APPENDIX: GOVERNMENT'S VIEWPOINT

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Portugal

ECRI, in accordance with its country-by-country procedure, engaged in confidential dialogue with the authorities of Portugal on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 6 December 2012, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

Response of the Portuguese Government to the European Commission against Racism and Intolerance (ECRI) draft report on its visit to Portugal from 24 to 28 September 2012

View points made by the Portuguese Government to be reproduced in an appendix to the fourth report on Portugal.

Observations made by the Ministry for Foreign Affairs:

I. Existence and Application of Legal Provisions

International legal instruments

Recommendation at Paragraph 4 *(page 9)*

ECRI recommends again that Portugal ratifies Protocol No. 12 to the ECHR and signs and ratifies the Convention on the Participation of Foreigners in Public Life at Local Level, the European Charter for Regional or Minority Languages and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

The Portuguese Government takes due note of ECRI's recommendation that Portugal signs and ratifies the Convention on the Participation of Foreigners in Public Life at Local Level, the European Charter for Regional or Minority Languages and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families however this is presently not envisaged. On the recommendation to ratify Protocol No. 12 to the ECHR, the internal ratification process is currently proceeding and we are confident that it will be finalized in the coming months.

Observations made by the Ministry of Justice:

Criminal law provisions

Recommendation at Paragraph 13 *(page 11)*

ECRI recommends that the authorities amend Article 240 of the Criminal Code to include language in the list of grounds.

The Portuguese Government will carefully analyze this recommendation.

Recommendation at Paragraph 15 *(page 11)*

ECRI strongly recommends that the authorities adopt a provision expressly making racist motivation an aggravating circumstance for all offences.

The Portuguese Government will carefully analyze this recommendation.

Application of criminal law provisions

Paragraph 19 *(page 11)*

However, ECRI considers that the authorities should look more closely into the reasons why there is so little recorded racist crime in the country. It could well be, as the authorities claim, that Portuguese society is extremely tolerant in general. However, there could be certain obstacles, such as the unwillingness of victims of racist offences to go the police or, as some reports suggest, a lack of confidence in the criminal justice system. It may also be due to failings by the police to register the racist nature of offences. ECRI invites the authorities to examine these factors and take steps to remedy them where necessary.

The Portuguese Government will carefully analyze this recommendation.

In what concerns the collection of data by the police regarding the racist nature of the offences please refer to the comments made to paragraph 200.

Civil and administrative law provisions

Paragraph 25 *(page 11)*

ECRI recalls that Law No. 18/2004 transposes Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. It has no provisions on compensation to victims of racial discrimination. Such victims have to turn to the civil courts to claim damages on the basis of the conclusions of the administrative procedure. However, the levels of compensation awarded by the courts are extremely low and this avenue is rarely pursued.

In this context it should be highlighted the adoption of Law 104/2009, 14/09, which approves the regime on the compensation to victims of violent crimes and of domestic violence entered into force on the 1st of January of 2010.

It established the Commission for the Protection of Crime Victims (CPCV) (that has succeeded the Commission for Compensation Requests to Victims of Violent Crimes), an administrative body, totally autonomous from the political power, in charge inquiring, analyzing, deciding such cases and paying compensation in advance to victims of violent crimes.

This new framework is build on the assertion that, in certain circumstances, the victims that have suffered serious damage to their health, either physical or moral, directly resulting from acts of violence, have the right to a compensation paid in advance by the State (even if they have not or cannot join the criminal proceeding as a civil party). It also foresees measures of a social and educational nature to support victims, as well as therapy considered adequate to their physical, psychological and professional recovery.

Its scope is not limited to victims of racial discrimination and there are records of giving support, for instance, to non-Portuguese victims of violent crimes or victims of domestic violence from «multicultural couples».

The findings in these cases seem to indicate that rather that a racial motivation, violence is originated in the context of situations where human relationships have failed or collapsed for several other reasons, such as economic distress.

Portugal is one of the few States of the European Union that does limit the granting of compensation to its nationals as long as the crime has occurred in its territory. Support is given to all persons whenever they are victims of violent crimes and, in particular, of domestic violence in its territory, even if they do not hold a totally legal status in Portugal.

During the year 2012, 157 new cases were submitted to CPVC and 107 cases of violent crime and 161 of domestic violence were concluded. Advancements of compensation were paid in 115 cases: 49 in cases of violent crime giving rise of compensations of, on average, 18.420,186€ (902.589,13€ in total) and 66 in cases of domestic violence, giving rise of compensations of, on average, 1.449,24€ (95.650,00€ in total).

The amount for advancements of compensations in the CPCV's budget for the year 2012 was all spent and an additional amount of 150.00€ was transferred from other services of the Ministry of Justice for this purpose.

