COMMENTAIRES DE LA PART DES AUTORITÉS NATIONALES PORTUGAISES SUR LE TROISIÈME RAPPORT DE L'ECRI SUR LE PORTUGAL

L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation au Portugal.

L'ECRI rappelle que l'analyse figurant dans son troisième rapport sur le Portugal est datée du 30 juin 2006 et que tout développement intervenu ultérieurement n'y est pas pris en compte.

Conformément à la procédure pays-par-pays de l'ECRI, le projet de rapport de l'ECRI sur le Portugal a fait l'objet d'un dialogue confidentiel avec les autorités portugaises. Un certain nombre de leurs remarques ont été prises en compte par l'ECRI, qui les a intégrées à son rapport.

Cependant, à l'issue de ce dialogue, les autorités portugaises ont demandé à ce que leurs points de vues suivants soient reproduits en annexe du rapport de l'ECRI.

Third Report on Portugal – European Commission against Racism and Intolerance (ECRI)

View Points made by the Portuguese authorities to be reproduced in an appendix to the third Report on Portugal

Observations made by the Office of the High Commissioner For Immigration and Ethnic Minorities (ACIME)

(Paragraph 24) - The suggestion that the inversion of the burden of proof predicted in the article 23-3 of the Labour Code should be adopted in other areas than employment is already foreseen in relation to anti-discrimination legislation according to article 6º from Law no.18/2004.

On the other hand, the recommendation to adopt the victims right to compensation in racial discriminations cases is also foreseen in the Law, immediately under paragraphs 1 and 2 of article 10 of Law 18/2004 of 11th May, as well as of the general terms of Portuguese Law, namely the general rules of civil responsibility and of the personality rights, articles 70º and 483º contained in the Portuguese Civil Code. However, a procedural initiative by the offended must always take place, in the sense of demanding the aggressor before the courts for the reparation of the damage.

In this respect, these recommendations are already implemented in the Portuguese legal system.

(Paragraph 36) There were a total of 183 alleged cases of racial discrimination recorded.

(Paragraph 94) In 2003, 22 complaints have been submitted to CICDR and only 4 were against authority agents.

Observations made by the Department for the European and International Affairs(Ministry of Labour and Solidarity)

SPECIFIC ISSUES

- The Social exclusion of Gypsy communities living in Portugal

a) Despite of the recognised difficulties in fighting social exclusion in Gypsy Communities, some progress has been registered namely trough the participation of the Ministry for Labour and Social Solidarity (MTSS) and of the European Anti Poverty Network (EAPN) - Portugal in the transnational project "Promotion of more active policies for the social inclusion of the Roma and Traveller Minorities" financed by the European Commission within the Programme of Action Fighting Social Exclusion.

Among the results of this project it should be highlight the "Manual of Sensitization for the working up of Social Inclusion Policies for Gypsy Communities ", which has been spread by the MTSS and the elaboration of an indicator's collection for measuring the progress of the social situation of Gypsy Communities.

It should be also referred that in the Portuguese National Action Plan for Inclusion (PNAI) 2003/2005 the Gypsy Communities are one of the transversal target groups contemplated in most of the social inclusion measures. Parallelly were created some specific instruments specifically directed to the Gypsy Communities (Annex III of the PNAI), namely:

- Romany Gypsy Accompaniment Group, promoted by the ACIME and created with the objective of implementing a cooperation and coordination Platform for the shelter of Romany Gypsies and information programmes to avoid child beggars. Considering the evaluation report of the PNAI 2003/2005 the target of this Group was completely accomplished;

- Discrimination against Gypsies in access to employment, goods and services

a) In what concerns measures for fighting racism and intolerance, the General Inspectorate of Labour (IGT) points out the following:

- The annual activities plan for the years 2004, 2005 and 2006 were elaborated taking into account two objectives: promotion of decent work and decreasing labour death and severe sinisters, trough four principles and fundamental labour rights – creating better opportunities for men and women, ensuring their job and remuneration; ensure the universality of social protection; reinforce tripartism and social dialogue.

In its control, the IGT takes into account the most vulnerable groups – women, minors, immigrants and temporary workers, once they are the easiest targets for discrimination.

On the other hand, the IGT develops an activity of information trough a personalized service at each regional service, which is addressed to workers, employers and social partners.

The IGT is also represented at the CNAI, where is one of the services responsible for the information. Between 17/03 to 31/ 12 2004 it attended 13 397 persons in Lisbon and 2 690 in Porto.

