



# **ECRI REPORT ON PORTUGAL**

## **(fifth monitoring cycle)**

Adopted on 19 June 2018

Published on 2 October 2018

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 22 March 2018; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's fourth report on Portugal on 21 March 2013, progress has been made in a number of fields covered in the report.**

In January 2017, Portugal became the 20th Council of Europe member State to ratify Protocol No. 12 to the European Convention on Human Rights (ECHR), which comprehensively prohibits discrimination. In addition, the authorities reinforced their legislation against hate crimes in August 2017 and passed a new anti-discrimination law with progressive rules governing the burden of proof. The High Commission for Migrations (ACM) has been assigned investigative powers, and the competences of the Commission for equality and against racial discrimination (CICDR) have been substantially extended.

In Portugal, racist, homophobic or transphobic comments by politicians are rare and publicly condemned. In April 2017 the President made a statement recognising the injustices committed during the era of slavery. The police services cooperate with the ACM and the non-governmental organisations in combating hate speech, and an increasing number of media refuse to publish comments containing hate speech on their websites. The judicial police college was awarded the rainbow prize by ILGA Portugal for its training programme focusing on discrimination against LGBT persons. Prosecutors specialising in hate crimes have been appointed in four major urban centres.

Very few Roma and Black people have been victims of violence motivated by hatred. In November 2017, the authorities took exemplary action following violence possibly motivated by racism outside a Lisbon discotheque. In July 2017, a judicial police investigation resulted in 18 police officers being indicted for serious racist violence against six Black people.

The authorities have developed a detailed system of integration indicators and plan to generate more specific data on the situation of disadvantaged groups during the next census in 2021. The school results of pupils of migrant origin have distinctly improved in recent years and the rate of early school drop-out among these pupils has been drastically reduced, while the authorities are striving to legalise the situation of pupils and their parents without stay permits. The rate of unemployment among people born outside the EU fell from 23.2% in 2013 to 14.8% in 2016. In 2013, the authorities adopted the National strategy for the integration of Roma setting out clear and ambitious objectives. A considerable number of Roma mediators have been recruited, and 30 young Roma have obtained study grants.

The vast majority of the Portuguese population believes that LGB persons should have the same rights as heterosexual people and that school curricula should cover this topic. Same-sex marriage was introduced in 2010, and joint adoption and assisted reproduction were opened to same-sex couples in 2016. There is draft legislation aimed at implementing the principle of self-determination for transgender persons. The National Plan for equality includes a section on LGBT persons, a "sexuality on-line" service provides them with telephone assistance, and three reception facilities have been opened.

**ECRI welcomes these positive developments in Portugal. However, despite the progress achieved, some issues still give rise to concern.**

Discrimination in the exercise of a public office or a profession has not been made a criminal offence, and the new anti-discrimination law does not cover all areas of life. The CICDR is not independent.

The definition of hate speech and hate crimes used by the police and the prosecutor's office is too narrow, and the vast majority of such incidents are not reported to them. Far-right and neo-nazi groups spread hate speech on the Internet and threaten migrants and the organisations working to uphold their rights, among others. In a great

many cases, the steps taken to combat hate speech are inadequate and the sanctions are not a deterrent.

There are numerous serious accusations of racist violence committed by police officers. However, no authority has systematically gathered these accusations and investigated them effectively to ascertain whether or not they are true. This has led to fear and a lack of trust in the police, particularly among people of African origin. The aforementioned indictment of police officers in July 2017 suggests a serious issue of institutional racism within one police unit that is tolerated by their hierarchy.

According to civil society, primary school drop-out for afro-descendant children is three times higher, and there are five times fewer students of African origin at university. Unemployment is high among afro-descendant adults and many of them are at risk from poverty and social exclusion since they only have low-skilled work. Rehousing programmes have resulted in spatial segregation, and those who have not been able to benefit from such programmes often still live in slum areas.

The situation of Roma children is deeply concerning: 90% of them leave school early, often at the age of 10 to 12 years. Only 52% of Roma men and 18% of Roma women work, and 17% of Roma live without running water and 25% without a toilet or a bathroom in their dwelling.

Data on the living conditions of LGBT persons are few and far between, and there is no comprehensive anti-discrimination legislation to protect them. As a result of closed attitudes and ongoing discrimination, the majority of LGBT persons feel obliged to hide their sexual orientation and gender identity, for example at school, in the workplace and even when dealing with health care staff.

**In this report, ECRI requests that the authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.**

The authorities should extend the scope of anti-discrimination legislation and align it with Protocol No. 12 to the ECHR, pass an anti-discrimination law covering the grounds of sexual orientation and gender identity and make the CICDR fully independent.

They should also reinforce human rights education, disseminate information on rights and the remedies available in the event of discrimination and hate speech and help the media to prevent and eradicate hate speech, particularly on the Internet.

The police and the prosecutor's office should adopt a broad definition of hate crime, step up their interaction with the individuals and groups exposed to racism and intolerance and encourage them to lodge complaints. An independent body should carry out investigations into all allegations of racist abuse and conduct on the part of the police, which should introduce a policy of zero tolerance towards racism, homo- and transphobia.

The authorities should make greater use of their system of integration indicators to assess and improve their integration policies. They should increase the rate of school attendance for children of migrant origin in preschool education and step up pupil support measures for them. In addition, they should swiftly implement their plans to rehouse those living in slum areas and ensure that there are no illegal forced evictions\*. The key authorities should publicly assume the responsibility for achieving the main objectives of the National strategy for the integration of Roma and the education authorities should ensure that all Roma children rigorously attend compulsory schooling up to the age of 18 years\*.

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\* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

The authorities should promote respect for LGBT persons, provide young LGBT persons with greater assistance, provide awareness-raising and training for healthcare staff in specific issues affecting LGBT persons and develop facilities capable of accommodating elderly LGBT persons.



## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism and discrimination<sup>1</sup>

##### - Protocol No. 12 to the European Convention on Human Rights

1. ECRI is pleased to note Portugal's ratification on 16 January 2017 of Protocol No. 12 to the European Convention on Human Rights (ECHR), which entered into force in this country on 1 May 2017. This Protocol contains a general prohibition of discrimination.

##### - Criminal law

2. ECRI has already examined in previous reports the conformity of Portuguese legislation with its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. In this fifth report it will therefore focus solely on the shortcomings that persist.
3. Following recent amendments to the Portuguese Criminal Code<sup>2</sup>, of which ECRI takes a positive view, its Article 240.1.a punishes anyone who "engages in organised propaganda activities inciting discrimination, hatred or violence against individuals or groups of people on grounds of their race, colour, ethnic or national origin, ancestry, religion, sex, sexual orientation, gender identity or physical or mental disability". ECRI regrets that the grounds of language and citizenship (§18a of GPR No. 7) are not mentioned; while the authorities claim that these two grounds are covered by the provision, they have not put forward any case-law confirming this. Furthermore, it would appear that the "organised propaganda activities" component limits the scope in relation to §18a of GPR No. 7, which states that any public incitement to hatred should be punishable<sup>3</sup>. The new indent 2d of this article makes public incitement to violence or hatred through a medium intended for dissemination a punishable offence; unfortunately, incitement to discrimination is omitted here.
4. There is no article in the Criminal Code expressly criminalising public expression of a racist ideology as recommended in §18d of GPR No. 7.
5. The new text of Article 240.2.a et b of the Criminal Code makes it a criminal offense to incite acts of violence or defame or insult an individual or group on the aforementioned grounds including through the condoning, denial or trivialisation of crimes of genocide, war crimes or crimes against peace and humanity. This is very close to the recommendation made in §18 of GPR No. 7 that any denial of genocide committed with a racist aim be made punishable, as the denial of genocide will almost invariably insult or defame the group to which the victims belonged.
6. Article 240.2 of the Criminal Code punishes anyone who, through a medium intended for dissemination, insults or defames an individual or group on the aforementioned grounds. According to the authorities, the provisions relating to attempted offences also cover the preparatory acts involved in the production and storage of such material as recommended in §18f of GPR No. 7. However, there

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<sup>1</sup> According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. According to GPR No. 7 "racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>2</sup> See Law no. 94/2017 of 23 August 2017.

<sup>3</sup> For example, comments inciting hatred made on television by a politician would not be punishable under Article 240.1.a of the Criminal Code, as long as they were not part of an organised propaganda campaign.

does not appear to be any case-law relating to such infringements. Article 240.1.a and b of the Criminal Code criminalise the creation of an organisation that incites racial hatred as well as participation in its activities. In contrast, §18g of GPR No. 7 recommends criminalising the creation of any racist organisation and participation in its activities, even with a view to committing racist offences other than incitement to hatred.

7. According to §18h of GPR No. 7, racial discrimination in the exercise of one's public office or occupation should be made a criminal offence. During its contact visit to Portugal, many of the ECRI delegation's talking partners stressed that such acts constituted only an administrative infringement in Portugal (Article 16.1 of the new anti-discrimination law No. 93/2017)<sup>4</sup>, leaving a substantial gap in protection against racism and intolerance. ECRI considers it particularly important to implement this recommendation.
8. Articles 132.2.f and 145.1 and 2 of the Criminal Code provide for increased sentences for homicide and assault and battery where motives are based on race, religion, colour, ethnic origin or citizenship, gender or sexual orientation. However, there is no general rule stipulating that a racist motive constitutes an aggravating circumstance for all ordinary crimes (§21 of GPR No. 7). Article 71.2.c of the Criminal Code, in turn, states only that the judge "must take into consideration the sentiments expressed while committing the offence and the aims and motives behind it".
9. ECRI recommends that the Portuguese authorities bring their criminal legislation into line with its General Policy Recommendation No. 7 and, in particular (i) incorporate the grounds of language and citizenship in all the provisions of the Criminal Code intended to combat racism, (ii) remove from the Code's Article 240.1.a the restriction that incitement to violence, hatred or discrimination must be committed in the framework of organised propaganda activity, (iii) make racial discrimination in the exercise of one's public office or occupation a criminal offence, (iv) stipulate that racist, homo- or transphobic motives constitute aggravating circumstances for any offences and (v) criminalise the creation of any racist organisation and participation in its activities, even with a view to committing racist offences other than incitement to hatred.