It should be highlighted that the CPCV's budget was not reduced in the year 2012 as it happened in the vast majority of the public services in Portugal. This should be seen as a clear sign of the importance that Portugal attaches to this subject and the work undertaken by the CPCV.

Law 112/2009, of 16/09, on the legal framework applicable to the prevention of domestic violence and on the protection and support to victims of this crime entered into force on the 16 of October of 2009. It recognizes that all victims, regardless of their ascendancy, nationality, social condition, sex, ethnicity, language, age, religion, disability, political or ideological beliefs, sexual orientation, culture and instruction, enjoy the fundamental rights that are inherent to the dignity of the human being and are ensured equal opportunities to live without violence and to preserve their physical and mental health.

The IV National Plan against domestic violence (2010-2013) (approved by the Resolution of the Council of Ministers 100/2010) recognizes as particularly vulnerable victims, among others, the immigrants. As a strategic objective, it also purports to promote specific interventions on particularly vulnerable victims. It foresees in particular the improvement of the information of the immigrant community on domestic violence by setting up focal points in the local centres to support the integration of immigrants and the production and distribution of information material.

Application of civil and administrative law provisions

Paragraph 31 *(page 13)*

Thus, there are still numerous stages and the proceedings are lengthy (often up to a year and a half). Moreover, since no investigatory powers have been granted either to ACIDI or to the CICDR, investigations continue to be carried out by the competent inspection body. For example, a case involving discrimination in employment will be examined by the Labour Inspection. Where the facts indicate the commission of a crime,

the police carry out an investigation and inform the Public Prosecution Service. In this respect, ECRI notes that there is an important lacuna in the procedure; where the case relates to an area in which there is no competent inspection body, no investigation can be carried out.

It should be clarified that whenever facts that may constitute a crime occur, the police forces, including the Criminal Police, carry out an investigation and inform the Public Prosecution Services. Where the crime at stake is the crime foreseen in the above mentioned Article 240 of the Criminal Code (please refer to the responses paragraphs 16 and following) an investigation takes place and a criminal procedure by the Public Prosecution Services is initiated even if the victim does not submit a complaint.

Even if there is no specific authority competent to analyse the other cases mentioned in the last sentence of paragraph 31, the Criminal Police and the Public Prosecutor are always competent to carry out an investigation as long as they are informed or somehow aware of the occurrence of the fact which may constitute a crime. This is true even if the victim does not submit a complaint. Therefore we suggest a slight adjustment of that paragraph in the lines of the following: "31. (…) Where the case **does not constitute a crime and** relates to an area in which there is no inspection body no investigation can be carried out".

Recommendation at Paragraph 37 *(page 14)*

ECRI strongly recommends that the Portuguese authorities take steps to simplify and speed up procedures following the lodging of racial discrimination complaints with ACIDI. In this context, ECRI also recommends that authorities consider ways in which the principle of sharing the burden of proof could be put into effect. ECRI strongly recommends that the Portuguese authorities take steps to simplify and speed up procedures following the lodging of racial discrimination complaints with ACIDI. In this context, ECRI also recommends that in the investigation stage the Portuguese authorities ensure implementation of the principle of sharing the burden of proof, as provided for in national legislation.

The Portuguese Government will analyze these recommendations carefully.

Nonetheless, it should be taken into account that the principle of sharing the burden of proof provided for in Law 18/2004, of 11/05, which transposes the Council Directive 2000/43/EC, 29/06, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, is not applicable as such to criminal procedures (Article 6 (3) of Law 18/2004 and Article 8 (3) of Council Directive 2000/43/CE).

Racist discourse in politics

Recommendation at Paragraph 66 *(page 18)*

ECRI recommends that the authorities monitor carefully the activities of the National Renovator Party. In the light of their findings, they should consider whether further action is required. ECRI refers in this connection to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in particular §§ 16, 17 and 18g.

According to Article 46 of the Constitution of the Portuguese Republic and to Article 8 of the Law on the Political Parties (Organic Law 2/2003, of 22/08, as amended by Organic Law 2/2008, of 14/05) political parties that are racist or display a fascist ideology are not permitted.

No monitoring of the activity of political parties is foreseen in the Portuguese legislation since that would be considered to be against the principle that associations pursue their purposes freely and without interference from the public authorities as determined in Article 46 of the Constitution of the Portuguese Republic.

However if there is a suspicion that a crime may have been practiced that will be investigated by the police authorities and the Public Prosecution Services (please refer to comments to paragraph 31).

Also, Article 18 of the above-mentioned Law foresees that political parties which are racist or display a fascist ideology shall, at the request of the Public Prosecutor, be terminated by the Constitutional Court.

