training of immigrants and the measures which should be taken to reach those goals were also debated.

On the 18<sup>th</sup> of October 2002, the Institute of Social Sciences and the Centre of Geographic Studies of the University of Lisbon organised the conference '*A Europa, o desafio demográfico e o espaço de liberdade, segurança e justiça*' ('Europe, the demographic challenge and the space of freedom, security and justice'). The theme of this conference was the new political options on the subject of immigration and the integration of immigrants, the labour market, qualification of immigrants, etc.

All in all, most of these initiatives were carried out by trade unions, which underscores the particular importance attached to labour-related questions.

Law no. 34/2003 stipulates the development of a project promoting the establishment of a National System of Support to immigrants. This system will consist of local centres in cities, towns and villages (CLAI — Local Centres of Support to Immigrants), Regional Centres in every district capital (CRAI — Regional Centres of Support to Immigrants) and two national centres, one in Lisbon and the other in Oporto (CNAI — National Centre of Support to Immigrants), and their purpose will be to aid foreign citizens to legalise their situation as quickly as possible; to provide them with information concerning their rights; and to answer any questions they may have. Several services will be provided in national centres, like the Foreigners and Borders Department, departments of housing, health, education and social security, as well as in the IEFP. These centres will also have services in attendance to help translation to and from Crioulo, Russian and English. The National System of Support to immigrants will have a Cabinet to recognise skills and competences, working in cooperation with the ministries governing the education sector<sup>62</sup> and the Ministry for Social Security and Work, in order to develop rapid and integrated responses to demands of equivalence of degrees and professional skills. Another cabinet will provide technical support to immigrants' associations in the initiatives they intend to develop.

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<sup>62</sup> There are two ministries dealing with two different levels of education in Portugal: higher education is the competence of the Ministry for Science and Higher Education, whilst the Ministry for Education deals with all other levels of learning.

## 10. Summary and Conclusions

For decades Portugal was an emigration country, the Portuguese being scattered all over the world. For political or economic reasons they had to leave their country and find a welcoming country. Nowadays, however, Portugal is primarily an immigration country, this being a new reality requiring great attention and sensitivity.

Portugal has adopted measures aimed at promoting tolerance and respect for the various social groups that have settled in our country, with a view to guaranteeing a perfect social integration.

The Portuguese policy for social integration of immigrants and ethnic minorities and combat against discrimination based on race or ethnic origin started in a more significant way in 1996 with the creation of the High Commission for Immigration and Ethnic Minorities.

Various legal instruments have been devised aimed at recognising and guaranteeing the equality of rights and measures have been adopted particularly in order to quantify and characterise the migrant populations and ethnic minority communities, as only by knowing them is it possible to adopt measures and programs focused on their needs, which are of most diverse kinds.

It can be said that in Portugal there is a juridical model of equality for foreign citizens and ethnic minorities, patent in several legal documents, starting with the Constitution of the Portuguese Republic and continuing with the subsequent introduction in the Portuguese legislation of the general principles stated in the international instruments ratified by Portugal.

However, the enforcement of these norms is inefficient, which may be due to various factors, such as: inefficacy of the legal instruments available to the victims; the general distrust in the legal system due to the belief that complaints will lead to no final result or, at least, so satisfying result; and the lack of awareness of the need to complain.

Concerning the exercising of rights by these communities, despite egalitarian legislation, the theoretical discourse of acceptance of the difference and integration policies that have been announced, there persist, however, factors preventing the actual improvement of their socio-economic conditions.

A relevant factor for this reality is the fact that for a long time these people were in a situation of virtual complete exclusion. The gypsy community's situation is particularly dramatic as, although for centuries it has been formed by Portuguese citizens, it has never really been part of the Portuguese community, due to a large number of deeply rooted prejudices both in the other Portuguese and in the gypsy community itself.

Another factor that should be mentioned is that immigrants from Portuguese-speaking African countries, who for historical reasons were the first to choose Portugal as a destination country, are not only foreign immigrants but also black, which has increased racial discrimination and made their social and economic integration more difficult.

Concerning the fight against racism, xenophobia and racial discrimination, Portugal has legislation aimed at combating racist crimes; however, it is extremely difficult to prove the offender's racist intention, which has resulted in many cases having been closed due to lack of evidence.

The problem of presenting proof may prevent racist crime victims from filing charges against their offenders, which may be the cause for such a small number of lawsuits due to racial discrimination.

The Council Directive 2000/43/CE, June 29, which states the principle of equality in treatment among people, without distinction of race or ethnic origin, establishes the inversion of the responsibility for presenting evidence in such cases.

This may be a solution for the problem of the inefficiency of penal norms related to racial discrimination, as far as proving goes; however, in view of contemporary penal law, this can turn out to be a dangerous solution because it is much more difficult to produce negative evidence, as basic principles of penal law are questioned, namely the principle of presumption of innocence (the "*in dubito pro reo*" principle). This can lead to sentences based on lack of negative evidence, which is inconceivable from the point of view of juridical certainty and assurance and even of the respect for human rights.