- The Law 20/98 from 12/05 - regulation of dependent work for foreigner citizens was replaced by Law 99/2003 from 27/98 (Labour Code) and its regulation, guaranteeing equal treatment between legal foreigner workers and national workers.

The contract established with a foreigner worker for an activity developed in Portuguese territory has to be done by writing and has to obey to the formalities previewed in article 158º. These contracts must be communicated to the IGT.

The IGT control actions, next to enterprises, related with identification and regularisation of immigrants faced a significant increase, specially in what concerns the construction sector, as we can verify at the map:

Regularisation Process of Foreigner Workers/2005		
Age	Immigrants with a registered Process	
	Total	%
-15 a 24	6 114	25,6
25 a 34	9 831	41,2
35 a 54	7 767	32,5
55 a 64	156	0,7
65	18	0,1
Total	**23 886**	**100**

b) The Portuguese Institute for Employment and Vocational Training (IEFP) of the Ministry for Labour and Social Solidarity, within the EQUAL Project "Migrations and Development" is developing a training referential "Citizenship and Cultural Diversity in the Professional Exercise""

This training referential will be tested in a fist group of technicians of the public services in 2006, and in 2007 to all of the technicians of the local public services of the IEFP.

Observations made by the Office of Documentation and Comparative Law of the Attorney General's Office (ODCL)

The ODCL has the honour to propose a slight change to the paragraph 22 of the draft report of ECRI on Portugal. In paragraph 22, in the phrase "As concerns Article 70 of the Civil Code, this provision may be invoked in order to prevent an illegal infringement of the physical or moral integrity of an individual."; the ODCL suggests:

"As concerns Article 70 of the Civil Code, this provision may be invoked in order **to stop or** to prevent an illegal infringement of the physical or moral integrity of an individual".

Observations made by the Ministry of Justice

Regarding the ECRI recommendations (18) that considers that the Portuguese criminal law still fails on foreseeing a generic aggravating circumstance for the crimes committed under racist motivation, we should say that the Portuguese Criminal Code already comprises such provisions. Actually, according to article 71 of the Criminal Code, to determine the penalty's proportion, the judge should consider all the circumstances, that are not part of the crime, which may testify in favour or against the perpetrator. Straight to this point, article 71 n.2 o the Criminal Code determines that, among others factors, the judge must consider :"c) the feelings revealed in the crime commission and the aim and motive that mined ".

This means that in any crime if a racist or xenophobic motive exists that should be evaluated by the judge and should be taken in account in order to determine the penalty's proportion. So, we consider that the Criminal Code in force already has a provision making racist motivation a general aggravation circumstance, applicable to any type of offence"

Commentary to the arrangements on immigration stated in the 3º Portugal Report

I

Recommendations respecting the Foreigners Legal Regime

Concerning immigration, after sending the project of the analysed Report, we should enhance the bill approved in the Ministry Council of August 10 (cf. http://www.pcm.gov.pt/Portal/PT), setting the legal regime for entry, permanence and exit of foreigners from the national territory. This bill aims to establishing a legal regime enabling the promotion of legal immigration channels thus preventing illegal immigration.

Concerning admission and residence of foreigners in national territory the following is proposed:

- The creation of a single type of visa allowing its holder to entry Portugal for residence settling, issued according to specific purposes (professional activity, family reassembling, study): the visa for residence authorisation. This measure, as it replaces the existing 6 types of long lasting visas (4 types of working visa, residence visa and study visa) for a single type of visa, allows the rationalisation and cutting the red tape in procedures.

- The visa granting regime for residence permit for working purposes (admission of immigrant workers), which will replace the existing regime of granting the working visa, is suitable for jobs available which were not taken both by national citizens or European Union citizens and the supply of foreign manpower with suitable professional training. - Specially, it allows the legal entry not only of those foreigners holding a working contract and suitable qualifications, but also applicants to jobs which were not taken by national and community workers since the employer states its interest in hiring.

- Creation of a legal regime for temporary immigration through a temporary staying visa, suitable for the exercising of a seasonal activity.

- Creation of a faster regime for admitting scientists and highly qualified foreigners who want to exercise their activity in Portugal, whether in a temporary way or settling in the country.

- As to residence of immigrants in national territory we aim at replacing the four existing visa types for working, visa for studying, visa for extension of permanence with working permit, visa of temporary staying with permit to exercise professional activity as employee, and the permanence permit for a single type of document enabling the settling of residence in Portugal: the residence permit.

- The enlargement of the beneficiaries for the right of foreigners to family reassembling who, today, aren't entitled to (specially the holders of working visas and holders of permanence permits). Also the reassembling of the immigrant with his/her partner is allowed.