The National Unit against Terrorism of the Criminal Police is competent to prevent, detect, criminally investigate and co-assist the judicial authorities in crimes against cultural identity and personal integrity as well as in others provided for in the Criminal Law on Violations of International Humanitarian Law. There is no national unit in charge of just the cybercrime but rather some sections that in the several units, operating nationwide, investigate this crime.

The Criminal Police cannot close websites because the Portuguese legal order values the freedom of expression and information (article 37 of the Constitution) and the separation and interdependence (article 111 of the Constitution) and only a decision from a judicial authority – and not from the police – may determine a site to be shut down.

Relations with law enforcement agencies

<u>Recommendation at Paragraph 125</u> *(page 27)*

ECRI reiterates its recommendation that effective investigations into alleged cases of racial discrimination or racially-motivated misconduct by the police are carried out and that the perpetrators of these acts are adequately punished. It refers in this context to its General Policy Recommendation No. 11 on combating racial discrimination in policing.

The monitoring of the activity of the security bodies under the Ministry of Justice is made either by the General Inspectorate for the Justice Services (IGSJ) or by the respective disciplinary units. All suspicions of ill-treatment by security bodies against Roma or against any other person are investigated by one of these entities and their authors are, disciplinarily and/or criminally, punished.

The mission of the IGSJ is to audit, inspect and supervise all entities, departments and dependent bodies of the Ministry of Justice or those whose activity is subordinated or regulated by this Ministry - including the Criminal Police and the DGRSP. Within the scope of its activity, it assesses claims, complaints, denunciations, participations and reports, it

performs inspections and proposes the opening of disciplinary proceedings, inquiries and investigations determined or mandated by the responsible member of the Government. It also monitors the implementation of legislation likely to contribute to the reduction of acts of racism, intolerance and abuse, for example, through the inspections on the entry into force of the new Code on the Enforcement of Sentences and Measures involving Deprivation of Liberty, the implementation of the Regulation on the use of coercive measures in prisons, or the implementation of the Regulation of the conditions of detention in the facilities of the Criminal Police and in detention facilities within the courts and in the Public Prosecution Services.

The DGRSP has an internal service of audit and inspection whose coordination is assured by magistrates. Whenever there is a case or the suspicion of a case of excessive use of force or abuse, an inquiry is launched and, when appropriate, those responsible are subject to a disciplinary penalty and the fact is reported to the Public Prosecution Service. The activity of the prison services is under constant scrutiny; in fact, prisons may be visited at any time by representatives of sovereign bodies, including judges, as well as by representatives of international organisations with responsibilities in matters relating to the promotion and protection of the prisoners' rights (Article 66 of the Code on the Enforcement of Sentences or Measures involving Deprivation of Liberty). Moreover, prisoners have the right to freely correspond themselves with lawyers, notaries, diplomatic and consular authorities, sovereign bodies, the Ombudsman, the General Inspectorate for Justice Services and the Bar Association (Article 68 (4) of the mentioned Code).

In the Criminal Police, disciplinary matters are committed to the Disciplinary and Inspection Unit. Pursuant to Article 43 (5) of Law 37/2008, of 06/08, which approves the structure of the Criminal Police, as amended by Law 26/2010, of 30/08, the director of the Disciplinary and Inspection Unit is chosen from among judges, prosecutors, advisors or top coordinators of criminal investigation. Currently, the Disciplinary and Inspection Unit is conducted by a magistrate from the Public Prosecution Service that does not belong to the staff board of the Criminal Police. It is considered that the law has set objective conditions for this unit to develop its work with the autonomy and independence required to a fair and impartial inquiry of the cases of a disciplinary nature.

Between 2006 and 2012, the Criminal Police has the following statistical data regarding new and completed inquiry cases on crimes related to racial or religious discrimination:

2004 – 4 new and 3 completed inquiry cases;

2005 – 7 new and 5 completed inquiry cases;

2006 – 4 new and 11 completed inquiry cases;

2007 – 9 new and 14 completed inquiry cases;

2008 – 3 new and 8 completed inquiry cases;

2009 – 1 new and 1 completed inquiry cases;

2010 – 0 new and 1 completed inquiry cases;

2011 – 0 new and 0 completed inquiry cases;

2012 – 3 new and 2 completed inquiry cases.

VI. Conduct of Law Enforcement Officials

New recommendation *(page 37)*

ECRI recommends that the police authorities actively monitor the progress and outcome of all criminal prosecutions against members of the police and that the Ministries of Internal Administration and Justice as well as the police authorities take steps to reassure the public, and especially immigrants and members of the Roma community, that complaints about police misconduct, including racism and racial discrimination, will be vigorously and independently investigated and that police officers found guilty of such conduct will be punished.

Please refer to comments to paragraph 125.

