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**REPORT BY  
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ON HIS VISIT TO PORTUGAL  
27<sup>th</sup> – 30<sup>th</sup> MAY 2003**

for the attention of the Committee of Ministers and the Parliamentary Assembly

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## **INTRODUCTION**

*In accordance with Article 3 e) of Resolution (99) 50 of the Committee of Ministers on the Council of Europe Commissioner for Human Rights, I accepted the invitation addressed to me by the Portuguese Minister of Foreign Affairs to make an official visit to Portugal from the 27<sup>th</sup> to 30<sup>th</sup> May 2003. I am grateful to the Minister of Foreign Affairs for this invitation and the cooperation offered by his Ministry and the Portuguese Permanent Representation in Strasbourg in the organisation of this visit. My thanks are also due to the Provedor de Justiça for the additional and generous assistance he afforded me on this occasion.*

*During my visit I met with the Minister of Foreign Affairs, the Minister of Justice, the Minister of Internal Administration, the Secretary of State for Labour, the President of the Assembly of the Republic, the Presidents of the Constitutional and Supreme Courts, the Chief Public Prosecutor, the Provedor de Justiça, the Deputy High Commissioner for Immigration and Ethnic Minorities, the President of the Human Rights Commission of the Bar Association, the President of the Portuguese Refugee Council and the President of the National Council against the Exploitation of Children . I am grateful to all these persons for forthright and informative discussions. My gratitude and admiration extends to the numerous non-governmental organisations I met with for their analyses and commitment. In addition to these meetings I visited the Lisbon Prison (Estabelecimento Prisional de Lisboa) the Psychiatric Hospital of Julio de Matos, the Portuguese Refugee Council's Reception Centre for asylum seekers and a number of Gypsy quarters in and around Lisbon. I am grateful to all those whose time and patience made these visits possible.*

## **GENERAL REMARKS**

1. Portugal became a member of the Council of Europe on 22 September 1976 and ratified the European Convention on Human Rights on 9 November 1978, since when it has proceeded to sign and ratify all the major Council of Europe instruments in the fields of human, social and economic rights. Indeed, its rapid and, ultimately, smooth transition to a stable democratic society has been accompanied by a justified reputation for a firm commitment to the promotion and protection of human rights in the international arena.

2. On the domestic front, Portugal is easily acknowledged as a peaceful and tolerant society in which human rights concerns are typically identified and addressed with a commendable thoroughness. No country, however, is without its faults and it is precisely in the light of successive Portuguese authorities' commitment to the protection of human rights that the issues below are raised.

## I. THE ADMINISTRATION OF JUSTICE

3. The perceived mal-functioning of the judiciary in Portugal has been the subject of considerable public concern for some time. These concerns have focused primarily on the length of judicial proceedings and the excessive application and duration of custodial remand. A fresh debate has recently arisen regarding the access of defendants to the files on which the decision to authorise pre-trial detention is based - the so called “segredo de justiça”, or in camera proceedings - in the wake of several high-profile criminal investigations. This particular issue is too complex to be examined in such a general setting and will, therefore, be treated in a separate opinion at a later date.

4. Two preliminary points are, however, worth noting given the current climate. Firstly nothing during my visit, in any of my meetings or prior investigations, suggested any reason to doubt the high quality and impartiality of the Portuguese judiciary and prosecution service. It is clear, however, that structural deficiencies in the administration of justice, notably with respect to the length of judicial proceedings, significantly undermine the confidence of the population in the effectiveness of the judicial system and the rule of law.

5. The evident willingness of the Ministry of Justice, and the members of the various legal professions I met with, to address the problems outlined below is therefore welcome. The success of their efforts is imperative<sup>1</sup>.

### A. The Length of Judicial Proceedings

6. The apparent inability of the Portuguese judiciary to deal with its current caseload has led several commentators to speak of a veritable “Crise de Justiça”. An indication of the gravity of the situation is easily given in statistics.

	<b>1992</b>	<b>1997</b>	<b>2001</b>
Cases <sup>2</sup> entered during the year	823441	754557	716272
Cases resolved	721729	583579	652014
Cases pending on 1 <sup>st</sup> January	566961	892174	1209373

7. It is notable, and worrying, that the number of cases pending has doubled since 1992 despite a reduction in the number of new cases entered each year. This is due to a decrease in the number of final judgements rendered annually as the average length of judicial proceedings continues to rise.

8. This development is largely the result of increasing delays in civil proceedings, which accounted for 72.3% of all cases heard in 2001. The average length of civil proceedings

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<sup>1</sup> Comments prepared by the Ministry of Justice in response to this report, and appended hereto, lay out several of these reforms in detail. These reforms have either only recently come into effect or are yet to do so. It is too early to judge of their success.

<sup>2</sup> Total number of cases for all jurisdictions

increased from 13 to 20 months between 1995 and 2001. The average length of criminal and labour cases have, by contrast, remained more or less constant over the same period, averaging a lengthy 14 (at first instance) and 11 months respectively in 2001.

9. It is particularly worrying that the increase in the average length of civil proceedings cannot entirely be attributed to the explosion of small claims litigation between 1991 and 1997 and an incommensurate increase in judicial resources. The number of new civil cases entered each year has, rather, levelled out over the past 6 years. At the same time, the number of judges has increased from 10 to 14 per 100,000 inhabitants, and the number of support staff from 62 to 91, since 1992, which represents an increase of over 30%. The conclusion of a cumbersome and inefficient judiciary is hard to avoid; at any rate, the problems faced evidently go beyond the simple equation of supply and demand.

