



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



## CommDH(2010)10

Ref: CommHR/DV/sf 183-2009

**Mr José MAGALHÃES**  
Deputy Minister of Justice  
Portugal

Strasbourg, 24 November 2009

Dear Minister,

Further to our meeting in Lisbon on 12 November, I would like to take this opportunity to follow up on the constructive dialogue that I had with you on a number of issues relating to the protection of human rights.

During our meeting I expressed my appreciation with the broad anti-discrimination protection under the Portuguese Constitution and anti-discrimination legislation. In view of this, I seized the opportunity to recommend the ratification by Portugal of Protocol N° 12 to the European Convention on Human Rights, containing a general prohibition of discrimination. This Protocol constitutes an invaluable instrument for the fight against discrimination in Europe. I was encouraged to hear that you would look into the possibility of ratification by Portugal of the above Protocol

A group affected in particular by discrimination is the Roma community. While welcoming the positive measures aimed at integrating Roma, such as the Re-housing Project and the Pilot Project for Municipal Mediators, I have received and been concerned at reports on the housing situation of some Roma communities in Portugal, referring *inter alia* to segregated areas in Portugal which are inhabited either exclusively or to a large extent by Roma, to widespread discrimination against Roma and their spatial and social segregation.

I have been particularly concerned by information indicating that access to water for Roma-inhabited settlements is refused and that there are neighbourhoods with only one entrance and exit route, some of them walled and with very difficult access. I invite the Portuguese authorities to examine promptly this situation and provide Roma in need with adequate housing, in accordance with the principles enshrined in the European Social Charter. Relevant action and policies of local authorities should also be closely and effectively monitored by the national authorities. In this respect, your authorities may draw inspiration from the guidelines contained in the Council of Europe Committee of Ministers' Recommendation (2008)5 *on policies for Roma and/or Travellers in Europe*.

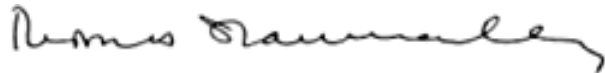
As regards human rights of transgender persons, I shared my concerns with you with regard to the lack of a uniform and expeditious procedure in Portugal for changing the name and sex of a transgender person on birth certificates and identity documents. I provided you with a copy of my Office's *Issue Paper Human Rights and Gender Identity* in which more background information is provided about this theme.

During my visit, I had the opportunity to meet also with the High Commissioner for Immigration and Interethnic Dialogue (ACIDI) and to visit one of the National Immigrant Support Centres (CNAI). The 'one-stop-shop' approach and the availability of all relevant services under one roof for immigrants is to be commended and provides an example of good practice in Europe. However, I remain concerned about the effectiveness of the racial discrimination complaint procedure before the ACIDI's Commission for Equality and Against Racial Discrimination as reportedly only few decisions have been taken during recent years and there is a significant backlog of cases.

Regarding allegations of ill treatment and excessive use of force by the police, you recognised that this is a serious issue to be tackled and informed me that detailed guidelines on the appropriateness of the use of weapons have been developed for the police force. I look forward to receiving further information on the implementation of these guidelines.

Finally, we discussed the issue of search warrants affecting lawyers' premises, in view of the need to maintain lawyers' professional confidentiality in the course of criminal proceedings. While there is a clear obligation under domestic law to cooperate with the authorities in cases of criminal investigations, I believe that a reasonable balance needs to be struck with the need to respect and ensure lawyers' proper function in the national justice system. I would appreciate receiving any further information you may have on this important issue.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Thomas Hammarberg', with a stylized, flowing script.

Thomas Hammarberg