Paragraph 186 *(page 37)*

The police authorities have informed ECRI that they cannot implement this recommendation based on their interpretation of the principle of equality set out in the Constitution (see §§ 5-8) as not allowing any kind of positive measures which would facilitate the integration of members of ethnic minorities or vulnerable groups into security forces and law enforcement agencies. Therefore, while there are annual calls for recruitment to the various police services open to all Portuguese citizens who meet the necessary requirements and pass the selection tests, there is no specific recruitment programme aimed at members of vulnerable groups. Moreover, since there is no collection of equality data, it is impossible to know how many members of vulnerable groups (if any) are currently employed in the various police services.

In the case of the Criminal Police the recruitment of new police officers does not take place yearly but more or less every three or four years depending on the factual circumstances and needs of that police body. Therefore the Portuguese Government suggests the amendment of paragraph 186 in the following lines: *"186. (…) Therefore, while there are (~~annual~~)* ***regular*** *calls for…".*

Recommendation at Paragraph 189 *(page 38)*

ECRI recommends that the authorities appoint socio-cultural mediators, particularly from the Roma community, to all the different police agencies with the aim of improving relations between law enforcement officials and vulnerable groups.

The following projects could also be mentioned in the context of efforts to improve relations between public authorities and vulnerable groups.

Firstly, the protocol signed between the Alternative Dispute Resolution Office (GRAL) and the High Commissioner for Immigration and Intercultural Dialogue (ACIDI), in order to enhance a better integration of immigrant communities and ethnic minorities in the justice field.

This protocol was signed on 26/05/2011, as to establish a strategic partnership between those bodies to promote access to the law and to the alternative dispute resolution mechanisms by the immigrant communities and the ethnic minorities. Under this protocol, ACIDI undertakes to refer to GRAL all disputes that can be solved by alternative dispute resolution mechanisms and to promote, publicize and inform citizens about these alternative means. For that purpose, GRAL conducted training and enlightenment sessions for the ACIDI staff.

Secondly, the protocols signed between the Institute of Registries and Notaries and the Association for the Support of Immigrants, the Jesuit Refugee Service, the Immigrant Solidarity Association, the House of Brazil in Lisbon, and with the Association «Olho Vivo» (association for the Protection of Patrimony, Environment and Human Rights), in 05.11.2007, with a view to preventing racial discrimination in access to its services and in order to provide foreign citizens residing in Portugal full access to information on the processing of the requests for granting, acquisition and loss of nationality and on the forwarding of the respective declarations or requests to the competent Central Registry. These protocols allow immigrants to obtain in an easy, close and trustworthy manner, the information and the support needed to acquire the Portuguese nationality. On the other hand, attendance points of the Central Registry were set up at the National Immigrant Support Centres (Lisbon and Porto), which allow immigrants, in full respect of their linguistic and cultural differences, to obtain information, counselling and assistance in obtaining Portuguese nationality given by specialized professionals.

Thirdly, the orientation of the DGRSP that all young persons in educational centers shall be legalized (or undergo a legalization process) in order to ensure equal access to training courses to foreign young people or belonging to other ethnic groups.

Fourthly, the protocol signed between the DGRSP and the SEF, in 2009, which aims at facilitating the communication between foreigner inmates with SEF – in particular, by promoting their legalization, their social rehabilitation and the recognition of the skills acquired or developed in prison – and to reinforce the knowledge of the agents of both services on the applicable legislation.

VII. Education and Awareness Raising

It could be pointed out in this context the publication, under the remit of the Alternative Dispute Resolution Office (GRAL), of the work “Fundamental Rights 2.0" (2010), which aims at presenting, in a perspective of non-lawyers, an analysis of the fundamental rights under the Constitution of the Portuguese Republic, contributing for the access and the knowledge by the citizens of their principles and basic rights.

Recommendation at Paragraph 200 *(page 38)*

ECRI urges the Portuguese authorities to take steps to put in place a monitoring system to enable the collection of data, either by Government agencies or by recognised academic institutions, which may indicate whether particular groups may be disadvantaged or discriminated against on the basis of “race”, ethnicity, religion or membership of Roma or other vulnerable communities, and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and voluntary self-identification.

Although a monitoring system as the one described is not in place in Portugal, it should be highlighted that the Statistics Department of the Ministry of Justice has continuously been developing the collection of data regarding racial discrimination, crimes motivated by racial hate or skin colour.

In fact, Portugal currently collects date on:

- Reports of crimes motivated by racial or religious discrimination to the police authorities (since 1993);
- Criminal procedures concluded in the first instance courts regarding crimes motivated by racial or religious discrimination (since 2007);
- Criminal procedures concluded in the first instance courts regarding homicides or physical offences crimes motivated by racial hate or skin colour (disaggregated from the data on homicides and physical offences crimes in general, i.e., regardless of motivation, since 2008);

Also, it should be noted that data on reports of homicides or physical offences crimes is collected but it is so in general, i.e., regardless of motivation, since the motivation may not be reported or known to the police authorities at the moment of the report of the crime and will be assessed later on by the Public Prosecution Services and the Courts.