- **Civil and administrative law**

10. ECRI is pleased to note the recent adoption of Law No. 93/2017 of 23 August 2017 on the prevention and prohibition of racial discrimination, replacing the old anti-discrimination Law No. 18/2004. Its articles 1, 3 and 4 prohibit all the forms of discrimination defined in the law on grounds of racial and ethnic origin, colour, citizenship, ancestry and place of origin. Seen against §1a of GPR No. 7, they omit the grounds of race, language and religion; sexual orientation and gender identity are not mentioned either. Article 24 of the Labour Code (Law No. 7/2009 of 12 February 2009) prohibits all discrimination on grounds of race, ethnic origin, sexual orientation, religion and gender identity.
11. Article 3 of Law No. 93/2017 addresses discrimination by association as well as instructing and ordering others to discriminate. On the other hand, the other forms of discrimination listed in §6 of GPR No. 7 - namely segregation in areas such as housing, the announced intention to discriminate, inciting others to discriminate – are not expressly prohibited.
12. In accordance with Article 1 of Protocol No. 12 to the ECHR and §7 of GPR No. 7, the prohibition of discrimination should cover all areas of life. Article 2.1 of Law No. 93/2017, on the other hand, limits its scope to the matters expressly listed in the law, namely social protection, welfare benefits, education and access to the provision of goods and services available to the public,

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<sup>4</sup> See below in §§11ff and legislative bill no. 471/XIII, Bloco de Esquerda 2017.

including housing<sup>5</sup>. To ensure that individuals exposed to discrimination are protected against all forms of it, ECRI strongly recommends that the authorities align the scope of the new anti-discrimination law with that of Protocol No. 12 to the ECHR, which they have just ratified. In this way, they will extend protection against discrimination to other important areas, such as the activities of the police and the prison authorities.

13. Articles 2, 13, 14 and 18 of the Portuguese Constitution stipulate that the public authorities must respect the principle of equal treatment. Unfortunately, the authorities have not indicated any norm clearly stating that the public authorities must, in addition, positively promote equality and prevent discrimination, as set out in §8 of GPR No. 7. Article 8 of Law No. 93/2017 sets out such an obligation solely for the Commission for equality and against racial discrimination (CICDR).
14. Under the terms of §9 of GPR No. 7, the public authorities should ensure that parties to which they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination. In this context, ECRI takes a favourable view of the entry into force of the new Code governing public contracts (Legislative decree No. 111-B/2017) on 2 January 2018; the text implements one component of that recommendation by stipulating that companies engaging in discriminatory practices are to be excluded from public tenders (Articles 1, 55.1.f, 456.a and 460)<sup>6</sup>. In addition, Article 21.1.c and d of Legislative decree No. 433/82 on administrative infringements provides for possible ancillary sanctions in the event of a conviction for discrimination taking the form of (i) deprivation of the right to a subsidy or benefit, (ii) deprivation of the right to participate in public tendering and (iii) closure of an establishment requiring a permit for operation.
15. With regard to the existence of judicial and/or administrative procedures easily accessible for all victims of discrimination (§10 of GPR No. 7), ECRI is concerned by the very low number of cases going to court based on the anti-discrimination legislation<sup>7</sup>, which points to problems experienced by victims in asserting their rights and suggests that judicial procedures are not always easily accessible.
16. Concerning the lodging of discrimination complaints with the equality body, ECRI recommended in its 4th report that steps be taken to simplify and speed up procedures and that the High Commission for Migrations (ACM) itself be assigned investigative powers. ECRI notes with satisfaction that this recommendation has largely been applied: under Article 8.2.g of Law No. 93/2017, the Commission for Equality and Combating Racial Discrimination (CICDR) is competent for providing victims of discrimination with the necessary support and information for the defence of their rights. It may also have complaints about discrimination lodged with it and attempt mediation (Article 11 of the law). Whereas the investigation of cases regarding employment is still within the remit of the Authority responsible for Labour Conditions (Article 17.4), the investigation of other cases now falls to the ACM itself. The decisions are taken by the standing committee of the CICDR (Articles 7.3, 8.3 and 18), which can always seek input from other inspectorates (Article 20.1.b). The ACM must close the investigation within 90 days and it has an additional 15 days to finalise its report and draft decision; the standing committee must hand down the decision within another 15 days (Article 21). Notwithstanding these improvements, civil society fears that the new structure could still work too slowly owing to the large membership of the CICDR.

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<sup>5</sup> Article 4.2.a to i of Law No. 93/2017 provides more details on its scope. In addition, the Labour Code prohibits discrimination in work relations.

<sup>6</sup> Diário de Notícias 2017g.

<sup>7</sup> EELN 2016: 11.

17. On the subject of reversal of the burden of proof in cases of discrimination, ECRI is pleased to note Article 14 of Law No. 93/2017, which appears to go even beyond the recommendation made in §11 of GPR No. 7: when a practice or action listed in Article 4 (such as refusing a service, Article 4.2.a) or some other similar action is committed, the intention to discriminate is presumed without further need to provide proof of this motive.
18. According to §§16 and 17 of GPR No. 7, the law should provide for an obligation to suppress public financing of political parties and other organisations promoting racism as well as the possibility of dissolution of such organisations. While fascist political parties are prohibited (Article 8 of Law No. 2/2008 of 14 May 2008)<sup>8</sup>, Law No. 19/2003 governing the public financing of political parties does not contain a provision removing the funding of parties promoting racism. Racist associations whose aims are illegal or in breach of public decency must be dissolved under Article 6.1.D of Legislative decree No. 594/74. ECRI regrets that there does not appear to be any other provision for the removal of public financing of all organisations promoting racism.
19. ECRI recommends that the Portuguese authorities generally align their anti-discrimination legislation with its General Policy Recommendation No.7 and, in particular, (i) broaden the scope of the anti-discrimination law to all areas, (ii) expressly include "race", language, religion, sexual orientation and gender identity in the list of prohibited grounds (iii) state in the law the general obligation of the public authorities to promote equality and (iv) provide for the suppression of public financing of political parties and other organisations promoting racism.

- **Equality bodies<sup>9</sup>**

20. The ACM was created by Legislative decree No. 31/2014 of 27 February 2014 and replaced the Office of the High Commissioner for Integration and Intercultural Dialogue (ACIDI, see the 4th report). It is a public institution under the authority and supervision of the Prime Minister or another minister (Article 1.2. of Legislative decree No. 31/2014). The High Commissioner is appointed by the government (Article 27.1 of Framework law No. 3/2004 of 15 January 2004). The ACM is assisted by the Commission for Equality and Combating Racial Discrimination (CICDR), three national centres providing support for migrants (CNAIM), local centres providing assistance for migrants (CLAIM), the Migration Observatory and the Roma Observatory<sup>10</sup>. In its 4th report, ECRI recommended, in addition to the recommendations already considered in §15, that the ACIDI be made fully independent from the government and that all of its decisions be published.
21. Under Article 8 of Legislative decree No. 31/2014 of 27 February 2014, the ACM is competent *inter alia* for promoting and fostering the reception, integration, participation and vocational and civic training of migrants and their descendants, and for combating all forms of discrimination. The CICDR, set up by Law No. 123/99 of 28 August 1999 and reformed by Articles 6 and following of Law No. 93/2017, promotes equality and combats discrimination on the grounds set out in Article 1 of that law. ECRI is pleased to see that its powers have been considerably broadened; among other things, it is competent for gathering information on discriminatory practices, imposing sanctions, publicising cases in which anti-discrimination legislation has been infringed, recommending the adoption of legislative, regulatory or administrative measures, commissioning studies, providing victims of discrimination with the necessary information for the

<sup>8</sup> EELN 2016: 5. Additional research will be necessary.

<sup>9</sup> The term "national specialised bodies" was updated to "equality bodies" in the revised version of GPR No. 2 which was published on 27 February 2018.

<sup>10</sup> ACM 2018. The Council of Europe uses the term "Roma" to designate the groups that call themselves "Ciganos" in Portugal.



defence of their rights, deploying mediation, receiving complaints and conducting procedures for administrative infringements, investigating cases, taking decisions and imposing fines and ancillary sanctions, compiling statistical information, promoting human rights education, training and awareness-raising and promoting good practices for combating discrimination (Article 8 of the law). In its full composition, the CICDR comprises the High Commissioner, 6 parliamentarians, 10 representatives of the government and 14 representatives of associations as well as other members and in its restricted composition it is composed of the president and two other members.

22. ECRI welcomes the fact that the first of the two aforementioned recommendations on the publication of the CICDR's decisions has been followed (Article 24 of Law No. 93/2017). At the same time, it is regrettable that the CICDR, which ECRI regards as an equality body within the meaning of its GPR No. 2 revised, is still not independent as per §§2 and 22 and following of that GPR. ECRI considers that the independence of equality bodies is indispensable to guarantee their effectiveness and impact, particularly when tackling (structural) discrimination generated by the authorities and when deciding on complaints, as in the case of the CICDR<sup>11</sup>. For that reason, the authorities should establish the CICDR as a separate legal entity outside the executive and legislative authorities, ensure its *de jure* and *de facto* independence, allocate it a separate budget, entitle it to decide independently on its internal organisation and the management of its resources, ensure that staff exercising supervisory functions are selected and appointed in transparent, participatory and expertise-focused procedures and grant the CICDR the right to make public statements and publish studies and reports independently (§§2 and 22 to 30 of GPR No. 2).

23. ECRI recommends that the Portuguese authorities make the Commission for Equality and Combating Racial Discrimination entirely independent, in line with paragraphs 2 and 22 to 30 of its General Policy Recommendation No. 2.

24. The Ombudsman, appointed by parliament, is an independent constitutional organ with a broad mandate to protect human rights, including the right to equality and non-discrimination. ECRI is pleased to note the recommendations made by the Ombudsman in a number of cases of racism and discrimination, particularly towards Roma and foreigners<sup>12</sup>.

## 2. Hate speech<sup>13</sup>

### - Data

25. Official data on hate speech are few and far between in Portugal. The justice system only produces statistics on hate speech if there are more than three cases in the year, a threshold that has never been exceeded in the last five years. The statistics of the Directorate general of justice policy comprise 19 cases of discrimination on grounds of race or religion for 2015 (2014: 19, 2013: 12; 2012: 6; 2011: 0)<sup>14</sup>. The statistics published by the ODIHR only have entries for the year 2014, when the police logged 21 cases, including cases of hate speech and discrimination<sup>15</sup>. For offences other than racial discrimination

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<sup>11</sup> §11 of the explanatory memorandum to GPR No. 2. See also EELN 2016: 90.

<sup>12</sup> Portuguese Ombudsman 2017; EELN 2016: 94 et seq.

<sup>13</sup> According to ECRI's GPR No. 15 on combating Hate Speech, "hate speech" shall mean the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.

<sup>14</sup> DGPJ 2018.

<sup>15</sup> OSCE, ODIHR 2018.

(Article 240 of the Criminal Code), the police do not register any racist, homo- or transphobic grounds. The ACM and the CICDR do not publish specific statistics on hate speech<sup>16</sup>.