Local political authorities should play a decisive role in these matters, both through implementing measures to combat racial discrimination and xenophobia and by promoting the participation by immigrants and ethnic minorities in the various areas of intervention, such as the social, cultural and economic areas, and in the political activity. However, Local Administration organs lack the technical and financial capacity to do it, at least at a desirable scale.

Decree-Law No. 34/2003, February 25, which alters the regime of conditions for immigrants' entrance, stay, exit and expulsion of the country, establishes that, among other entities, the National Association of Portuguese Municipalities must be consulted in order to determine the maximum annual limit of entries of foreign citizens. Its article 36, no. 3, established that the report is done according to a number of criteria, such as the geographical prevision of job opportunities, according to the capacity of absorption by each district (d)). During the discussion of this legal document, the National Association of Portuguese Municipalities stated that the district authorities are unable to cooperate in this kind of report, as many of them do not even know how many immigrants live in their district, under what conditions, what they are doing, what their needs are, etc. Besides this, several complaints concerning racial discrimination and involving representatives of Local Public Administration have unfortunately appeared<sup>63</sup>.

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<sup>63</sup> See chapter on complaints, processes and jurisprudence.

## 11. Bibliography

ACIME, (2002) “Actas do Seminário Técnico sobre a Aplicação da Lei Contra a Discriminação” [Minutes of the Technical Seminar on the Application of the Anti-discrimination Law], Lisbon.

ACIME, Informative Bulletin, “Meios Jurídicos de Combate ao Racismo”, [“Juridical Means for the Fight Against Racism”]; “Lei da Nacionalidade Portuguesa” [Portuguese Nationality Law]; “Autorização de Permanência” [“Permanence Permit”]; “Trabalho de Estrangeiros em Portugal” [“Foreigner Workers in Portugal”]; “Recenseamento Eleitoral” [Electoral Census].

PORTUGAL, ACIME, Relatório de Actividades [Activities Report], 1999-2000, Lisbon.

INTERNATIONAL AMNESTY, *Annual Report 2003*, International Amnesty – Portuguese Section, Lisbon, May 2003, pp. 142-144.

ECRI, “*Second Report on Portugal*”, March 2002, Estrasburg, November 4th 2002.

CPR [Portuguese Refugees Council], (2002) “Study for the diagnosis and Evaluation of the Reception Process for Asylum Seekers in Portugal”, Final Report, Lisbon.

COIMBRA DAILY, “*Poiares rejeita indesejados*” [*Poiares Rejects Unwants*], 15.03.2000, Coimbra.

DOCUMENTATION AND COMPARATIVE LAW BUREAU, (1999) “Portuguese Report on Racial Discrimination”, Documentation and Comparative Law, Attorney General, Lisbon, pp. 134-135.

MEIRELES, J. M. C., (2002) *Guia Prático Jurídico do Cidadão Imigrante (Não Comunitário)* [Juridical Practical Guide for the Immigrant Citizen (Third Country)], Published: Families Association, First edition.

MESQUITA, Bárbara, (2002) “Asilo e Imigração Económica ou a Fronteira Indefinida” [Economic Migration and Asylum or the Undefined Frontier], in *A Imigração em Portugal [Immigration in Portugal]*, SOS Racism, Lisbon.

PORTUGAL, WORK AND SOCIAL SECURITY MINISTRY, “Publication of the Studies and Planning and Prospective Department of the Work and Social Security Ministry”, 1st edition, October 2002.

OBERCOM, Monitoring Centre on Communication Journal, n.º 5, May 2002, Published by Obercom.

“O Independente”, de 14.06.96, Lisbon.

PIRES, Francisco Maria D’Orey de Oliveira, “A lei do Asilo em Portugal – Alguns aspectos da interpretação do art. 2.º da Lei n.º 70/93, de 29 de Setembro” [The Asylum

Law in Portugal – Some interpretation points on art. 2 of the Law 70/93, September 29th]  
, [www.cidadevirtual.pt/cpr/asilo1/fmdop.html](http://www.cidadevirtual.pt/cpr/asilo1/fmdop.html).

SOS Racism, (2002) *Imigração em Portugal [Immigration in Portugal]*, Lisbon, November.

THE BAR, Annual Report 2002, Human Rights Commission, [www.oa.pt](http://www.oa.pt)

TRINDADE, M. B. R., “Minorias, Polissemia do Conceito e Diversidade de Manifestação”, [Minorities, Concept Polissemic and Diversity of its Manifestation” in: *Emigração-Imigração em Portugal. Actas do Colóquio Internacional sobre Emigração e Imigração em Portugal nos Séculos XIX e XX,[Emigration-Immigration in Portugal. Minutes of the International Meeting on Emigration and Immigration in Portugal in the XIX and XX Scenturies]*, Lisbon, Fragmentos, 1993, p. 428.