On the 6 December 2012 data on all of the abovementioned topics could be consulted up to the year 2011.

Furthermore, it should be taken into account the Portuguese legal framework on data protection which guarantees, amongst other things, that:

- "Information technology may not be used to treat data concerning philosophical or political convictions, party or trade union affiliations, religious faith, private life or ethnic origins, save with the express consent of the data subject, or with an authorization provided for by law and with guarantees of non-discrimination, or for the purpose of processing statistical data that are not individually identifiable" (Article 35 (3) of the Constitution of the Portuguese Republic; having in mind that paragraph 7 of the same Article foresees that personal data contained in manual files enjoy the same protection; and Article 7 (1) of Law 67/98, of 26/10, which transposes Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data);
- Personal data can be collected solely where there is a specific, explicit and legitimate purpose that requires it and cannot be treated disaccording with such purposes (Article 5 (1)(b) of Law 67/98, 26/10);
- The treatment of data shall be made in full respect of the private life and rights, liberties and fundamental rights in the Constitution of the Portuguese Republic (Article 2 of Law 67/98, 26/10).

Observations made by the Ministry of Internal Administration:

The Portuguese Government regrets the observations made by the ECRI in the Draft Report without any factual base and not evidence-based alleging that the Security Forces and

Services tolerate racist and xenophobic behaviours. These observations are totally unfounded and incorrect. As a matter of fact, not only the Security Forces and Services do punish such behaviours as they train their officers to the respect of human rights of all citizens, irrespectively of their racial or ethnical origin, as they also promote the security and integration of racial and ethnical minorities, as proves the good practices of the Security Forces and Services identified in this document, namely the "Project of Investigation and Support to Especially Vulnerable Victims" and the "Integrated Programme of Proximity Policing" (both referred in this document related to paragraph 126 of the Report) and the Programmes "SEF in Motion" and "SEF goes to school" (both referred in this document related to paragraph 134 of the Report).

In the following paragraphs of this document the Portuguese Government will specifically refer to the parts of the ECRI Report to which we consider relevant to respond to be as close to the Portuguese reality as possible, as well as the most correct and accurate possible.

SUMMARY

"Cases of police harassment, misconduct and abuses against Roma continue to be reported." *(Page 8)*

The Portuguese Government firmly disagrees with the allegation above quoted from the ECRI Report. The observation made lead to an interpretation that the alleged acts occur specifically with Roma citizens which is false.

(i) The number of participations and condemnations by the kind of acts referred in the quoted paragraph, allegedly committed by officers presents, has witnessed, in general , a decreasing tendency, and has merely residual numbers;
(ii) Nevertheless, if analysed, in particular, the punctual cases existing, one easily understands that the characteristics are transversal, such as gender, age, religion, nationality or ethnicity;
(iii) There is no xenophobic tendency institutionally tolerated by the National Republican Guard (*Guarda Nacional Republicana* – GNR) or by the Public Security Police (*Polícia de Segurança Pública* – PSP), and pretending to imply the contrary is contributing to raising, amongst the population, the institutional intolerance that the GNR and the PSP police officers and officials attempt themselves to eradicate everyday.

"No statistical disaggregated equality data are collected for combating racial discrimination." *(Page 8)*

The criminal information that is elaborated in Portugal is produced in function of the crime perpetrated. In the meeting held on September 26, 2012, between the MAI and the ECRI's Delegation that visited Portugal, the competent entities did explain that the type of crimes aimed in this inspective action is typified in article 240 of the Portuguese Criminal Code (*Código Penal*). To produce criminal information based in the criminal ethnicity or of the victim raises doubts on its constitutionality as it may be a measure precisely encouraging xenophobic perspectives.

"Effective investigations into alleged cases of racial discrimination or racially motivated misconduct by the police should be carried out and the perpetrators adequately punished." *(Page 8)*

Concerning the observation above made by the ECRI, it is important to mention that in Portugal, apart from the procedure through the Public Prosecutor (*Ministério Público*), that assures total independency from an eventual participation of the GNR or the PSP in the processes involving their own officers and officials - as it allows this entity to develop all process, from the reception of the complaint to its presentation to the Court - it is already possible for any citizen to present a criminal denounce electronically, through internet, having, only after that, to go to a police precinct or to a delegation of the Public Prosecutor (*Ministério Público*) to validate the process.

It is important to make clear that the data inserted in the electronic complaint, even if not validated in the police precinct or in the delegation of the Public Prosecutor, may not be erased by the Security Forces and Services. As such, it would be easy to detect any episode of an eventual complaint electronically presented that, later, for any reason, any entity of criminal police had refused to validate.