26. Civil society statistics and various studies indicate a far higher number of cases of hate speech. In 2016, the ILGA non-governmental organisation (NGO) logged 179 complaints over homo- and transphobic acts (158 in 2015). Of those cases, 55.9% involved insults or threats and 10.5% verbal harassment. Only 31% of the victims reported the incidents to an authority; a considerable number of victims said that they had not been decently treated by the authorities when lodging a complaint<sup>17</sup>. In a survey by the European Union Agency for Fundamental Rights (FRA), 51% of the LGBT persons questioned in Portugal replied that they had felt harassed or discriminated against on grounds of their sexual orientation or gender identity (EU 28 average: 48%). Only 12% reported the incidents to the authorities (EU 28 average: 10%)<sup>18</sup>.
  27. The Portuguese Association for Victim Support (APAV) provided assistance to 310 victims of discrimination, including through hate speech, between 2011 and 2015. In 2015, only 20.9% of victims reported the incidents to the authorities<sup>19</sup>. The ACM and the Commission for citizenship and gender equality (CIG), which is competent for assisting victims of homo- and transphobia, confirmed that there are many cases of hate speech that were not reported to them. According to the FRA's MIDIS II study, only a quarter of the respondents were aware of these institutions; only 5% of Roma victims and 9% of Black victims contacted an authority following discrimination<sup>20</sup>.
  28. According to the 2015 Eurobarometer, 64% of the 1 005 people questioned in Portugal thought that discrimination on grounds of ethnic origin was widespread. 69% gave the same reply for grounds of sexual orientation, 65% for gender identity, 32% for religion and 30% for gender. 19% replied that they would feel uneasy about having a Roma as a work colleague, as would 18% with a transgender or transsexual colleague, 12% with a Muslim colleague, 9% with an LGB colleague and 8% with a Black, Jewish, Buddhist or Asian colleague. 45% stated that they would prefer to report a case of discrimination to the police and 13% to the equality body. Only 18% thought that measures to combat discrimination were effective in Portugal (EU 28: 27%), and 29% that they were moderately effective (EU 28: 36%)<sup>21</sup>.
- **Racist public discourse**
29. ECRI notes with satisfaction that, in Portugal, politicians and other public figures do not in general make racist, homophobic or transphobic comments. However, hate speech and racism are present in public discourse and are aimed in particular at the Roma national minority and Black people<sup>22</sup>.

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<sup>16</sup> See for example ACM 2017: 84.

<sup>17</sup> ILGA 2017: 8 et seq.

<sup>18</sup> EU FRA 2012.

<sup>19</sup> APAV 2015: 3.

<sup>20</sup> EU FRA 2017: 44 and 124.

<sup>21</sup> EU, EC 2015. According to the European Social Survey, 52.9% (compared to the European average of 29.2%) of the Portuguese population thought that groups of humans could be ranked according to biological factors, and 54.1% (compared to the European average of 44%) according to cultural factors, Público 2017f. For a critical analysis of the methodology and the representativeness of this study, see Público 2017e and Observador 2017a. For other surveys, see Journal de Notícias 2017: in an anonymous survey, 16.4% replied "yes, I am racist". The percentage of people stating that they would not accept their son or daughter having a relationship with a Black person was 26.1%. 43.7% thought that the Portuguese were racist.

<sup>22</sup> Cf. UN CERD 2017: 4.

30. One example was provided by racist comments aimed at migrants and Blacks made by a professor of the Economics Faculty of Porto, Pedro Cosme Vieira<sup>23</sup>. On 16 June 2017, the Socialist Party (PS) Member of European Parliament (MEP) Manuel dos Santos engaged in anti-Gypsyism in a tweet insulting another MEP<sup>24</sup>. In July 2017, a criminal complaint for racist and xenophobic statements against the Roma community was lodged against André Ventura, the PSD candidate in local elections in Loures<sup>25</sup>. In mid-August 2017, Pedro Passos Coelho, the president of the PSD, was also accused of racism<sup>26</sup>. In March 2017, graffiti threatening death to Roma was spray-painted in Moura<sup>27</sup>. In Cabeça Gorda, another village in Beja province, the mayor refused to allow the burial of a Roma person in July 2017<sup>28</sup>, even though the deceased had lived there for two years.
31. With regard to the racism underlying such comments, there are many who claim that Portugal has never been racist, even during the colonialist era, and that there is no structural racism in Portugal, a view that is increasingly challenged<sup>29</sup>; ECRI notes the example of a demonstration organised by the SOS Racism NGO in October 2017 to protest against a statue of Father Antonio Vieira in Lisbon, whom it accuses of having contributed to the enslavement of Black people and the genocide of South American Indians<sup>30</sup>. In April 2017, the Portuguese President stated during a visit to Gorée Island off Senegal that "Portugal's political authorities had recognised the injustice of slavery when they had abolished it in part of its territory in 1761"<sup>31</sup>.
32. Nationalist, far-right and neo-nazi groups also help to spread hate speech, particularly on the Internet. The National Renovator Party may have obtained only 0.5% of the vote in the last parliamentary elections, but there are a number of small groups which actively disseminate hate speech and intimidation. In November 2016, the police arrested 20 people for incitement to hatred, and also attempted murder and armed robbery, who are presumed to be members of the "Hammerskin" group, accused of proclaiming the superiority of the "white race" and wanting to expel all minorities from the country. Some of the group's members are also suspected of involvement in another violent assault in 2015<sup>32</sup> and their former leader Mário Machado was sentenced to ten years' imprisonment in 2010 for racial discrimination, aggravated threats, possession of arms and attempted extortion<sup>33</sup>. There are also concerns that some police officers sympathise with these groups which, in turn, infiltrate the police. Members of extremist nationalist groups also disrupted the SOS Racism

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<sup>23</sup> He suggested "sinking all the boats carrying migrants in the Mediterranean and shooting any potential survivors" and called Black people "black scum".

<sup>24</sup> In his tweet he described Ms Luisa Salgueiro as: "the Gypsy, not only because of her appearance but also because she pays for the favours she receives with votes aligned with the centrists", *Jornal Económico* 2017.

<sup>25</sup> He described the Roma as living "above the law" and "nearly exclusively off state subsidies", *Diário de Notícias* 2017e; *Europapress* 2017.

<sup>26</sup> He had said that he did not want "every Tom, Dick and Harry" living in Portugal, *Diário de Notícias* 2017c. This comment related to a draft amendment to the law on immigration providing for the granting of a stay permit before a work contract had been signed, *Sapo* 2017.

<sup>27</sup> *Público* 2017j.

<sup>28</sup> *Jornal de Notícias* 2017d.

<sup>29</sup> See for example. *Público* 2018 and 2017c; *Observador* 2017a; <https://www.publico.pt/racismo-em-portugues>, accessed on 24.01.2018.

<sup>30</sup> *Diário de Notícias* 2017a; *Noticiasaminuto.com* 2017.

<sup>31</sup> *Público* 2017i.

<sup>32</sup> *Deutsche Welle* 2016 ; *Diário de Notícias* 2016.

<sup>33</sup> He was recently arrested in Sweden when seeking to take part in a meeting of the "Nordic resistance" movement, *Sábado* 2017a.

demonstration mentioned in §31; the police officers who were present did not intervene<sup>34</sup>.

33. There are no statistics on the number of hate speech incidents on the Internet, but civil society has informed ECRI of the existence of hundreds of hate-filled messages, particularly in internet far right forums. This hate speech targets and negatively portrays, in particular, the Roma, Black people<sup>35</sup>, Muslims<sup>36</sup> and LGBT persons. Only some of the media filter comments prior to publication on their sites and reject those containing hate speech.

- **Responses to hate speech**

34. To effectively prevent and combat hate speech, action is required in several areas, notably awareness-raising and prevention, assistance for self-regulation, the use of regulatory powers and, as a last resort, criminal investigations and sanctions against hate speech (see ECRI's GPR No. 15 on combating hate speech).
35. School education plays a key role in this connection. It is important for human rights education to be an integral component of the school curriculum at all levels and include measures to raise awareness of racism and discrimination. ECRI is pleased to see that the first steps have been taken in that direction. The ACM has devised a kit to help children discuss skin colour<sup>37</sup> for example, and a pilot project on racial discrimination has been launched in 200 schools during the current school year<sup>38</sup>.
36. At the same time, ECRI encourages the authorities to step up education for human rights and equality and make it compulsory and also rethink the teaching of history, particularly the history of the former colonies. This teaching should cover the role played by Portugal in the development and later in the abolition of slavery and in the discrimination and violence committed against indigenous peoples in the former colonies. The "discovery of the New World" narrative should be called into question, and the history and contribution of afro-descendants, as well as Roma to Portuguese society should be covered (§2 of ECRI's GPR No. 10 on combating racism and racial discrimination in and through school education). The authorities should also improve school textbooks along these lines and pursue and step up measures to raise awareness of society as a whole of racism.
37. ECRI recommends that the Portuguese authorities step up human rights education and awareness-raising regarding racism and discrimination and develop history teaching in such a way as to encompass the role played by Portugal in the development and abolition of slavery and the discrimination and violence committed against indigenous peoples in the former colonies.
38. With regard to hate speech in public debate ECRI recalls that the PS and the PSD have both signed the Charter of European political parties for a non-racist society<sup>39</sup>. In this context, ECRI is pleased to see that the Prime Minister and other politicians firmly condemned the hate speech of the MEP Manuel dos Santos (see §30 above). ECRI also regards as a positive development the public debate on the provocation of xenophobic sentiment by comments that Pedro Passos Coelho made in August 2017<sup>40</sup>. Such counter-statements and public

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<sup>34</sup> Diário de Notícias 2017a.

<sup>35</sup> UN, Human Rights Council 2012: §59; Organisations of Afro-descendants 2016.

<sup>36</sup> Seta 2016 : 446 ff.

<sup>37</sup> <http://www.acm.gov.pt/-/campanha-descobre-a-tua-cor->, accessed on 24.01.2018.

<sup>38</sup> Diário de Notícias 2017b.

<sup>39</sup> <https://www.coe.int/T/F/Com/Dossiers/Evenements/2005-ecri/charte.asp>, accessed on 10.01.2018.

<sup>40</sup> Diário de Notícias 2017c; Jornal de Notícias 2017d.

debate are indispensable to publicly make it clear that hate speech is unacceptable and jeopardises cohesion and social harmony. André Ventura lost the local elections in October 2017.