10. Easy explanations and, consequently, easy remedies are difficult to offer. Successive governments have already commissioned detailed studies and several recommendations, notably regarding the development of alternative dispute resolution mechanisms, have recently been implemented. It is evident, however, that further structural and procedural reforms are required.

11. It is worth insisting on this point. The access to a fair and public hearing in *a reasonable time* is by no means a right of a secondary importance. It is, as suggested earlier, central to the confidence of the population in the judicial system. It is also essential to the enforcement of other fundamental and everyday rights. A couple of examples, relating to subjects examined later on in this report, suffice. The average length of employment cases in 2001, for instance, was 10 months – too long, perhaps, for an immigrant dependent on a contract for the annual renewal of his residence permit to risk litigating unfair contract terms or successfully to claim unfair dismissal. Similarly for a victim of domestic violence to wait 32 months<sup>3</sup> to sever their legal and economic ties with their aggressor is to significantly, and culpably, prolong distress. The rapid resolution of criminal charges is of obvious importance, particularly in the event of the accused being detained on remand.

## **B. Detention on remand**

12. Lengthy detention on remand (*prisao preventiva*) gravely prejudices the resumption of the ordinary lives of those acquitted. It can also delays the enjoyment by those subsequently convicted of advantageous custodial regimes. When both frequently applied and of excessive length, detention on remand can also place a considerable burden on prison services ill-equipped to deal with high numbers of remand prisoners.

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<sup>3</sup> 32 months was the average length of divorce and division of property proceedings in Loures, on the outskirts of Lisbon, in 2001

13. On 1<sup>st</sup> September 2003, 4100 persons were being held on remand in Portugal. At 29% of the total prison population, this proportion well exceeds the European average. Whilst the number of persons held on remand at any given moment has, at around 4000<sup>4</sup>, remained more or less constant over the last decade, the average length of remand custody has increased over this period.

14. In 1992, 54.2% of those detained on remand were held for less than 6 months and only 2.7% were held for more than 18. By 2001 the figures were respectively 31.4 and 5.8%. Indeed, by 2001, the most recent year for which statistics exist, the average length of detention on remand stood at 8 months, with 20% (528 out of 2501) of those tried that year spending in excess of 1 year remanded in custody. The fact some 94% of all persons detained on remand are subsequently convicted in no way detracts from the urgent need to reduce the length of remand detentions. Indeed, that an average of 150 innocent persons a year are faced with the real prospect of spending in excess of 12 months in custody is itself of concern.

15. Whilst examining these figures it ought, however, to be borne in mind that in Portugal detention on remand continues until all possible appeals have been exhausted. This is unlike the majority of European states where the sentence proper begins immediately upon conviction at first instance. Precise statistics regarding the proportion of persons detained on remand whilst awaiting the outcome of appeals do not appear to exist. Most of those spoken to estimated the figure at 25%, which would, in fact, put the proportion of remand to sentenced detainees at close to the European average. The rationale behind this system is that the accused enjoys the presumption of innocence until the last possible decision. It is debatable, however, whether this theoretical entitlement is, in all cases, preferable to the custodial regimes enjoyed by sentenced prisoners. Remand detainees may, for instance, face limitations in their visiting rights and their rights to freedom of speech. Remand prisoners are also unable to benefit from various drug addiction and employment schemes offered to sentenced prisoners, which may be prejudicial to those spending lengthy periods awaiting the outcome of appeals. These considerations apply particularly to the many whose sentences do not, ultimately, greatly exceed the length of time already spent on remand. Moreover, a reclassification would also ease the pressure on the prison service, which is finding it increasingly difficult to detain remand and sentenced prisoners separately.

16. Several commentators, moved primarily by the overcrowding in Portuguese prisons, have suggested that judges authorise detention on remand too readily, in a spirit contrary to the intention of existing legislation.<sup>5</sup> In fact, of the 103,623 individuals tried in 2001, only 2501, or 2.4%, were detained on remand. The judges addressed on this issue also pointed to the large increase in drug related offences in respect of which they felt they had little option,

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<sup>4</sup> The number of persons detained on remand reached a high of nearly 5000 in 1996 and a low of around 3500 in 1992.

<sup>5</sup> The current legal regime states that custody on remand should be an exceptional measure (article 28 of the Constitution) and used applied where other measures less restrictive of individual liberty are inadequate (article 193 Code of Criminal Procedure) for reasons of public safety or possible flight (article 204) and that the maximum penalty for the offence of which the defendant stands accused is at least three years imprisonment (article 202).

given the likelihood of continued offending, but to impose custodial restrictions. Indeed, the proportion of persons held in remand for drug related offences rose from 14 to 44% between 1991 and 2001, whilst the overall level of the application of remand has remained more or less constant. Moreover, whilst 3884 individuals were convicted of drug related offences in 2001, only 1055 (c. 25%) were remanded in custody.

17. Whilst it is always preferable to reduce the application of pre-trial detention wherever possible, and alternative measures<sup>6</sup> might certainly be encouraged further, the fact remains that the principle problem with respect to custody on remand in Portugal, both for the enjoyment individual rights and the administration of the prison service, is its excessive length. Significant efforts are required to increase the efficiency of the criminal justice system.

## II. PRISON CONDITIONS

18. The conditions in Portuguese prisons have been a concern of the Committee for the Prevention of Torture (CPT) for some time, with visits in 1992 and 1995 already identifying shortcomings with respect to material conditions, drug abuse and inter-prisoner violence in a number of Portuguese prisons. Its 1999 report recorded some progress on previous years and noted the sincere attempts of the Portuguese authorities to address these problems. It is obvious, however, that several difficulties remain in 2003.