On the contrary of what the ECRI pretends to refer, not only the Portuguese State does not fail by default in this matter, as it has available two independent mechanisms to participate criminal complaints, among them, obviously, those against the officers' behaviour.

III. RACISM IN PUBLIC DISCOURSE

Racist statements and publications, including in the media and on Internet

Paragraph 75 *(page 20)*

In the Report, the ECRI refers to a website using the logo of the GNR that disseminated extreme hate speech against Roma. At this purpose and in line with the information previously given to the ECRI that visited Portugal – namely, during the meeting held on the 26th of September, the GNR informs that:

(i) The GNR strongly repudiates any kind of speech or language of racial discrimination, of racial disrespect or of racial hate, and punishes any eventual situations that may occur of this nature by their officials with the sanctions foreseen in the Portuguese Law in force;
(ii) The GNR applications for admission of new candidates to enter in this Security Force are open to all Portuguese citizens irrespectively of their racial or ethnic origin once they meet the professional requirements and pass the necessary admission tests. In result of this open admission process, the GNR also has officials of different ethnic and racial origins and, therefore, for the main reasons of the respect and protection of all persons' humans rights and also for this reason it would never allow any offensive behaviour towards persons of any ethnic or racial origin;
(iii) The modern means of communication and information, among the various advantages that they bring to the relationship between the authority and the citizen, also entail major risks from the point of view of identity theft and misuse of symbols and logos of bodies and organisations around the world;
(iv) In becoming aware of these facts, the GNR shall participate them, in accordance with the applicable national law, to the legally competent authority – the Public Prosecutor's Office – so that the appropriate investigatory measures may be initiated;

(v) This is a crime which attacks the good reputation of the GNR, which this Security Force vehemently condemns;, it was, moreover, an illegal act committed via Internet; hence it should be referred that, according to the cybercrime law, the investigation of crimes committed via Internet falls under the jurisdiction of the Portuguese Criminal Police (*Polícia Judiciária* - PJ). Thus, due to the subject matter, the GNR could not take additional measures;
(vi) The GNR condemns any form of misuse of its symbols and logos, whereby also condemning any situation of discrimination that may be verified in the context of its officers, as, in accordance with the applicable law, there are duly imposed inspection and sanctioning channels to deal with situations of this nature.

V. VULNERABLE/TARGET GROUPS

Roma

- ***Access to Employment, goods and services***
Paragraph 111 *(page 26)*

In what concerns the reference made in this paragraph to the non-discrimination of Roma in the access to employment, it is important to reiterate the information given by the GNR Representative in the meeting held with the ECRI Delegation. In that occasion, the Portuguese Authorities informed that the GNR annually publishes an application to enter into this Security Force, being this application open to all Portuguese young citizens that meet the necessary requirements and that pass the selection tests.

The race and the ethnicity are not criteria of exclusion for the application and selection. Therefore, as the members of Roma communities are Portuguese citizens, they may apply to enter into the GNR and have success entering in this Security Force, if, as all the other Portuguese citizens, they pass the cultural, physical, medical and psychological tests.

Identical situation occurs to enter into the PSP, in which public application and selection procedures, race and ethnicity are not criteria, being them open to all Portuguese citizens in equal circumstances and without any kind of discrimination once they meet the necessary requirements and pass the tests made to that purpose.

- ***Relations with Law Enforcement Agencies***
Paragraph 121 *(page 27)*

In what concerns the references made by the ECRI in this paragraph, the Portuguese Government reiterates the comments made in this document related to the ECRI Report in its Summary at page 8 referring to cases of alleged police harassment, misconduct and abuses against Roma.

Paragraph 122 *(page 27)*

The first part of this paragraph was already commented by the Portuguese Government as it repeats the content integrated in the Summary of the ECRI Report. Nevertheless, assuming that it exists any document produced by the national NGO that supports the ECRI idea that, in Portugal, it exists in such a generalise way a perception of discrimination and victimisation by

misconduct of the GNR or of the PSP, the Portuguese Government regrets that such document has not been shared with the competent national authorities as the State does with its research papers which presentations are public or with the Annual Reports of Internal Security, that are as well made public. The Portuguese Government fears, nevertheless, that this ECRI idea results from opinions with strong subjectivity and without scientific validity. Notwithstanding, the competent national authorities express the biggest interest to, with the NGO that produced the eventual document, develop efforts to continue improving the work with the Roma communities.