39. At the same time, ECRI is concerned that further hate speech could be published on Pedro Cosme Vieira's blog despite a disciplinary sanction apparently being imposed on him<sup>41</sup>. In addition, six months after the hate speech made by MEP Manuel dos Santos, no information is available on the progress of the announced disciplinary procedure before the national disciplinary committee of the PS<sup>42</sup>. ECRI urges those responsible to swiftly move forward with this procedure. At the same time, it encourages parliament, the government, politicians and the political parties to adopt codes of conduct such as the Charter of European political parties for a non-racist society and renew their determination to comply with them.
40. As stated above, it is still difficult to gauge the scale of hate speech on the Internet and in other media. No systematic monitoring of the Internet is carried out by civil society, the media, the media regulators or the police to detect hate speech, to have it taken down and to compile reliable statistics on this subject. Furthermore, the vast majority of those exposed to hate speech and discrimination are not aware of the legislation banning such acts nor of the authorities and websites to which they can complain. Since this lack of information is a major factor in the under-reporting of hate speech to the bodies responsible, ECRI considers that the authorities should organise an information campaign among those exposed to hate speech, covering the applicable legislation and the authorities tasked with combating the phenomenon.
41. ECRI recommends that the Portuguese authorities, particularly the High Commissioner for Migrations, run information campaigns to provide the groups exposed to hate speech and discrimination with information on the rights and remedies set out in legislation and the authorities they can approach, and that they build the capacity of those groups to exercise their rights (§13f of ECRI's General Policy Recommendation No. 2). The authorities should assess the impact of these activities, for example through surveys of members of those groups.
42. There are currently three regulation mechanisms to prevent, detect and take down hate speech on the Internet and in the traditional media: the Ethics Council of the Union of Journalists rules on complaints relating to violations of the Journalists' Code of ethics, revised in 2017<sup>43</sup>. The organisation tasked with issuing press cards may withdraw a card from a journalist who has committed an infringement; in practice, sanctions are very rare. Thirdly, the Portuguese Regulatory Entity for the Media (ERC) takes action on complaints over hate speech and has received 21 such complaints since 2009. The ERC informed ECRI that a growing number of complaints related to the Internet and hate speech towards Roma and LGBT persons. Following those complaints, it had recommended that its decision be made public on three occasions and submitted

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<sup>41</sup> <http://economicofinanceiro.blogspot.fr/>, accessed on 24.01.2018. A text was published on this site on 20.7.2017 containing the following passage: "Gypsies. The best way to get rid of gypsies is to force gypsy children to go to school. That's what they did with the Australian aborigines. Of course, the politically correct thing to say is that we are all equal and gypsies are Portuguese like everyone else, but we know this is not true. When we walk down the street as the sun is coming up and we come across gypsies or Africans (I can't say black or otherwise I'll get [another sanction and] more of my wages docked, although there are whites and Indians in Africa too), we feel a little chill run down our spine. It's not racist because this is a biological response".

<sup>42</sup> Jornal de Notícias 2017c.

<sup>43</sup> Its article 9 states that "the journalist rejects discrimination against people on grounds of their ancestry, colour, ethnic origin, language, place of origin, religion, political or ideological beliefs, education, financial status, social status, age, sex or sexual orientation".

three cases to the prosecutor general for the investigation of possible offences<sup>44</sup>. The ERC believes that its work has had a positive impact, as more and more media are introducing moderation in their on-line comments sections. Civil society feels that the sanctions, taking the form of warnings, are far too light and generate a climate of impunity. According to an assessment carried out by the European Commission of the implementation of the code of conduct for combating on-line hate speech, only 38.6% of the 101 contents containing hate speech reported by ILGA Portugal have been removed (EU average: 70%)<sup>45</sup>.

43. Since the rise of hate speech in the media and more specifically on social networks is a threat to cohesion and social harmony, ECRI considers that the authorities should introduce a more effective system for detecting and swiftly taking down hate speech on the Internet and in the traditional media. As also indicated in Article 9 of Law No. 53/2005 setting up the ERC, it is preferable to help the media, their self-regulation bodies and civil society to do this work, including by providing them with the necessary financial resources. If those stakeholders are unable to combat hate speech effectively, the authorities should step in and introduce effective regulation from the outside.
44. ECRI recommends that the Portuguese authorities (i) ensure, without compromising the independence of the media, that the media and Internet providers prohibit hate speech in their conditions of use and enforce that prohibition, (ii) encourage those stakeholders to run training on preventing and combating hate speech for journalists and staff responsible for monitoring sites and networks on the Internet and (iii) ensure that the Portuguese Regulatory Entity for the Media takes firm action, at its own initiative, in all instances of hate speech in the media, particularly on the Internet, and imposes appropriate sanctions with a view to preventing the dissemination of hate speech.
45. Where the investigation of hate speech by the law enforcement agencies is concerned, ECRI is pleased to note the cooperation between the different police forces – the Public Security Police (PSP), the National Republican Guard, the Judicial Police (PJ) and the Foreigners and Border Service (SEF) – and the ACM and the NGOs. In 2013, the PJ College was awarded the rainbow prize by ILGA Portugal for its training on the specific characteristics of discrimination against LGBT persons and good practices for interaction with LGBT persons<sup>46</sup>. In 2017, this cooperation focused in particular on the preparation of a handbook for dealing with hate crimes. The concept of local policing, regular contact and the concluding of "security contracts" between the police and groups at risk from hate speech are all contributions helping to improve the response to hate speech and crimes, and ECRI encourages the law enforcement agencies to pursue and step up this work, especially in the districts populated by Black people and Roma. Furthermore, ECRI considers that the appointment of prosecutors specialising in hate crimes in four major urban centres is a significant step forward.
46. At the same time, ECRI is concerned by the level of under-reporting of cases of punishable hate speech to the police services. Although the civil society statistics and surveys summarised in §§25 ff of the report points to a considerable number of cases of hate speech, this reality is not reflected in the statistics of the police and prosecution services. The recommendation made in §41 and closer interaction with the groups exposed to hate speech are essential to ensure that more cases of hate speech are reported to the police.
47. As regards the manner in which these complaints are dealt with, ECRI considers that the police and prosecutor's office should adopt a broad definition of a racist,

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<sup>44</sup> See for example the decision ERC/2017/232.

<sup>45</sup> EU EC 2018: 2.

<sup>46</sup> <http://www.ilga-portugal.pt/premioarcoiris/2013/>, accessed on 11.01.2018.



homo- or transphobic incident and register any incident as hate speech or crime which is perceived as racist, homo- or transphobic by the victim or any other person (§14 and 12 of ECRI's GPR No. 11 on combating racism in policing). The adoption of such a broad definition sends out a positive signal to victims that what they have to say will be listened to. Moreover, it will induce police officers to collect and secure from the outset evidence to prove that the perpetrator has a racist, homo- or transphobic motivation. At a later date, it is often difficult to prove such motives. Finally, in this context, it is important to take account of the case-law of the European Court of Human Rights stating that, in the adjacent area of hate crimes involving violence (see §§49 ff), the member States have a duty to take all possible steps to determine whether racism or discriminatory motives may have played a role in an offence involving violence. That duty exists irrespective of whether a complaint is made, as does the general obligation to investigate hate crimes<sup>47</sup>.

48. ECRI recommends that the police services and the Portuguese prosecutor's office adopt a broad definition of a racist, homo- or transphobic incident and register any hate speech or crime perceived as being racist, homo- or transphobic by the victim or any other person as such. In addition, they should further step up their interaction with the groups exposed to racism and intolerance and encourage them to lodge complaints.

### **3. Racist and homo/transphobic violence**

#### **- Scale of the phenomenon and the authorities' responses**

49. ECRI is concerned that there are no reliable official statistics on violent hate crimes either<sup>48</sup> and refers the authorities to the recommendation made in the previous paragraph. The ILGA statistics on homo- and transphobic incidents for 2016 include two cases of physical violence, 11 cases of assault and one case of damage to a vehicle<sup>49</sup>, while those for 2015 include one case of homicide, three cases of physical violence, 11 cases of assault and three cases of damage to property<sup>50</sup>. According to the FRA study quoted in §26 of this report, 23% of LGBT persons questioned in Portugal said that they had been physically assaulted in the last five years<sup>51</sup>. Otherwise, in another survey very few Roma and respondents of sub-Saharan origin said that they had been victims of hatred-driven violence<sup>52</sup>.

50. Of the crimes possibly motivated by hatred brought to ECRI's attention, those of particular note are an attack on a restaurant whose chef de cuisine had participated in a gastronomic festival in Israel; this attack was followed by a picket by militants of a "Boycott, divestment and sanctions" group<sup>53</sup>, death threats to members of SOS racism and attacks on a Roma community during which a church, houses and a car were burnt and animals killed<sup>54</sup>. In January 2014, the prosecutor's office opened an investigation following allegations of torture committed by inspectors of the judicial police when searching a Roma camp<sup>55</sup>. In

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<sup>47</sup> *Nachova and others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, 6.7.2005, §§160 to 168; *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14.9.2010, §81; *Škorjanec v. Croatia*, (no. 25536/14), 28 March 2017, paragraphs 52 et seq.

<sup>48</sup> See §§25 ff above in this connection.

<sup>49</sup> ILGA 2017: 25.

<sup>50</sup> ILGA 2016: 19 ff.

<sup>51</sup> EU FRA 2012.

<sup>52</sup> FRA 2017: 64, 1% of persons of sub-Saharan origin and around 0% of Roma. The FRA emphasises that these results are based on small numbers of cases and could not be regarded as reliable.

<sup>53</sup> American State Department 2016: 12.

<sup>54</sup> Público 2016a.

<sup>55</sup> Sapó 2014.

April 2016, a police officer was sentenced to one year and three months in prison for shooting a 30 year-old Roma with a rifle, seriously wounding him in the face, after the latter had asked if he could help with olive-picking on a farm run by the police officer and several of his colleagues<sup>56</sup>.

51. In 2017, public debate was marked by an emblematic case of violence possibly motivated by racism. On 3 November the authorities temporarily closed the Urban Beach discotheque in Lisbon for 6 months following the publication of a homemade video showing security staff of the establishment violently punching and kicking a Black person in both the head and the torso. Three of the presumed attackers were arrested. Prior to that, 38 other complaints had been lodged with the PSP in the course of 2017, many of them accusing the discotheque of racism. In 2014, the Portuguese athlete and former Olympic triple-jump champion Nelson Evora said on a social network that he had been refused entry to the club because there had been "too many Blacks in the group".<sup>57</sup>
52. ECRI welcomes the exemplary intervention of the authorities in the latter case. At the same time, it encourages the authorities to analyse which factors made it possible to intervene swiftly and effectively in this case whereas many other cases that may have involved presumed racist, homo-and transphobic violence have not prompted investigations and interventions with the same speed and effectiveness. On the basis of that analysis, the police and the prosecutor's office, particularly the four prosecutors specialising in hate crimes, should devise an action plan and internal rules for effectively processing all the cases falling within the broad definition of hate crimes which ECRI would like to see introduced.