19. Many of the problems faced have their origins in serious over-crowding. On the 1<sup>st</sup> September 2003, the total prison population was 14,060 compared to a capacity of 11,603 (an over-crowding, therefore, of 21.2%). At approximately 130 detainees per 100,000 inhabitants, Portugal's prison population is well above the European Union average (of about 80).<sup>7</sup> It is clear, therefore, that policies to reduce the number of prisoners and increase the capacity of the prison service are necessary.

20. There are a several ways in which prison populations can be reduced: a reduction in the application of pre-trial detention and the greater use of alternative sentencing policies, suspended sentences and conditional release being the most obvious. These measures have certainly been under-used so far in Portugal. They do, however, require an effective supervisory mechanism. This service is currently provided the Institute of Social Reinsertion (Instituto de Reinserção Social), which would appear to be ill equipped to cope with such shift in detention policies. A significant increase in the resources and a reform of the structure of this body will be necessary if any real changes are to be made permitting a reduction in the prison population at the same time as crime rates are increasing. Legislative amendments facilitating the use of alternative mechanisms, as well as the greater sensitivity of the judiciary to their employment will also be necessary.

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<sup>6</sup> Such as electronic tagging as foreseen by para 2 of art 201 of the Code of Criminal Procedure and elaborated on in Law n° 122/99. Electronic tagging, managed by the Instituto de Reinserção Social, was introduced in the Lisbon area on 1<sup>st</sup> January 2002 and in Oporto in October of this year. It has been extended to a total of 32 judicial districts so far and has met with success.

<sup>7</sup> Its crime rate, by contrast, is among the lowest.

21. Another possibility which may well be worth considering is a reduction in length of certain prison sentences, which are generally high in Portugal. Indeed, the average length of sentence being served in Portugal is 26 months compared to an average eight months across the European Union.

22. None of these changes are likely, however, to entirely remove the need to increase the capacity of the prison service. The 30% increase in the prison population since the early 1990s has primarily been accommodated by reopening old facilities and stretching the capacities of existing establishments to the limit, with several now being used to detain categories of inmate they were not originally intended for. A three-fold increase in the infrastructure budget and a doubling of the budget for running costs between 1995 and 2001 has certainly secured a significant improvement in the living and material conditions in existing prisons in recent years. The construction of new detention facilities has not, however, received the necessary attention.

23. New prisons, variously foreseen in previous action plans, have either never been started or remain incomplete. The construction of a new prison for 550 persons in Carregueira, for instance, was authorised in 1997, but it only recently opened with a provisional capacity of 94 persons and has a population of 288 inmates already<sup>8</sup>. A special prison for juveniles in Viseu, foreseen by the same act, has not even been begun. The construction of a new wing in Paços de Ferreira prison is at least nearing completion and is intended to house the overflow from the central Oporto prison, which has been the object of particular criticism by the CPT. The fact that Paços de Ferreira is itself overpopulated by 50% gives an indication of the scale of the problem and the urgency of releasing additional funds for the completion of new detention facilities, the necessity of which has been already acknowledged for some time<sup>9</sup>.

24. The situation in Oporto Central Prison, whilst an extreme example, highlights the problems that have arisen within the Portuguese prison service. Over-crowding in prisons ill adapted to the types of inmate detained has made it difficult to control drug abuse and the resulting inter-prisoner violence. Drug abuse is estimated to extend to 50% of the prison population and is now a serious problem. In addition to the security concerns that result (4 persons died as a result of inter-prisoner violence in 2002), the pervasive consumption of drugs is becoming a serious health hazard. Some 300 persons are already known to be HIV positive and its further spread is inevitable unless attempts are made to address this problem. High suicide rates (20 in 2001) reflect these concerns. On a more positive note, the ill-treatment of inmates by prison staff is widely acknowledged to have declined significantly over the last decade, though a number of complaints are still recorded each year by the Ombudsman and Bar association.

25. Initiatives to tackle drug addiction in prisons have already been launched. A visit to the Lisbon Prison Establishment enabled the inspection of its innovative programme of drug free wings (*unidades livres de droga*). There are currently 5 such programmes running in different prisons throughout Portugal and the impressions gained as a result of discussions with inmates following the demanding regime, were extremely positive. Problems were raised,

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<sup>8</sup> On 1<sup>st</sup> September 2003. Since then the capacity has increased to 300 beds and is due to rise to a final capacity of 610 by the end of the year.

<sup>9</sup> The new wing in Paços de Ferreira has recently opened, increasing its current capacity to 300 beds.



however, regarding the fate of detainees following the completion of the course. Too often, it appears, they return to the ordinary prison regimes or find themselves restored to civil life with inadequate assistance or supervision. Whilst numerous protocols exist between the Prison service and public service providers regarding the employment of such detainees, real opportunities are apparently limited in practise. The continued supervision of such persons ought, however, to represent an important part of the work of the Institute of Social Reinsertion. More attention to the reintegration of detainees into the ordinary custodial regime or the outside world is vital if such excellent work is not to be wasted. It would also be desirable for the programmes to be extended to other particularly problematic prisons.

26. A Commission on the Study and Debate on the Reform of the Prison System has been established to examine all these issues in greater detail. The problems of the Portuguese prison service require more than piecemeal tinkering to resolve. It is to be hoped that the broad and structural recommendations currently being elaborated are implemented effectively.