- The statute of long duration resident is created and given to all those residing legally for 5 years which implies, besides an expressive set of rights, the right to move within the European space and to settle residence.

- With the end of the permanence permit, the renewal of the existing titles changed into residence permit; the same happens with the titles granted under the Luso-Brazilian Agreement (extraordinary regularisation processes established by the former Government).

- The granting of residence permit without the need for a visa is extended to:

Children born in Portugal who lived illegally in the country and attending primary school, as well as their parents if effectively exercising their parenthood; Foreigners as offspring of legal immigrants who came of age and living in the country since they were years old; Foreigners who have lost their Portuguese nationality and stayed illegally in the country for the last 15 years; Victims of human trafficking who have lived in the country under that state; Foreign students who want to stay in Portugal; Scientists and highly trained professional admitted with temporary visas and who want to continue their activities in Portugal.

- As to removal/expulsion of foreigner from national territory we point out:

- The laying down of generic legal limitations related to expulsion which namely come from the jurisprudence of the European Court of Human Rights (ECHR), being now inexpulsable all foreigners who were born and live in Portugal, or live in the country since tender years, have minor children of Portuguese nationality in ward, or foreign nationality over who have parenthood powers.

- As to administrative removal (immigrants in an illegal status) and judicial expulsion (without any connection to criminal procedures), the possibility of application of preventive arrest is excluded, favouring the detention in temporary detention centres or electronic surveillance as a coercive measure of rendering removal effective.

- The fight against illegal immigration is strengthened through the aggravation of the penal framework for the crime of assistance to illegal immigration and the revision of applicable fines to employers of illegal immigrants. It is also foreseen the contingency of granting residence permit to victims of human trafficking crimes.

II

Recommendations regarding service and approach of SEF to foreign citizens

The strengthening of relations between Serviço de Estrangeiros e Fronteiras and citizens looking for its support has been one of the major concerns of the Service whose general purpose is the introduction of improvements in the areas regarding service to public, from the renovation of facilities, from a call centre to the present wage on the improvement of reception and direction of foreigners.

The Contac Centre of SEF was created to improve service to public. SEF wants to refresh one of the main service areas: information to public available in sever languages (Portuguese, English, French, Russian, Ukrainian, Moldavian and Creole), simplifying the relationship between citizens and SEF.

From January to November, the Contact Centre took up 155.910 calls.

In order to improve service quality, SEF signed five Cooperation Protocols to place 28 Socio-cultural Intermediaries form Immigrants Associations and NGOs at the Central and Regional Services of SEF.

Cooperation Protocols were signed in order to use socio-cultural intermediaries for reception service, screening, support, appointment arrangements, information and redirecting of foreign citizens at the Central Services, namely in the Contact Centre, and at the regional services of SEF.

In the documental area SEF considers as priority the improvement of conditions in service to public. In this sense, the improvement of the access to services is felt as a need, according to the new citizen-minded organisation culture, materialised in the presence of intermediaries who contribute for an evolution in dialogue and proximity.

Lastly, SEF opened different communication channels in order to optimise communication both internally as externally, through the Intranet and the Internet sites.

As to the external communication and within the new Web Site, a new line of contents was made, including several audio-visual web sites grouped around immigration themes in order to improve information and, in an interactive way, to draw near SEF and the citizens. In this communication technology we can find many of the work SEF developed during this year.

III

Recommendations regarding Asylum

The process of transposition of Directives to which the States are bound to, regarding asylum, is in progress, namely the Directive regarding the procedures on granting and withdrawing refugee status and condition to be fulfilled in order to be granted refugee status and which will imply a few changes to the present Asylum Law.

Although we cannot assure (because changes to law are not yet concluded) that ECRI's, remarks will be included in the new Law, namely the suspending effect of the appeal during the phase of admissibility and the extent of the period for an

application to asylum, we can assure that the principles underlying the Directives will be fully transposed.

Portugal has transposed this year the Directive n ° 2003/9/CE from the Council, of January 27., laying down the minimum norms in terms of hosting asylum applicants, thus resulting in the Law nº 20/2006 of June 23.

The entry into force of the mentioned Law – Law nº 20/2006 – serves as complement to the arrangements of the Asylum Law regarding hosting, and rules with more detail the hosting material conditions, namely facilities, meals and social support subsidies.

For instance, the new Law foresees the collaboration of NGOs with the State, aiming at measures to integration/hosting of asylum applicants, referring what are the measures for support, e.g., juridical support, support in organising information and voluntary work, support in the hosting process, etc.