- **Police brutality**

53. A serious case of alleged racist violence in February 2015 eventually resulted in charges being brought, in July 2017, against 18 PSP officers, including an officer of higher rank. They were indicted for torture, abduction, vilification and assault and battery on grounds of hatred and discrimination against six Black victims. According to the charge-sheet, the police officers had initially arbitrarily and violently arrested a Black resident of the Cova da Moura district in the Amadora suburb of Lisbon. Although he did not resist arrest, the police officers violently beat him, he fell to the ground and bled from his mouth and nose. To prevent further acts of ill-treatment, five members of a local association lodged a complaint with the Inspectorate General of Home Affairs (IGAI), which is competent for internal and disciplinary investigations within the police. Despite previous accusations of racist violence committed by officers from that police station (see §59 below), the IGAI took no immediate action.
54. To protect the victim, the five association members, two of them known to be mediators by the police, went to the police station at their own initiative. According to the charge-sheet and witness statements, police officers attacked them as they were approaching the police station, shouting racist insults and dragging them to the police station, where they were handcuffed, thrown to the floor and kicked, punched and slapped all over their body, including the head. In addition, the police shot rubber bullets at them, and one officer shouted: "You don't know how much I hate your race, I want to exterminate you all from the face of this Earth, you should get out of this country and if it was down to me, you'd all be sterilised". One of the victims who suffered from paralysis of the right hand received death threats. In this manner, the six victims were detained, tortured and humiliated for two days. According to witness statements, the hospital certified, upon intervention of the police, that the victims had injured themselves falling over. It is also alleged that the police officers cleaned the floor in order to

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<sup>56</sup> Público 2016b.

<sup>57</sup> Público 2017a.



remove bloodstains. The public prosecutor accuses certain officers of falsifying reports and witness statements. An assistant commissioner and an officer also stand accused of failing to provide assistance and to report these actions.

55. The IGAI has closed seven of the nine disciplinary procedures opened in July 2015 as it held that "there was no proof of the allegations"<sup>58</sup>. It was on the basis of a fresh investigation of the Judicial Police that the prosecutor's office drew up the indictment. In September 2017, the prosecutor's office requested that the 18 accused be immediately suspended<sup>59</sup>.
56. Civil society organisations and victims believe that a considerable number of other violent acts against Black people have also been motivated by racial, homo- or transphobic hatred; in particular, the level of police brutality towards afro-descendants is said to have increased in recent years<sup>60</sup>. Since police officers achieving good results and appraisals are able to choose where they work, it is often police officers with poor appraisals who are assigned to police stations covering the districts populated by Black people. An open letter sent by several afro-descendant organisations to the UN Committee on the Elimination of Racial Discrimination (CERD) alleges that dozens of young Black people have died at the hands of the police since the 1990s, without there being effective investigations into police officers<sup>61</sup>. A video posted on YouTube describes the cases of eight Black people aged between 14 and 30 who were killed by police officers between 2002 and 2013. Five of those eight incidents occurred in Amadora. Of the 39 people killed by the police between 2000 and 2009, over a third were Black<sup>62</sup>.
57. Regarding the investigation into the death of Elson "Kuku" Sanches, a Black youth aged 14, there is also information concerning tampering with evidence. A piece of evidence for the prosecution went missing during the procedure. That evidence indicated that the fatal shot had been fired from a distance of only 25 cm, suggesting an execution, and it is alleged that a firearm was placed nearby to give the impression that the dead person had been armed. The police officers indicted were acquitted in 2012<sup>63</sup>.
58. Civil society activists also informed ECRI of cases of violent police interventions, particularly in the 6 de Maio district in Amadora, when people of immigrant origin were expelled from their dwellings; according to these reports, some of the evictions had been unlawful, as they had not been announced and no alternative housing had been offered to those concerned (see also §82)<sup>64</sup>. ECRI is particularly concerned by information on a new case under investigation, in which PSP officers are suspected of having ill-treated a man originating from Cap Verde, handcuffed in the police car and at Alfragide police station<sup>65</sup>. The injuries sustained by the victim to the head and abdomen necessitated three days of hospitalisation. Irrespective of whether or not this forced eviction was lawful, it is difficult to imagine that these serious injuries were inflicted on the victim during his arrest and that acts causing such injuries would have been necessary to bring him under control.
59. The police pointed out during ECRI's contact visit that the letter mentioned in §56 was signed by a mere 16 organisations of afro-descendants whereas 300 such

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<sup>58</sup> Diário de Notícias 2017f.

<sup>59</sup> Sábado 2017b.

<sup>60</sup> ENAR 2016: 2.

<sup>61</sup> Afro-descendants' organisations 2016.

<sup>62</sup> <https://youtu.be/NjgYtA5SLg>, accessed on 16.01.2018; Islamic Human Rights Commission 2015.

<sup>63</sup> Público 2012.

<sup>64</sup> Cf. Amnesty International 2017: 300.

<sup>65</sup> Diário de Notícias 2017d.

organisations existed, the letter did not cite specific cases, these young people had lost their lives as a result of their attitude and their involvement in criminal activities, and they belonged to groups regarded by the police as problematic. The authorities also stressed the presumption of innocence of the police officers involved and investigative secrecy and that a distinction had to be drawn between criminal and disciplinary procedures, particularly where the Cova da Moura case of 2015 was concerned. They said that these were isolated cases and there was no institutional racism within the police forces. Concerning the last case featured in the video mentioned in §56 – the death of Diego Borges aka "Musso" on 12 June 2013 at the age of 14 - the authorities informed ECRI that the investigation had been closed, as other persons detained alongside him had denied that they had been assaulted and Mr Borges had suffered from a malformation of the brain compatible with the type of haemorrhage having caused his death.

60. For its part, the CERD has expressed concern at reports of abuses by police officers and the fact that the steps taken to prevent and combat such abuses were inadequate<sup>66</sup>. The Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concluded in turn that Black people were at high risk of being ill-treated by the police.<sup>67</sup>
61. Like the CERD and the CPT, ECRI is deeply concerned by these reports on violent abuse by the police. Given the persistence of these reports and the number and serious nature of them, ECRI considers that the authorities responsible for investigating cases of torture, homicide and racist, homo- and transphobic conduct committed by police officers, and the IGAI in particular should question their attitude and course of action. Specifically, the authorities should look into why the IGAI did not immediately intervene to protect the first detainee when alerted in 2015 to possible racist violence at Alfragide police station, especially as there had been many previous accusations made against the officers in that station.
62. Furthermore, it is difficult to comprehend how, according to the charge-sheet, 18 PSP officers, rotating as several teams, could have tortured, threatened and insulted six detainees for two days without their superiors putting a stop to this abuse. This points to deeply rooted institutional racism at this police station, which has jurisdiction for several districts densely populated by Black people, and to the toleration of this racism by the police hierarchy and the IGAI.
63. ECRI considers that a body independent of the police should gather all these allegations of abuse and racism and carry out an independent investigation of all them (§9 of ECRI's GPR No. 11). That body could be the Ombudsman, an independent equality body or a parliamentary committee. Another alternative would be to set up a new body, independent of the police, tasked with investigating allegations of racial discrimination and conduct motivated by racism, homo- or transphobia on the part of the police, as recommended in §10 of ECRI's GPR No. 11.<sup>68</sup> Comprehensive investigation of this kind will be indispensable as a basis for rebuilding a climate of trust between Black people, Roma and the police services.
64. ECRI recommends to the Portuguese authorities that a body independent of the police collect all allegations of racist abuse and conduct on the part of the police and carry out independent and effective investigations of all these cases.

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<sup>66</sup> UN CERD 2017: §§18 ff.

<sup>67</sup> CoE CPT 2018: §§ 10 et seq.

<sup>68</sup> See in this respect also the recommendation of the CPT in CoE CPT 2018: § 21.

65. On their side, the police and the prosecutor's office should ensure that misconduct of this kind cannot happen again. To that end, the police should change its attitude and proactively and effectively carry out internal investigations into any alleged racist or homo- or transphobic conduct by police officers and stop playing down serious violence against Black persons and Roma. Furthermore, it should pursue a zero tolerance policy with regard to racism and homo- and transphobia within its services and put an end to the feeling of impunity prevailing among its staff (cf. §7 of GPR No. 11).<sup>69</sup> In this context, the authorities should also consider installing cameras in police stations and vehicles and on police uniforms to make police officers accountable and prevent further abuse. This new attitude and zero tolerance policy should shine through in the basic and further training of police officers.
66. At the same time, the police should continue to change its approach in the districts it regards as difficult. Particularly in the districts of Amadora, local policing and prevention approaches should be stepped up in order to rebuild a relationship of trust with the communities which have suffered from police brutality and the ongoing threat of it. Regular contact between the police and civil society should be intensified (§18 of the GPR No. 11) and crime prevention programmes should be developed, especially for young people.
67. ECRI recommends that the Portuguese authorities introduce within the police services a policy of zero tolerance towards racism and homo- and transphobia, which should shine through in the basic and further training of police officers. The police services should intensify dialogue and cooperation with the groups at risk from racism and intolerance.

#### **4. Integration policies**

68. In Portugal, there are integration policies for people of migrant origin and Roma.

##### **- Integration policies for people of migrant origin**

69. Since 2011, the number of people emigrating from Portugal has been higher than the number of immigrants. In 2016, there were 392 969 foreign nationals living in Portugal, including 81 251 from Brazil, 36 193 from Cap Verde, 34 428 from Ukraine, 20 428 from Romania, 19 384 from the United Kingdom, 18 445 from China, 16 876 from Angola, 15 306 from Guinea-Bissau, 8 840 from São Tomé and Príncipe and 2 823 from Mozambique. In 2016, 29 925 foreigners immigrated for a stay of less than one year (2015: 29 896), 25 104 foreigners obtained Portuguese citizenship (2015: 20 396) and 375 were expelled (2015: 363)<sup>70</sup>. In 2016, 757 refugees were resettled in Portugal, 1 469 people requested asylum (+64%), 104 asylum seekers were recognised and 267 stay permits were granted on humanitarian grounds<sup>71</sup>.
70. In 2015, Portugal adopted its third national integration plan, the Strategic plan for migration (2015-2020) with five main thrusts of action: integration of migrants; integration of new citizens; coordination of migration flows; improvement of migration procedures and the quality of migration services; and encouragement, guidance and assistance for the return of Portuguese emigrants. The plan comprises over 100 measures in various areas, including the learning of Portuguese, education, employment, health and housing; it does not specifically address the integration of the growing number of refugees. The ACM is tasked with drawing up a report assessing the application of the plan every two years<sup>72</sup>.