### **III. THE SITUATION OF FOREIGNERS**

#### **A. Immigration concerns**

27. Portugal has historically been a country of net emigration. This trend has, however, been dramatically reversed over the last decade, with the number of foreigners (legally) residing in Portugal quadrupling from 107,767 in 1990 to 419,600<sup>10</sup> 2003. In addition to the traditional influx of migrants from former Portuguese colonies, the last few years have seen the arrival of large numbers of migrant workers from Eastern European countries; so much so, indeed, that the 60,000 Ukrainians legally residing in Portugal constitute the largest foreign community. The vast majority of these immigrants have been attracted by easy entry, abundant jobs (particularly in the poorly regulated civil construction industry) and the tolerant, indeed generally warm, welcome provided.

28. With so many migrant workers having entered Portugal and found work irregularly, the previous Government launched a regularisation process in 2001, which resulted in the granting of annually renewable “permission to stay” permits (*autorizações de permanência*) to some 179,165 persons by 31<sup>st</sup> March 2003. The current government, concerned by the exponential increase in immigration and fearing an imminent economic recession, passed a new immigration law, Decree-Law 34/2003 of 25<sup>th</sup> February, halting the granting of new “permission to stay” permits, and replacing this regime with a system of work permits valid for one year and obtainable at Portuguese consulates prior to arrival<sup>11</sup>. The refusal to award new “permission to stay” permits obviously represents a tightening of immigration policies

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<sup>10</sup> on 31<sup>st</sup> March 2003.

<sup>11</sup> There is inevitably an element of the arbitrary in the termination, from one day to the next, of any given immigration policy. Flexibility has, however, been shown with respect to tardy applicants; permission to stay permits may, as a result, be granted to those capable of proving residence in Portugal prior to the cut off date and currently in possession of a valid employment contract.

and, as such, has been met with criticism in certain quarters. This report is less concerned with the broader questions of migration management than the specific hardships and human rights concerns faced by foreigners in Portugal. However, a few general reflections are perhaps called for, given the frequency and similarity of immigration concerns in Europe.

29. Strict entry and regularisation criteria are obviously intended to discourage immigration. The fact remains, however, that migrants will continue to arrive so long as there are jobs to be found. Especially, indeed, when these jobs are essential to the functioning of an economy. There is an obvious danger, therefore, of restrictive policies resulting in large numbers of necessary workers being kept in a state of perpetual irregularity, without social protection and with no means of enforcing their basic rights. The contradiction is evident. At the same time, it must be acknowledged that it is extremely difficult for individual EU states to tackle such issues without the matching commitment of other countries. Such responsibility as there may be for incoherent and unjust immigration policies ought, therefore, to be proportioned amongst the member States of the European Union. It will continue to be so until such time as they are unable to coordinate their immigration policies in a manner consistent with economic realities and the fundamental rights of migrant workers.

30. Turning specifically to the situation in Portugal, the most significant problem would appear to be the exploitation of foreign labour by unscrupulous employers. This is primarily, though not exclusively, a problem for the between 35 and 50,000 irregular workers remaining in Portugal, who are frequently employed in the construction industry for low wages and without health or accident insurance. Regular immigrants may also be affected however, since the requirement of a valid employment contract for the annual renewal of “permission to stay” permits greatly strengthens the position of employers, particularly given the average length of employment cases. The need for effective supervision by the General Inspectorate of Labour (Inspeção Geral de Trabalho), particularly in industries easily identified as employing foreigners is evident. The legal requirement that employees forward copies of contracts with foreign workers to the IGT is certainly a welcome provision, as are the reforms penalising the employment of irregular foreign labour (see section III C). However, whilst the quality of the IGT’s work was generally respected, it was variously alleged that it was too under-funded and under-staffed to carry out its monitoring tasks effectively. Measures to reinforce this organ are, therefore, to be greatly encouraged.

31. The requirement of a current work contract for the annual renewal of “permission to stay” permits places considerable pressure on immigrant workers. Calls have been made to extend the renewal period to at least two years to grant more time to those losing their jobs to find alternative employment. Another possibility requiring a less substantial change to the current regime, would be to consider allowing a period of grace of, say, six months following the loss of employment, which might extend beyond the formal expiry date of the “permission to stay” permit. So, for instance, if an individual’s permit is due for renewal in December, but he loses his job in October, he might have until April of the following year to secure alternative employment before forfeiting his permit definitively. Such a provision would reduce the precariousness of such foreigners’ residence in Portugal, diminish their dependence on their current employers and reflect the reality of an employment market with a rapid turnover<sup>12</sup>.

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<sup>12</sup> The Commissioner has since been informed by the Serviço de Estrangeiros e Fronteiras that a draft directive along these lines has already been elaborated and is scheduled to be approved by the Council of Ministers shortly

32. Foreigners' associations also frequently complained of the length of time taken by the Aliens and Frontiers Service (Serviço de Estrangeiros e Fronteiras) to process requests for obtaining and renewing "permission to stay" and other permits. Certainly, the four-fold increase in the number of foreigners over the last 10 years has placed a considerable burden on the SEF's staff and resources. The administrative delays that may result are often extremely prejudicial to the enjoyment by foreigners of other rights, since the legality of their stay in Portugal, on which the exercise of these rights depends, may temporarily lapse. Complaints were still made to the Commissioner by immigrant groups regarding delays and difficulties in obtaining documents, but significant improvements have been made in this area over the last 18 months, which have helped to overcome many of the problems arising from the glut of applications following the recent regularisation process. The SEF has, for instance, introduced public attendance posts in Citizen's Bureaus, a computerised waiting system and a special appointment system in areas of high demand for the renewal of "permission to stay" permits, enable same day renewals for those applying through this system. "Residence" permits, which formerly took 6 months to be granted, are issued, on average, within 60 days of the request and renewed within 30.