Paragraph 123 *(page 27 and 28)*

In what concerns the allegations of abuses committed by the GNR officers at a Roma camp near Vila Verde, referred by the ECRI, the GNR informs that:

(i) The detainees were present to Court (*Tribunal Judicial de Vila Verde*) on September 25, 2012, with the exception of one detainee that was escorted to the Braga Prison, in result of a warrant of the Court (*Tribunal de Execução de Penas do Porto*);
(ii) The Court (*Tribunal Judicial de Vila Verde*) did not made any remarks concerning the GNR behaviour with the detainees and all the detentions and apprehensions made were duly validated;
(iii) The GNR Territorial Post of Amares (*Posto Territorial de Amares*) has a video surveillance system that allows for the verification that there did not take place any aggression or mistreatment to the detainees;
(iv) There has been no use of "Taser" weapons by the GNR Territorial Post of Amares;
(v) In any moment were the detainees assaulted or tortured in the Amares GNR Territorial Post;
(vi) In the interior of Amares Post do not exist any water points - with the exception of the sanitary taps and showers- or tanks or other similar equipment to make possible the alleged "waterboarding" referred in the ECRI Report;
(vii) The GNR has no knowledge of the presentation of any reclamation/complaint allegedly presented by the alleged victimes, the social workers or any NGO.

Recommendation at paragraph 126 *(page 28)*

In this paragraph the ECRI suggests that it may exist an institutionalization of racism or racial discrimination in the police.

The Portuguese Government vehemently refuses this kind of insinuation.

As the ECRI heard in its Delegation's meeting with the GNR and the PSP representatives, the MAI, in the recent years, carried out and continues to carry projects specifically oriented to these communities and proving exactly the opposite of what the ECRI intends to refer in the Report.

The institutional policyis demonstrated, in practice, with the implementation of multiple initiatives aiming precisely to contribute, through formal and informal partnerships and based in the philosophy of proximity policing, to improve the quality of life of these specific groups, with special incidence in the area of security.

In the meeting with the ECRI Delegation, the GNR Representative referred that, in the scope of the proximity policing, the GNR pays special attention to the more vulnerable groups, developing proximity relations and trust relations with all the population, especially with ethnic minorities.

GNR has been developing the Project of Investigation and Support to Especially Vulnerable Victims (*Projeto de Investigação e Apoio a Vítimas Especialmente Vulneráveis* – IAVE), in which target groups are included the ethnic minorities. The National Republican Guard (GNR) recognizes the crimes committed against women, children, elderly and other especially vulnerable populations as one of the most delicate incidents that the criminal investigation department must deal with. These types of criminality are known as an area concealed behind the "family" frame of shame and covered by the ignorance about the law and the unawareness of the existing supports. The problem is so complex that the biggest challenge to the investigators is how to obtain enough evidences in order to produce adequate proof to accuse the suspects. Therefore, the Project “Investigation and Support to Especially Vulnerable Victims (IAVE)” was created and carried out to reply to this specific situation.

Nowadays the IAVE Project is based on a concept of community policing, whose focus is established on a philosophy and organizational strategy based on two aspects: prevention and quality service - both increasing a better integration of police forces with their communities, interacting together, especially through partnerships. This is a model that meets the objectives of the GNR intervention with the victimized citizens by developing actions both in police criminal investigations and as well as under a strong psychosocial support to those victims.

Following this philosophy were implemented the new specialized teams, in every district, called NIAVE (Investigation and Support to Especially Vulnerable Victims Teams). The main responsibility of NIAVE’s daily work is: "to bring to the investigation all crimes committed against particularly vulnerable victims and to promote all needed actions in order to support the victims". In terms of organization, the elements with IAVE training are distributed in 24 specialized teams (18 in District Capitals, and 6 decentralized, with a ratio of 3-4 per Team), complemented with a minimum of 254 specialized investigators, at the rate of 1 per GNR Post. Currently the headcount is 310 investigators, 78 within the IAVE Teams and 232 within the GNR Posts.

The IAVE specialists are recruited in a voluntary scheme, amongst the criminal investigators, with field service experience, denoting particular talent for addressing these issues. The specific training of these elements, in addition to the criminal investigation course, and a previous experience as an Investigator, is complemented with a specific subspecialisation, at the GNR School, directly related with the victims support. This subspecialisation course was designed in coordination and collaboration with various organizations, institutions and associations linked to this problem, providing different perspectives and visions of these events, enriching the training.

In the same meeting, when asked about improvements at different levels that had been implemented in light of the ECRI recommendations made in its third Report of the visit to our country, the PSP Representative replied with improvements at three levels.

In a first level, of national scope, he referred that the PSP has been working in cooperation with the High Commissariat for the Immigration and Intercultural Dialogue (*Alto Comissariado para a Imigração e Diálogo Intercultural – ACIDI*) and with the Directorate General for Home Affairs (*Direção Geral de Administração Interna – DGAI*) in order to obtain a better knowledge and understanding of the reality of the different minority groups existent in the country and, through that information, improve police replies to these realities.