<sup>69</sup> See also the recommendation made by the CPT in CoE CPT 2018: § 12.

<sup>70</sup> Instituto Nacional de Estatística (INE) 2017a: 115, 139 and 158; Foreigners and Border Service 2017: 11; Fundação Francisco Manuel dos Santos 2018.

<sup>71</sup> SEF 2017: 41.

<sup>72</sup> Chair of the Council of Ministers 2015.

In the Migrant Integration Policy Index (MIPEX), Portugal is ranked second in Europe<sup>73</sup>.

71. The three National Immigrant Support Centres (CNAIMs) were opened in Lisbon and Porto in 2004 and in Faro in 2009 to act as one-stop shops for migrants. In particular, they provide free legal assistance and help migrants to develop their qualifications and vocational skills as well as to look for jobs. Since 2003, a network of 91 local centres (CLAIMs) has been set up in partnership with the municipalities and civil society. In addition, mediators run telephone advice lines in nine languages, and the ACM has set up an interpreting by telephone service and a mentoring programme for migrants. The Foreigner and Border Service (SEF) helps migrants to legalise their residence status, a process that resulted in 130 foreign school pupils being legalised in 2016<sup>74</sup>. Since 2012, Article 135 of the Law on foreigners has stipulated that persons born in Portugal cannot be expelled if they have custody of Portuguese or foreign children residing in Portugal or have lived in the country since the age of ten years or under.
72. ECRI welcomes the fact that the Migration Observatory (see § 20 above) has developed a system of integration indicators<sup>75</sup>, which goes well beyond those established by the European Union developed following its Zaragoza declaration.<sup>76</sup> At the same time, ECRI urges the Portuguese authorities and the ACM in particular to use and incorporate these indicators more systematically in the Strategic plan for migration: the authorities should designate such indicators for each objective and measure, determine their initial values and set target values to be attained.<sup>77</sup> In this connection, ECRI welcomes the plan to insert a question on ethnic origin in the next population census, which will make it possible to generate separate data for different groups of migrants.<sup>78</sup>
73. ECRI recommends that the Portuguese authorities incorporate in the Strategic Plan for migration one or more indicators for each objective and each measure with an initial value and a target value to be attained.
74. Concerning the different components of integration policies, ECRI firstly welcomes the initiatives aimed at teaching Portuguese to persons of migrant origin. In addition to the "Portuguese for all" programme, the ACM launched two on-line platforms for the learning of Portuguese in May 2016, one for learners and the other for teachers.
75. Regarding education for children of migrant origin, while there has been substantial improvement in results, they continue to lag a considerable way behind Portuguese children. While one of the European Union's 2020 objectives is to have at least 95% of 4-6 year-olds in pre-school education, in Portugal there were only 90% of 3-6 year-olds with both parents born abroad attending pre-school in 2012, compared to 93% for children with both parents born in Portugal<sup>79</sup>.
76. The number of young foreigners dropping out of school fell from 42.7% to 22.4% between 2007 and 2015<sup>80</sup>. Between the school years 2012/2013 and 2013/2014,

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<sup>73</sup> Barcelona Centre for International Affairs and Migration Policy Group 2018.

<sup>74</sup> Foreigners and Border Service 2017: 15.

<sup>75</sup> ACM 2017b.

<sup>76</sup> EU, EC 2017b: 37.

<sup>77</sup> See for example the indicators inserted for measures 42 and 51 of the Strategic plan for migration (2015-2020), which are the school drop-out rate and the school success rate, Chair of the Council of Ministers 2015.

<sup>78</sup> At the same time, ECRI recalls that the principles of confidentiality, voluntary self-identification and free and enlightened consent must be respected when collecting such data.

<sup>79</sup> OECD (2015): 241.

<sup>80</sup> Eurostat 2017c.

the success rate among foreign pupils rose by 0.8%, a slightly higher increase than for Portuguese pupils (0.6%). In 2012, children aged 15 years born in Portugal to foreign parents scored 31 points less in the PISA reading test, and over 30% of those children performed poorly in reading<sup>81</sup>. The gap for children born abroad was 21 points. Compared to 2003, these results are a distinct improvement, with the gaps being reduced by 30 or 20 points<sup>82</sup>. In the 2015 PISA study, pupils of migrant origin scored only 8 points less than the overall population<sup>83</sup>. Children originating from certain countries even scored above average and, during the 2015/2016 school year, around 10.5% of the students enrolled in higher education were foreigners (some 37 000), representing an increase of 72% since the 2010/2011 academic year<sup>84</sup>.

77. The situation of children of African descent is far more worrying. According to civil society, Portuguese-speaking afro-descendant pupils are three times more likely to fail the first cycle of secondary education and twice as likely to fail the second and third cycles<sup>85</sup>; at secondary level, the vast majority (80%) are in the vocational streams, which only rarely lead to higher education. In the universities there are five times fewer students from certain afro-descendant groups, following a widening of the gap between 2001 and 2011<sup>86</sup>. A significant number of children born in Portugal do not have a stable stay permit situation, and their parents or the children themselves are under threat of expulsion. The main reasons for their poor results are an inadequate grasp of the language of teaching, lack of support in the educational process and problems in the home environment. This results in structural discrimination, in turn leading to disadvantages on the labour market, lower incomes and an inauspicious environment for the children of the next generation<sup>87</sup>. This description is borne out by OECD statistics: of the young people born in Portugal with both parents born abroad, 43.8% have only a low level of training and, on average, take 33 months to find their first job, compared to 17 months for Portuguese<sup>88</sup>.
78. This analysis suggests that people of African descent constitute the group most in need of support, particularly in the area of education. For that reason, ECRI encourages the Portuguese authorities to pay special attention to their integration and, in this way, make a significant contribution to the 2015-2024 International decade for people of African descent proclaimed by the UN General Assembly<sup>89</sup>. At the same time, it encourages the authorities to actively pursue their policy of regularising the residential situation of afro-descendant children and their parents<sup>90</sup>.
79. ECRI recommends that the Portuguese authorities further increase the school attendance rate for children of migrant origin in pre-school education and step up measures to support them at school, particularly in establishments with high numbers of pupils of migrant origin.
80. On the labour market, the situation of migrants appears to be improving. In 2016 79% of people born in Portugal and 84.6% of people born abroad had a job. The

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<sup>81</sup> OECD 2015: 245.

<sup>82</sup> OECD (2015): 243.

<sup>83</sup> UE CE 2016: 19; OECD 2016: 8 et seq.

<sup>84</sup> ACM 2017b: 11 et seq.

<sup>85</sup> See also ACM 2017b: 91 et seq.

<sup>86</sup> Portuguese Afrodescendant Organisations 2016 ; see also ACM 2017b: 94 et seq.

<sup>87</sup> UN Working Group of experts on people of African descent 2012: §30.

<sup>88</sup> OECD 2015: 247 and 253 for persons aged 25 to 34 years.

<sup>89</sup> <http://www.un.org/fr/events/africandecade/background.shtml>, accessed on 10.01.2018.

<sup>90</sup> See in this connection the case-law of the ECHR, eg Maslov v. Austria, no. 1638/03, 23 June 2008, §75; CoE, ECHR 2017: §§247 et seq.

figure stood at 87.7% for people born in an EU country and 83.6% for people born in a third country (88.4% for men and 79.8% for women)<sup>91</sup>. The rate of unemployment among people born outside the EU fell from 23.2% in 2013 to 14.8% in 2016<sup>92</sup>. Nevertheless, 31.2% of them were still vulnerable to poverty or social exclusion in 2016 (37.5% in 2015) compared to 24.5% of those born in Portugal (2015: 25.4%)<sup>93</sup>. Half of the complaints for discrimination received by the ACM related to employment.

81. A number of sources show that the rate of unemployment is far higher among people of African descent (33% in 2015), they are three times as likely to have low-skilled work and earn an average of 103 Euros less a month. They often cannot find work corresponding to their qualifications, and most of them work in a back office environment, in factories, in kitchens and in supermarkets, sometimes without contracts in situations of exploitation, and very few of them occupy a post that wields power. Women of African descent are more frequently unemployed, and single mothers are often obliged to hold down several jobs and can consequently devote little time to their children, who are exposed to risks such as drugs and crime<sup>94</sup>. There is also a perception that Black people are over-represented in prisons<sup>95</sup>. The UN Working Group of experts on people of African descent has recommended taking special measures on a temporary basis to break this vicious circle of poverty and inadequate education and employment<sup>96</sup>.
82. In addition to these difficulties, there are problems in the housing sector. Some people of African descent have been rehoused under social housing construction programmes which began in the 1990s and are welcomed by ECRI. However, those programmes have resulted in spatial segregation, as many new dwellings have been created in buildings situated a long way from urban centres<sup>97</sup>. The schools in these districts have a high proportion of pupils of migrant origin. Furthermore, those who arrived after the 1990 census, which formed the basis of these rehousing programmes, have not benefited from rehousing and continue to live in slum areas and districts with very substandard housing. According to civil society, the very tough living conditions in slum areas also fuel the spread of illness, including psychiatric disorders, among the inhabitants. On top of this, the residents of these districts live under the threat of forced evictions, some of which are said not to comply with the guarantees provided for in international and national texts. ECRI is deeply concerned by the information received from civil society regarding forced evictions without prior notice, without any possibility of seeking legal remedies and without the authorities proposing to rehouse those evicted in decent accommodation, particularly in Amadora (see §58 above).
83. ECRI recommends that the authorities ensure that there are no cases of illegal forced evictions and that anyone at risk of being forcibly evicted from their home is afforded the full range of guarantees provided for in international and national texts on the subject: they should be given sufficient advance notification of any decision to forcibly evict them, they should be entitled to appropriate legal protection and should not be evicted without the possibility of being rehoused in decent accommodation.

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<sup>91</sup> Eurostat 2016 and 2017a for persons aged 20-64 years. See also OECD 2018.

<sup>92</sup> Eurostat 2017b.

<sup>93</sup> Eurostat 2017d.

<sup>94</sup> See for example ENAR 2016: 2, Público 2017g and Afrodescendant Organisations 2016.

<sup>95</sup> UN Working Group of experts on people of African descent 2012: §§42 and 64: Whereas only 1% of Portugal's population has the nationality of an African country, 11.66% of prisoners have the nationality of an African country; ENAR 2016: 2.

<sup>96</sup> Idem: §§61, 77f and g. Inocência Mata, the only black teacher at the faculty of arts at Lisbon university also advocates positive measures such as quotas, Público 2017c.