33. Complaints were also raised regarding the 75 euro fee for the annual renewal of "permission to stay" permits. This fee is out of all proportion to the cost of the administrative service provided. Exemptions are foreseen for those facing economic difficulties, however, for a family of 4 on a modest income 300 euros a year represents a notable financial burden. A reduction in this fee, which far exceeds the cost of obtaining other official documents, would certainly be greatly welcomed by the immigrant community.

34. The current rules on family reunion are very strict. Decree-Law 34/2003, limits the automatic right (*direito subjectivo*) to family reunion to those foreigners in possession of a valid "residence" permit (*autorização de residência*) for at least one year. This effectively excludes all foreigners in possession of "permission to stay" or work permits, who may apply for "residence" permits only after 5 years of legal residence in Portugal. For possessors of "permission to stay permits", an automatic right to family reunion is, therefore, acquired only 6 years after arrival. Foreigners with "permission to stay permits" may still be granted family reunion, but on less certain terms than those with residence permits; their family members will only be awarded temporary stay visas. Moreover, the granting of such visas is to be decided on by Portuguese consular officials in accordance with criteria to be defined by a directive which is foreseen by article 38(1)c of Decree-Law 34/2003, but which, at the time of writing had still not been prepared. It is important that flexible criteria are established promptly with due regard to the right to a family life.<sup>13</sup>

35. It is, finally, worth noting that the increase in the number of foreigners in Portugal, whether from Eastern Europe, Portuguese speaking countries or elsewhere, has so far been absorbed without any noticeable rise in social or racial tensions. This is certainly a testimony to the general openness and tolerance of Portuguese society, and an example to other countries across Europe. This tolerance will, however, be tested by the increased numbers. In the relation to the issues raised above, therefore, it perhaps worth recalling that the best

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<sup>13</sup> The Commissioner has since been informed of a draft directive which would grant temporary stay visas for the same duration to the immediate family of holders of permission to stay permits, who have spent one year in Portugal. This would certainly be a positive development. The Office has not received information on the precise criteria involved.

possible promoter of good relations between indigenous and immigrant communities is the effective integration of the latter. The effective integration of immigrants is, moreover, best achieved by the effective respect for their fundamental rights.

## **B. Asylum seekers**

36. Portugal receives an extremely low number of asylum applications per year. 202 and 180 persons requested asylum in Portugal in 2001 and 2002 respectively. 7 persons were granted refugee status and 34 persons temporary residence permits for humanitarian reasons in 2001. The corresponding figures for 2002 were 14 and 18. The concerns relating to asylum applications are, therefore, of a qualitative rather than quantitative nature. Many of them have, moreover, already been raised by the European Commission against Racism and Intolerance (ECRI) in its Second Report on Portugal of March 2002.

37. Asylum seekers are currently assisted, advised and, initially, housed by the Portuguese Refugee Council (CPR), an NGO recognised by statute as having a central role to play in the reception of asylum seekers. This arrangement appears to function soundly, with the reception centre run by the CPR in Sacavem being a very model of its kind. Concerns have, however, arisen regarding both the ability of potential applicants to request asylum in Portugal and the procedural guarantees available during the admissibility phase of asylum applications.

38. Applicants are required to file asylum requests within 8 days of their arrival in Portugal and the initial decision on their admissibility is taken by the SEF within 20 days, unless the request is filed at a border point in which case the decision must be taken in an accelerated procedure of 5 days. Appeals against negative decisions by the SEF can be made to the National Commissariat for Refugees, and from there to the Administrative Supreme Court. However, appeals against admissibility decisions are not suspensive, which enables the deportation of asylum seekers rejected by the SEF before a final decision has been reached. Though deportations are, in fact, extremely rare, it would nonetheless be preferable to guarantee the suspensive effect of appeals against admissibility decisions<sup>14</sup>.

39. Question marks have, lastly, been raised over the impartiality of the National Commissariat for Refugees. Whilst the independence of the Commissariat is not in question, (two magistrates of 10 years service are appointed by the Supreme Magistrates Council), it has, nonetheless, proved reluctant to summon applicants for interviews except where specifically requested by the CPR to do so, leading to the suspicion of an excessive reliance on the initial findings of the SEF. A reversal of this practice would certainly contribute to dispelling such doubts.

40. Concerns have also been raised regarding the admission of potential asylum seekers on to Portuguese soil. It has been suggested that the decline in asylum applications made at Lisbon airport from 44 in the first half of 2002 to only 9 in the second six months is due to the strategic placement of Portuguese immigration officials in sensitive foreign airports. Such suggestions are, however, somewhat difficult to corroborate. The possibility of this practice being carried out in the instant case is not a matter that can be commented on in this report. However, the practice is by no means unheard of and it is worth recalling to all member States

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<sup>14</sup> Especially since 12% of appeals were successful in 2002

that extra-territorial controls must not be conducted to the detriment of rights guaranteed by the Geneva Conventions on asylum. Equally worrying, but more easily addressed, are the suggestions that potential asylum seekers are increasingly being returned immediately upon arrival. The round the clock presence of a lawyer in the newly created holding area of Lisbon airport would suffice to remove such suspicions and might easily be arranged in a protocol with the Bar Association.

41. The impressions gained from a visit to the refugee reception centre in Sacavem run by the Portuguese Refugee Council were of an extremely supportive environment for the asylum seekers residing there. The services provided range from legal aid to welfare assistance and it is worth noting that the atmosphere was one of calm and caring professionalism.