<sup>97</sup> See in this context Lopes Alves, A. R. 2013.

84. Furthermore, ECRI welcomes the plan to carry out a new census to take stock of current rehousing needs, as well as the determination of the central and local authorities to eradicate remaining slum areas. In this context, ECRI points out that the reception centres dealing with the growing number of refugees and asylum seekers are at full capacity and the over-frequent use of detention in this respect remains a problem<sup>98</sup>. It is pleased to note the announcement by the city of Loures to rehouse 23 of the 67 families living in the "bairro da Torre" shanty-town and encourages all the authorities to quickly find a solution for the other 44 families<sup>99</sup>.
85. ECRI recommends that the Portuguese authorities swiftly carry out their plans to rehouse people of migrant origin who still live in slum areas or very substandard housing.

- **Integration policies for Roma**

86. ECRI welcomes the adoption of a national strategy for the integration of Roma (SNIR) on 17 April 2013<sup>100</sup>, through which the authorities have implemented a recommendation of ECRI's 3rd report. The strategy covers key areas of integration such as education, housing, health, employment and professional training. It sets out clear and ambitious objectives accompanied by indicators and target values. The objectives in the area of education for example are to ensure that 50% of Roma children can receive preschool education for at least one year in 2016, and 100% in 2020; that 40% of Roma children successfully complete compulsory schooling in 2016, and 60% in 2020; and that school drop-out is cut by 40% in 2016, and 60% in 2020. According to the 2016 report on the strategy's application, 94% of the measures provided for in the strategy have been put into operation and 1 173 initiatives have been carried out to implement it<sup>101</sup>.
87. Substantial progress has been achieved, such as training and recruiting a sizeable number of Roma mediators, which has helped to improve school attendance rates and the results of Roma pupils in many districts; it is now planned to recruit 50 mediators on a more permanent basis. Under the OPRE programme, developed by civil society and the ACM, 30 young Roma, many of them women, were able to start university studies in 2017, which is seen as a historic turning point. During its field visit to Loures, the ECRI delegation was able to see for itself the enormous efforts required to move forward in this area. After her first year in the job, the mediator has managed to bring half of the 14 Roma children up from the last class of primary school class to secondary school.
88. That said, ECRI regretfully points out that these positive initiatives are still far from reaching all Roma communities, as it saw when visiting another Roma community in Loures and hearing of two Roma communities in Lisbon without mediators to support them. The community in Loures still lives in a shanty-town, and there are many Roma living in precarious conditions in Lisbon; in one district, 33% of Roma families do not have a dwelling of their own, 6% have to live in a flat shared by three families and 3.5% in a flat shared by four families. In Loures, the electricity company refused to install individual meters for dwellings in the shanty-town, which violates the right to equal treatment<sup>102</sup>. These precarious living conditions are one of the reasons why the vast majority of Roma children living in these areas drop out of school very early and with no qualifications, after

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<sup>98</sup> See §157 of ECRI's 4th report and Ombudsman 2017b on detention conditions.

<sup>99</sup> Sapoz24 2018.

<sup>100</sup> Government 2013.

<sup>101</sup> Deputy Ministry and ACM 2016.

<sup>102</sup> Court of Justice of the European Union, no. C-83/14, 16 July 2015, ECLI:EU:C:2015:480.

class five at the age of only 10-12<sup>103</sup>; there are still numerous Roma children placed in segregated schools or classes and many others suffer from discrimination. Street vending, a traditional activity of Roma families, is being made increasingly difficult by stricter regulation and stronger concurrence. Many Roma work as Uber drivers but must hide their origin to avoid discrimination at work.

89. According to a study conducted on a national scale and published in 2016, only 42% of Roma children (31% of girls and 51% of boys) were in pre-school education. Segregation at school was still substantial, with 11% of Roma children schooled in classes of entirely Roma pupils<sup>104</sup>. 90% of Roma children left school prematurely (compared with 14% of the overall population), often at the age of 10-12 years, and new arrangements for distance learning could be a factor in further reinforcing that trend<sup>105</sup>. Only 35% of Roma aged 20-62 years were in work (52% of men and 18% of women), 17% of Roma were living without running water in their homes, 25% without a toilet, shower or bathroom in the home (compared with 0.9% of the overall population), and 42% had a leaking roof, damp walls or mould around the windows or on the floor<sup>106</sup>. According to another study, between 2 400 and 3 000 families (32% of all Roma families) live in huts, tents or mobile homes<sup>107</sup>. Along the lines of a recommendation in ECRI's 4th report, a wall built round a Roma district in Beja was demolished, by the Roma themselves but an embankment has been created in its place with rubble from a cemetery.
90. ECRI regretfully observes that, according to these studies, some of the most important objectives of the SNIR have not been attained. To improve implementation of the strategy, ECRI encourages the authorities to formulate the objectives even more clearly and in the form of performance targets; the objective regarding pre-school education for example should stipulate that 50/100% of Roma children actually attend it<sup>108</sup>. In addition, data on the SNIR indicators should be regularly gathered and published and used to assess the application of the SNIR, including in assessment reports by the ACM. Thirdly, the key administrations should assume the responsibility for achieving these objectives; the Ministry of Education and Schools administration should publicly take ownership of the objectives of compulsory education for all Roma children and target levels for educational achievement and reductions in early school drop-out. The local authorities should, for their part, assume responsibility for the objectives falling within their competence. Furthermore, the Roma, the mediators and Roma NGOs should be even more closely involved in devising and applying objectives and measures in order to take better account of the specific cultural characteristics and specific needs of Roma families, for example in the housing sector. ECRI considers that the planned update of the SNIR, which ECRI welcomes, will provide an opportunity to implement the following recommendations.

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<sup>103</sup> In one district of Lisbon, only 26% of Roma children reach the 6th grade, and only 1% reach the 8th grade.

<sup>104</sup> The case of a segregated class in Tomar (a city in the centre of Portugal) fuelled debate at national level; the national human rights protection bodies approved the maintaining of this class for integration purposes for an interim period, Público 2015. In this connection, ECRI refers to §3c of its GPR No. 10, indicating that such classes must be for a strictly limited period of time.

<sup>105</sup> Civil society fears that Roma families lacking the capacity for home schooling could withdraw their children even earlier from school.

<sup>106</sup> EU FRA 2016: 22 et seq.

<sup>107</sup> Instituto da Habitação e da Reabilitação Urbana 2015.

<sup>108</sup> At present, it merely stipulates ensuring that 50%/100% of Roma children *may* attend pre-school education.



91. ECRI recommends that the Portuguese authorities (i) transform the key objectives of the National Strategy for the Integration of Roma into performance targets, (ii) regularly gather and publish recent data on the strategy indicators, (iii) ensure that the key administrations publicly assume responsibility for achieving the objectives falling within their competence and (iv) more closely involve the Roma, the mediators and Roma NGOs in devising and applying the strategy.
92. To avoid the next generation of young Roma also suffering from social exclusion and discrimination, the authorities should, once the economic crisis has subsided, swiftly boost financial and human resources to improve the levels of school attendance and results among young Roma, and ensure that all Roma children rigorously attend compulsory schooling.
93. ECRI recommends that the authorities ensure that all Roma children rigorously attend compulsory schooling up to the age of 18 years.
94. The authorities should also swiftly improve the housing conditions of Roma.

## **II. Topics specific to Portugal**

### **1. Interim follow-up recommendations of the fourth cycle**

95. The first interim follow-up recommendation made by ECRI in its 4th report to the Portuguese authorities was to introduce a system for the collection of data on the situation of various vulnerable communities. In its 2016 conclusions on the application of this recommendation, ECRI considered that the recommendation had been only partially applied. ECRI reiterates its belief that it is important to record such data anonymously to be able to prevent and combat racism and homo- and transphobia effectively and to have a real impact in the sphere of integration. It is pleased to learn that the Directorate general of Education has asked the National Data Protection Commission to check whether it is possible to compile anonymous data on Roma children. Moreover, ECRI welcomes the recent announcement by the Minister Eduardo Cabrita that the authorities will work with the National Statistics Institute with a view to including a question on the ethnic origins of the population in the next census in 2021<sup>109</sup>.
96. The second interim follow-up recommendation on the speeding up of the procedures before the ACM and the CICDR has been studied in §§15-23 of the present report. Regarding the third follow-up recommendation, on the demolition of all walls and other barriers segregating Roma communities, ECRI refers to §89 of the present report.

### **2. Policies to combat discrimination and intolerance vis-à-vis LGBT persons<sup>110</sup>**

#### **- Data**

97. In Portugal, the official data on the number of LGBT persons and their living conditions are few and far between. Between 2010 and 2016 there were 2 299 same-sex marriages (1 474 between two men and 825 between two women). Over half those marriages took place in densely populated municipalities, whereas in 64% of municipalities there were no marriages of this kind<sup>111</sup>. Between 2011 and January 2017, 202 people changed their gender to male and 173 to female. The most recent Portuguese study on the situation of LGBT persons dates from 2010<sup>112</sup>. ECRI is pleased to note that the Commission for citizenship and gender equality (CIG) intends to commission a new study on the

<sup>109</sup> Público 2017h.

<sup>110</sup> For terminology, see the definitions set out in CoE Commissioner for Human Rights 2011.

<sup>111</sup> INE 2017b: 7; Público 2017b.

<sup>112</sup> Commission for citizenship and gender equality (CIG) 2010.

situation of LGBT persons in Portugal and encourages it to swiftly implement this plan.

98. According to the 2015 Eurobarometer, 71% of the 1 005 Portuguese surveyed replied that LGB persons should have the same rights as heterosexuals, with 59% saying that there is nothing wrong in sexual relations between two people of the same sex. 69% thought that school curricula and educational material should include information on sexual orientation and gender identity<sup>113</sup>.

- **Legislation**

99. Portuguese legislation relating to LGBT persons is progressive. Homo- and bisexual people have been able to join the armed forces since 1999, civil partnerships for homosexual couples were introduced in 2001, and sexual orientation was included in Article 13 of the Constitution in 2004. Discrimination based on sexual orientation has been an offence since 2007 and Law No. 9/2010 of 31 May 2010 introduced same-sex marriage. Law No. 7/2011 of 15 March 2011 established a framework for recognising the true gender and changing the first name of transgender persons. Law No. 1/2016 of 29 February 2016 opened joint adoption and assisted reproduction to same-sex couples. In 2017, draft legislation was tabled in Parliament with a view to further facilitating recognition of transgender persons' true gender and the changing of their first name. ECRI is pleased to note that this draft legislation is based on the principle of self-determination and no longer stipulates the requirement of medical diagnosis or a medical certificate to make the transition official.