### **C. Measures to combat trafficking in human beings**

42. As with other countries in Western Europe, Portugal has developed into a destination country for human trafficking. Portugal, has, however, been faster than most to develop an effective legislative response. Thus Decree-Law 244/98 made aiding illegal immigration a crime punishable by up to three years imprisonment. This legislation has since been supplemented by Decree-Law 34/2003, which criminalizes assisting the continued presence of irregular migrants and aiding the irregular transit of migrants with gainful intentions. Act 99/2001, amending article 169 of the Portuguese Penal Code, criminalizes the trafficking of prostitutes for foreign consumption and the slavery provisions of article 159 provide for a maximum sentence of 15 years.

43. Admirable new legislation has also been introduced to assist victims of trafficking. Act 93/99 covers the protection of witnesses in trafficking cases. It has recently been reinforced by Decree-Law 190/2003, which foresees a number of novel implementation mechanisms. Article 87 of Decree-Law 244/98 foresees the possibility of waiving the visa requirement for granting residence permits to victims of trafficking that cooperate with investigators. Further steps could however be taken. Act 107/99, for instance, foresaw the creation of a national network of support centres for victims of violence. So far, however, only few such centres have been established (see section V). Victims of trafficking would also benefit greatly if illegal immigrants were covered in the measures foreseen by the Action Plan for Assistance to Victims that is currently being elaborated and from which they are currently excluded. The Minister of Internal Administration expressed the firm intention of his government to combat trafficking in human beings effectively. Respect for the rights of victims should play an equally important part in this campaign.

## **IV. THE ROMA/GYPSY COMMUNITY**

44. There are currently about 50,000 Roma/Gypsies living in Portugal. They are primarily sedentary, poorly integrated and remain, for the most part, in the lowest income categories. It cannot be said, however, that Roma/Gypsies suffer widespread or systematic discrimination in their daily lives. Nonetheless, isolated incidents of overt racial barracking by local politicians have occurred in recent years and Roma/Gypsies continue to face difficulties with respect to housing, education, employment and, occasionally, in their relations with the police.

45. The greatest challenge faced by Roma/Gypsies is the gradual disappearance of the local markets or “feiras”, in which they have traditionally made their living as travelling salesmen.

The unwitting victims of shifting economic realities, Roma/Gypsies are in real danger of being left behind; poorly educated, and with little to no professional training, many Roma/Gypsies are finding it difficult to adapt to the demands of the modern labour market. Serious efforts will be required to assist Roma/Gypsies in making this transition. Some admirable steps have, indeed, already been taken. The Institute of Employment and Vocational Training has, for instance, introduced specific training schemes for Roma/Gypsies and signed a protocol with the High Commissioner for Immigration and Ethnic Minorities to promote the access of Roma/Gypsies to the labour market.

46. However, the real long-term challenge is the provision of adequate education and training to young Roma/Gypsies arriving on the labour market. At present, cultural factors and poorly adapted schools, continue to result in high-levels of non-attendance and dropout rates, particular amongst girls, for whom the necessity of a formal education, beyond the acquisition of basic literacy, is still not generally recognised within the Roma/Gypsy community. There is, moreover, a widespread reluctance amongst parents to sanction the daily departure of post-pubescent girls whose assistance around the house is appreciated and for whom travelling to school alone is considered inappropriate.

47. The establishment of a network of socio-cultural mediators to liaise between parents and schools was originally intended to overcome many of these difficulties. Such officers have, indeed, been shown to contribute greatly to the attendance and performance of Roma/Gypsy children in those schools where they have been introduced. The problem, however, is that there are far too few of them owing to the almost total impossibility of earning a living in this profession. Given the benefits they can bring, it is evidently desirable that such posts are filled in schools with significant numbers of Roma/Gypsy children in the area.

48. The access of Roma/Gypsies to adequate housing has improved significantly over the previous decade. Without being targeted specifically, Roma/Gypsies have benefited greatly from urban re-housing programmes (“reajamento social”). The inhabitants of a large, and utterly decrepit, flat building visited near the EXPO centre were, for instance, due to be offered alternative housing shortly. Efforts must still be made, however, to extend such programmes to the estimated 13% of Roma/Gypsies<sup>15</sup> that still live in slum like accommodation (“barracos”).

49. Relations with certain public authorities continue to give rise to concern. Every so often, particularly in rural towns, local councils can be seen disparaging and disadvantaging local gypsies in attempts to encourage their relocation. Such declarations and practises tend to be firmly condemned both by central authorities and the national press. However, they serve as a warning against complacency and the need to supervise the respect for the rights of Roma at the level of local administrations. Tensions have also been known to flare up between the police and certain Roma/Gypsy communities. The overwhelming majority of Roma/Gypsies spoken to refused to accuse to the police of systematic discrimination, stating instead that

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<sup>15</sup> By the Obra Nacional da Pastoral de Ciganos

relations varied greatly from area to area, depending largely on the amity or enmity between the local Roma/Gypsy leader and the regional chief of police. Additional training and strict disciplinary measures would, however, appear to be required to eliminate incidents of arbitrary harassment and discriminatory treatment.

## V. DOMESTIC VIOLENCE

50. 11,765 cases of domestic violence, (1.19 per 1000 inhabitants), were recorded by the police in 2002 and the number of unreported incidents is, as in most countries, certainly higher still. The issue of domestic violence in Portugal has not, however, been swept under the table. As with the majority of social and human rights concerns it has, rather, resulted in much public debate and many legislative and practical initiatives. Unfortunately the majority of these initiatives have been either poorly implemented or are rarely applied.

51. The Portuguese legislation on domestic violence is, certainly, exemplary. Domestic violence is an offence under criminal law defined as the “physical or psychological ill-treatment of a spouse, minor or disabled person<sup>16</sup>” and carries a sentence of between one and five years. Law No. 61/91, the first major piece of legislation devoted exclusively to domestic violence, provides for a raft of preventive and awareness-raising measures as well as numerous protection mechanisms for female victims of domestic violence. Subsequent legislative developments notably include Law No. 59/98, introducing the possibility of barring assailants from the family home into article 200 of the Code of Criminal Procedure<sup>17</sup>, and Law No. 129/99, which requires the state to provide compensation to victims in the event of the assailant being unable to do so. Law No. 7/2000 has made domestic violence a public crime (“crime publico”), placing an obligation on the prosecution service to investigate allegations of domestic violence brought to its attention. As suggested above, this excellent legal framework is not always respected: compensation and restraining orders, in particular, are rarely applied.

52. Implementation has also been a problem for the many of the practical initiatives announced over the last decade. The creation, for instance, of police units specialised in the treatment of victims of domestic violence foreseen in Law No. 61/91 has not happened. The most obvious failure, however, arises in respect of the creation of a network of reception and assistance centres for victims of domestic violence, foreseen in the 1<sup>st</sup> National Plan against Domestic Violence of 1999. Law No. 129/99 subsequently required the establishment of such centres in each administrative district of Portugal. The NGOs spoken to on this matter maintained that only 5 such centres existed, of which four were being run by NGOs. The Commission for Equality and Women’s Rights has, however, informed the Commissioner that a total of 22 are currently operational. When questioned on the need to create more such centres, however, the Secretary of State for Labour stated that it was seeking the assistance of NGOs in this task. It is somewhat surprising, therefore, that one of the existing centres run by an NGO in Sintra should be faced with the prospect of closure, as its public funding has not been renewed for this year.

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<sup>16</sup> A subsequent amendment to article 152 of the Criminal Code has extended this provision to persons living together as husband and wife

<sup>17</sup> 152 of the criminal also provides for the imposition of restraining orders

53. Notable success has, however, been achieved through the INOVAR programme, which was launched in 1999 to improve the responsiveness of the police to victims of crime. Similarly, effective training programmes are widely acknowledged to have resulted in the increased sensitivity of police officers to the complexities of domestic violence cases.

54. A Second National Plan Against Domestic Violence, covering the period 2003-2006, was adopted in June this year. It addresses many of the shortcomings raised above. It requires, for instance, the greater training of judges in the use of restraining orders and repeats the objective of the creation of a national network of support centres laid down in Law No. 129/99. It also foresees a revision of the compensation procedure foreseen by Law No. 129/99. It is very much to be hoped that this Second Action Plan, which matches its predecessor in ambition, will nonetheless surpass it in effect.

## **VI. THE RESPECT FOR HUMAN RIGHTS BY LAW ENFORCEMENT OFFICIALS**

55. A number of concerns continue to be raised regarding ill treatment and deaths in police custody, and the excessive use of force and fatal shootings by police officers on duty. It should be noted, however, that allegations and indications of police brutality have decreased markedly over the last decade. Considerable resources have, indeed, been spent on the improvement of police detention facilities and the increased training of police officers over this period.

56. The establishment, in 1996, of the Inspectorate General of Internal Administration (IGAI) has also contributed significantly to this development. The IGAI's three main functions are to carry out random inspections of police establishments, to investigate and suggest disciplinary measures in respect of improper police behaviour and, lastly, to make general recommendations regarding the respect for human rights by law enforcement agencies.

57. The IGAI inspected 63 police stations without warning in 2002 and was broadly content with its findings. Also in 2002, the IGAI opened 20 preliminary investigations into serious incidents leading to 11 acquittals, 3 full investigations and 5 disciplinary proceedings<sup>18</sup>. The IGAI conducted a total of 20 full investigations, which resulted in a further 6 disciplinary proceedings. Of the 34 disciplinary proceedings underway in 2002, 16 were completed, resulting in the application of disciplinary measures in 3 instances. A further 283 administrative proceedings for lesser abuses were initiated.

58. In the most serious cases, investigations are opened automatically: thus the 5 deaths as a result of police behaviour, the 6 woundings with firearms and the 3 suicides in police custody in 2002 all gave rise to investigations. In respect of the deaths in 2002, 3 cases were still pending at end of 2002 and 1 case resulted in acquittal. In the 5<sup>th</sup> case, the fatal shooting of Mr. Antonio Perreira in Bela Vista, Setubal, disciplinary measures were suggested in the light of the conclusion that the officer in question ought to have been better acquainted with the possibly fatal consequences of shotgun fire over short-distances. This last case, the subject of

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<sup>18</sup> With the twentieth case still pending at years' end



considerable publicity, highlighted several inadequacies in the regulations and training given to officers regarding the use of fatal and, supposedly, non-fatal firearms such as shotguns. The IGAI has been sensitive to these shortcomings and recommended several measures that ought to be implemented as rapidly as possible.

59. In general the IGAI investigations and disciplinary measures can be said to have had a positive impact on the respect for human rights by police officers. A number of improvements might be made, however, that would reduce impunity and improve the effectiveness of the IGAI's proceedings still further.

60. In principle the criminal investigations launched by the public prosecutor and the disciplinary proceedings launched by the IGAI are entirely independent. In practice, however, disciplinary proceedings have been suspended pending the outcome of criminal proceedings, and dropped altogether on the termination of criminal investigations. This is regrettable since internal investigators should be able to obtain more information, within a shorter delay, than public prosecutors are able to. The continuation of internal proceedings is also important to the impression of a police force intent on addressing and resolving its problems itself. Reducing the duration of the IGAI's lengthy three-stage procedure, from initial investigation, to full investigation to disciplinary hearing, would also be desirable.<sup>19</sup>

## **VII. CHILD LABOUR**

61. Largely as a result of the Portuguese authorities' own attempts to address particularly high levels of child labour, the issue attracted much domestic and international attention in the late 1990's. In 1995 the ILO placed Portugal on the list of European countries with high levels of economically active children and in 1998 a collective complaint on child labour in Portugal was submitted to the European Committee of Social Rights<sup>20</sup>. A violation of article 7 of the European Social Charter was found.