100. At the same time, ECRI regrets that there is no anti-discrimination legislation covering the grounds of sexual orientation and gender identity (see §10 above).

101. ECRI recommends that the Portuguese authorities pass an anti-discrimination law covering the grounds of sexual orientation and gender identity and incorporate these grounds of discrimination in the legal texts aimed at combating discrimination.

102. The CIG is responsible for promoting equality for LGBT persons and combating discrimination based on sexual orientation and gender identity. Like the ACM, it is a central service directly under state authority with administrative autonomy. In this context, ECRI refers to §§20 ff of this report and encourages the Portuguese authorities to make the CIG entirely independent, in line with paragraphs 2 and 22 to 30 of its GPR No. 2. They should also empower the CIG to receive and process complaints about discrimination. Finally, within the CIG, the NGOs and representatives of the LGBT communities should be treated on an equal footing and be given a position similar to that of NGOs representing women.

- **Policies**

103. The 5th National Plan for equality, gender, citizenship and non-discrimination, coordinated by the CIG, includes a section, for the second time, on sexual orientation and gender identity with three objectives: to prevent and combat all forms of discrimination based on sexual orientation and gender identity, to foster awareness of this issue across the whole of society and to ensure that all the international instruments relating to non-discrimination on those grounds ratified by Portugal are applied and followed up<sup>114</sup>. In July 2013, the CIG launched a national campaign against discrimination on those grounds, featuring a TV spot, a radio spot, brochures, t-shirts, free postage and an Internet site. The campaign involved a great many stakeholders such as the Ministry of Education, the police, teachers, NGOs and media; it won ILGA's "Rainbow Award"<sup>115</sup>. In addition,

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<sup>113</sup> EU, EC 2015.

<sup>114</sup> Chair of the Council of Ministers 2013: strategic area no. 4.

<sup>115</sup> Portuguese Government 2015: 6-7.

Article 33.1.q of Law No. 75/2013 of 12 September 2013 provides for the devising and implementation of local equality plans, and ECRI welcomes the opening of three facilities for receiving LGBT persons in distress or at risk of violence, particularly in the home.

104. To assess the current situation of LGBT persons, one might usefully quote the study mentioned in §98, in which 69% or 65% of respondents thought that discrimination based on sexual orientation and gender identity was still very widespread<sup>116</sup>. In another study, 80% of the LGBT persons questioned said that they had often or always hidden their LGBT identity at school, 76% had hidden it from healthcare staff and 58% from work colleagues. 21% had felt discriminated against in cafés, restaurants, bars or discotheques and 17% in their dealings with health services<sup>117</sup>.
105. ECRI is especially concerned by the situation of young LGBT people who need information, assistance and protection to enable them to find their way and come out during the difficult period of puberty. In the view of civil society, the education system is not yet prepared for tackling the isolation of these young LGBT people or intersex people and giving them the help they need. Given that the Portuguese public is very open to LGBT issues, ECRI encourages the authorities to include sexual orientation and gender identity as a compulsory topic in school curricula, for example as part of sex education. In addition, efforts to provide information and assistance to young LGBT and intersex persons should be stepped up and include their families. At the same time, the authorities should organise training drives aimed at teachers and also those supervising sports and cultural activities to ensure that these professionals are able to help LGBT persons and deal with their problems in a non-discriminatory manner. In this context, ECRI is particularly pleased to note the launch, in 2017, of the "sexuality on-line" service, which is a telephone help-line for questions in the sphere of sexuality, including sexual orientation.
106. Two other areas where progress is required are that of health and that of care for elderly LGBT persons. ECRI considers that the authorities should launch an awareness-raising and training campaign to better prepare healthcare staff to deal with specific questions of health linked to sexual orientation and gender identity and create an environment in which LGBT persons can openly bring up those questions. Furthermore, the authorities should set about creating residential facilities capable of accommodating elderly LGBT persons and providing the environment and services they need. Finally, ECRI encourages the authorities to find a solution with regard to the considerable costs that numerous transgender persons have to bear themselves in the course of treatment to confirm and change gender<sup>118</sup>.
107. ECRI recommends that the Portuguese authorities (i) develop, apply and reinforce measures to foster understanding of and respect for LGBT persons, particularly in schools, (ii) provide all LGBT pupils and students with the information, protection and support they need to live in accord with their sexual orientation and gender identity, (iii) provide awareness-raising and training for healthcare staff enabling them to deal with the specific questions raised by LGBT persons and (iv) develop facilities for accommodating elderly LGBT persons.

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<sup>116</sup> EU, EC 2015.

<sup>117</sup> EU FRA 2012.

<sup>118</sup> At present, transgender persons must pay for frequent trips to Coimbra hospital, currently the only one offering this treatment in Portugal.



## **INTERIM FOLLOW-UP RECOMMENDATIONS**

The two specific recommendations for which ECRI requests priority implementation from the authorities of Portugal are the following:

- ECRI recommends that the authorities ensure that there are no cases of illegal forced evictions and that anyone at risk of being forcibly evicted from their home is afforded the full range of guarantees provided for in international and national texts on the subject: they should be given sufficient advance notification of any decision of forcibly evict them, and they should be entitled to appropriate legal protection and not be evicted without the possibility of being rehoused in decent accommodation.
- ECRI recommends that the authorities ensure that all Roma children rigorously attend compulsory schooling up to the age of 18 years.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 9) ECRI recommends that the Portuguese authorities bring their criminal legislation into line with its General Policy Recommendation No. 7 and, in particular (i) incorporate the grounds of language and citizenship in all the provisions of the Criminal Code intended to combat racism, (ii) remove from the Code's Article 240.1.a the restriction that incitement to violence, hatred or discrimination must be committed in the framework of organised propaganda activity, (iii) make racial discrimination in the exercise of one's public office or occupation a criminal offence, (iv) stipulate that racist, homo- or transphobic motives constitute aggravating circumstances for any offences and (v) criminalise the creation of any racist organisation and participation in its activities, even with a view to committing racist offences other than incitement to hatred.
2. (§ 19) ECRI recommends that the Portuguese authorities generally align their anti-discrimination legislation with its General Policy Recommendation No.7 and, in particular, (i) broaden the scope of the anti-discrimination law to all areas, (ii) expressly include "race", language, religion, sexual orientation and gender identity in the list of prohibited grounds (iii) state in the law the general obligation of the public authorities to promote equality and (iv) provide for the suppression of public financing of political parties and other organisations promoting racism.
3. (§ 23) ECRI recommends that the Portuguese authorities make the Commission for Equality and Combating Racial Discrimination entirely independent, in line with paragraphs 2 and 22 to 30 of its General Policy Recommendation No. 2.
4. (§ 37) ECRI recommends that the Portuguese authorities step up human rights education and awareness-raising regarding racism and discrimination and develop history teaching in such a way as to encompass the role played by Portugal in the development and abolition of slavery and the discrimination and violence committed against indigenous peoples in the former colonies.
5. (§ 41) ECRI recommends that the Portuguese authorities, particularly the High Commissioner for Migrations, run information campaigns to provide the groups exposed to hate speech and discrimination with information on the rights and remedies set out in legislation and the authorities they can approach, and that they build the capacity of those groups to exercise their rights (§13f of ECRI's General Policy Recommendation No. 2). The authorities should assess the impact of these activities, for example through surveys of members of those groups.
6. (§ 44) ECRI recommends that the Portuguese authorities (i) ensure, without compromising the independence of the media, that the media and Internet providers prohibit hate speech in their conditions of use and enforce that prohibition, (ii) encourage those stakeholders to run training on preventing and combating hate speech for journalists and staff responsible for monitoring sites and networks on the Internet and (iii) ensure that the Portuguese Regulatory Entity for the Media takes firm action, at its own initiative, in all instances of hate speech in the media, particularly on the Internet, and imposes appropriate sanctions with a view to preventing the dissemination of hate speech.
7. (§ 48) ECRI recommends that the police services and the Portuguese prosecutor's office adopt a broad definition of a racist, homo- or transphobic

incident and register any hate speech or crime perceived as being racist, homo- or transphobic by the victim or any other person as such. In addition, they should further step up their interaction with the groups exposed to racism and intolerance and encourage them to lodge complaints.

8. (§ 64) ECRI recommends to the Portuguese authorities that a body independent of the police collect all allegations of racist abuse and conduct on the part of the police and carry out independent and effective investigations of all these cases.
9. (§ 67) ECRI recommends that the Portuguese authorities introduce within the police services a policy of zero tolerance towards racism and homo- and transphobia, which should shine through in the basic and further training of police officers. The police services should intensify dialogue and cooperation with the groups at risk from racism and intolerance.
10. (§ 73) ECRI recommends that the Portuguese authorities incorporate in the Strategic Plan for migration one or more indicators for each objective and each measure with an initial value and a target value to be attained.
11. (§ 79) ECRI recommends that the Portuguese authorities further increase the school attendance rate for children of migrant origin in pre-school education and step up measures to support them at school, particularly in establishments with high numbers of pupils of migrant origin.
12. (§ 83) ECRI recommends that the authorities ensure that there are no cases of illegal forced evictions and that anyone at risk of being forcibly evicted from their home is afforded the full range of guarantees provided for in international and national texts on the subject: they should be given sufficient advance notification of any decision to forcibly evict them, they should be entitled to appropriate legal protection and should not be evicted without the possibility of being rehoused in decent accommodation.
13. (§ 85) ECRI recommends that the Portuguese authorities swiftly carry out their plans to rehouse people of migrant origin who still live in slum areas or very substandard housing.
14. (§ 91) ECRI recommends that the Portuguese authorities (i) transform the key objectives of the National Strategy for the Integration of Roma into performance targets, (ii) regularly gather and publish recent data on the strategy indicators, (iii) ensure that the key administrations publicly assume responsibility for achieving the objectives falling within their competence and (iv) more closely involve the Roma, the mediators and Roma NGOs in devising and applying the strategy.
15. (§ 93) ECRI recommends that the authorities ensure that all Roma children rigorously attend compulsory schooling up to the age of 18 years.
16. (§ 101) ECRI recommends that the Portuguese authorities pass an anti-discrimination law covering the grounds of sexual orientation and gender identity and incorporate these grounds of discrimination in the legal texts aimed at combating discrimination.
17. (§ 107) ECRI recommends that the Portuguese authorities (i) develop, apply and reinforce measures to foster understanding of and respect for LGBT persons, particularly in schools, (ii) provide all LGBT pupils and students with the information, protection and support they need to live in accord with their sexual orientation and gender identity, (iii) provide awareness-raising and training for healthcare staff enabling them to deal with the specific questions raised by LGBT persons and (iv) develop facilities for accommodating elderly LGBT persons.



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