62. The response of the Portuguese authorities to this phenomenon was the creation, already in 1996, of a National Commission to Combat Child Labour which was superseded in 1998 by the Plan for Eliminating the Exploitation of Child Labour (PEETI). The effectiveness of this Plan over the last 5 years is widely acknowledged by child rights NGOs. Whilst child labour, in the classical sense originally at issue, certainly still exists, its significant reduction is a testimony to the will of the Portuguese authorities to tackle this problem with all the necessary means. A remaining, if particular, problem referred to by the PEETI representatives met with concerns the employment in entertainment and sports of minors. This area would appear to be under-regulated and subject, at present, to little scrutiny. PEETI's recognition of this problem augurs well, however, and it is to be hoped that its advice in this area will be well heeded.

63. Indeed, PEETI's primary concerns have shifted away from traditional rural and family based child labour towards emerging forms of urban child exploitation. There are increasing concerns that homeless, immigrant and poverty-stricken children are being caught up in prostitution, begging and drug trafficking rackets. These children are harder to detect and harder still to recover than ordinary early school-leavers. The multi-disciplinary approach

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<sup>19</sup> It is possible for the IGAI to proceed directly to a disciplinary hearing after the initial investigation.

<sup>20</sup> Complaint No.1/1998 : International Commission of Jurists against Portugal

required to deal with this problem makes PEETI ideally equipped to lead the fight against these forms of child exploitation. It is important that it continues to enjoy the same support and resources in this new phase of its activity as it did when classical child labour was attracting so much attention.

## **FINAL REMARKS AND RECOMMENDATIONS**

Portugal is fully entitled to be considered as a country with a firm commitment to the respect for human rights. This commitment is evidenced by speed with which human rights concerns are identified and the multitude of responses that typically ensue. Greater attention and resources could, however, often be devoted to the implementation of these comprehensive strategies.

In order to assist the Portuguese authorities in their efforts to promote the respect for human rights, and in accordance with Article 8 of Resolution (99)50, the Commissioner recommends that the appropriate authorities:

### **The administration of justice**

1. Increase the resources of the judiciary and implement the reforms necessary for the reduction in the length of judicial proceedings, in particular for criminal cases giving rise to long periods of preventive detention;
2. Consider changing the definition of detention on remand in line with European norms to provide for its termination upon conviction at first instance;

### **The prison system**

3. Develop further the alternatives to custodial remand, including, notably, electronic tagging as regulated in Law n° 122/99; and encourage the application of these alternatives, through the necessary legislative amendments and judicial training;
4. Develop further alternative sentencing policies permitting a reduction in the prison population; and restructure and reinforce the Institute of Social Reinsertion (IRS) to meet these demands;
5. Address over-population by increasing the capacity of the prison service by releasing the funds necessary for the construction of new detention facilities;
6. Tackle drug addiction in prisons, including through the opening of drug-free units (unidades livres de drogas) in other establishments; and ensure the effective post-treatment supervision of detainees upon release (with respect to employment opportunities and social integration) or on their return to the ordinary prison regime;

**The situation of foreigners**

7. Strengthen practical efforts to combat the exploitation of foreign workers, notably through an increase in the resources of the General Inspectorate of Labour (IGT);
8. Rapidly adopt the draft directive foreseeing the extension of the renewal dates of “permission to stay” and other permits so as to allow foreigners a reasonable time to find alternative employment;
9. Consider reducing the 75 Euro fee for the annual renewal of “permission to stay” permits;
10. Ensure that the resources of, and the administrative services provided by, the Aliens and Frontiers Service (SEF) remain adequate to their tasks;
11. Enact the directive on the conditions for the family reunion of foreigners in possession of permission to stay permits foreseen by article 38(1)c of Decree-Law 34/2003, with due regard to the right to family life;
12. Provide for the suspensive effect of appeals during the admissibility stage of asylum applications;
13. Ensure that the personal testimony of asylum seekers is heard by the National Commissioner for Refugees in complex or contested admissibility cases;
14. Consider providing for the presence of a lawyer in the holding area at Lisbon Airport at all times, possibly through the signing of a protocol with the Bar Association, or an appropriate NGO;
15. Ensure that irregular immigrants are granted equal access to the measures foreseen by the Action Plan for Assistance to Victims;

**The Roma/Gypsy community**

16. Increase the accessibility of vocational training to the Roma/Gypsy community;
17. Provide sufficient resources for the creation, and occupation, of the office of socio-cultural mediator in schools with high numbers of Roma/Gypsy children in the area;

**Domestic violence**

18. Implement the proposals for the creation of a network of reception and assistance centres for victims of domestic violence, contained in consecutive Action Plans on Domestic Violence, particularly through the provision of funding to certified NGOs willing and able to manage such centres;
19. Encourage the knowledge of and use by the judiciary of legal protection mechanisms for victims of domestic violence, in particular regarding restraining orders;

**Police behaviour**

20. Implement the Inspectorate General of Internal Administration's (IGAI) recommendations concerning the use of non-lethal firearms by law enforcement officials;
21. Ensure the continuation of the IGAI's investigations and disciplinary hearings, regardless of the outcome possible criminal proceedings;

**Child labour**

22. Assist the Plan for the Elimination of the Exploitation of Child Labour in its efforts to combat the exploitation of urban children for prostitution, begging or other ends.