In a second level, of regional scope, it was referred that the PSP, having in mind that the solution to these communities' problems is not exclusive of the police, since 2008, participates in 11 Local Safety Audits (*Contratos Locais de Segurança*), aiming precisely to work in partnership with the other partners in the process of integration, socialisation and security of these communities. Through this process the PSP works to purpose of a better integration and acceptance of these groups, culturally less accessible, and that, through the work on social network and institutional interaction, PSP looks for a bigger proximity between police officers and the members of these communities.

In a third level, of local scope, and resulting from that approximation, the PSP, through the Integrated Programme of Proximity Policing (*Programa Integrado de Policiamento de Proximidade*), and following a goal decided for 2012, already carried out 35 actions of "intercultural dialogue", contributing to reducing social barriers and eventual cultural stigmas, promoting with these actions the equality, the tolerance and the acceptation of minority communities in the areas where they exist.

The ECRI also suggests to be conducted an enquiry into any possible institutionalisation of racism or racial discrimination in the police. At this purpose, the first question to be raised by the Portuguese Government is: based in which facts would such an enquiry be opened? Until today never has been presented any circumstantial evidence of an alleged institutionalisation of racism or racial discrimination fomented or even institutionally tolerated by the GNR or by the PSP. On the contrary, such behaviour, when proved, is dully punished. It would be an absolute paradox if the same institutions incentivise or tolerate the behaviour they then punish.

Immigrants

<u>Paragraph 134</u> *(page 29)*

In what concerns the information mentioned in this paragraph the Portuguese Government thanks the ECRI for the recognition of the improvement made in this area, and considers important to stress that, in general, the situation has improved dramatically, in large part thanks to the catch up with backlogs successfully achieved by the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras* – SEF), which, between 2005 and 2006, surmounted approximately 40.000 backlog cases; together with the adoption of new technologies for costumers' service, which included the strategy of transferring from the back office to the front office approximately 80% of the procedures.

This was achieved by reinforcing the training of staff serving the public, consequently making it possible to reach a decision on most cases – there and then - upon their delivery, thereby saving applicants from having to visit SEF more than once, as the electronic card was later sent by post to their respective address.

Similarly, aiming at avoiding useless trips and do away with lengthy queues outside the service bureaus, from 2006 onwards, SEF made available, through its Call Centre, a telephone service for pre-booking appointments managed by dozens of socio-cultural mediators, provided – through the signing of protocols - by the associations of immigrants represented in the Consultative Council for Immigration Matters (*Conselho Consultivo para os Assuntos da Imigração* – COCAI), and later a service of on-line booking that itemised the set of documents that was required for each specific case.

Likewise, regarding customers' service, there were major improvements, both in relation to the number of bureaus and to the quality of those bureaus, especially with the introduction of SEF's branches in One-Stop-Shops (*Lojas do Cidadão*) all over the country and the opening of new branches in areas with high concentration of immigrants (Lisbon alone with more than 4 of these branches) to achieve greater proximity with the foreign population in densely populated areas.

With the same purpose, SEF signed a number of protocols with immigrant associations and with the Jesuit Refugee Service (*Serviço Jesuíta de Refugiados*) in order to launch a procedure for the recruitment of socio-cultural mediators (55) to be placed in the main public-service branches, with the exception of the National Centres for the Immigrant Support (*Centros Nacionais de Apoio ao Imigrante* –CNAI), whose mediators are recruited directly by the High Commissariat for the Immigration and Intercultural Dialogue (*Alto Comissariado para a Imigração e Diálogo Intercultural* – ACIDI), and who, since the end of 2006, have been in effective and permanent collaboration with the customer's service network (encompassing 6 Regional Directorates and 25 Delegations) particularly in what concerns language and cultural barriers.

In addition to this set of initiatives we must recall the project "SEF in Motion" (*SEF em Movimento*), promoted since 2006 and aimed at bringing the service closer to the foreign citizens who have limited mobility who, normally, belong to vulnerable groups such as the elderly, the handicapped, the sick, large families and detainees. In the wake of this project, in 2009, SEF launched another initiative called "SEF goes to school" (*SEF vai à escola*) which made it possible to legalize hundreds of students and their parents.

The "SEF in Motion" is a priority action aiming to revitalise attendance to the public. This project is based in the principle of simplification of citizens' lives in their interaction with SEF, with special attention given to vulnerable groups of citizens, mainly those with more difficulties in going to SEF Services. With an implementation based on the multiplication of attendance places, closer to citizens daily life, using technology support to fasten the procedures and to avoid any useless paper, the project is based in the cooperation between SEF and several institutions, namely the Social Reinsertion Institute, NGO, Associations of Immigrants and Local Authorities. The initiative is composed of both dimensions: sensitisation and information as well as in documentation.

The initiative "SEF goes to School" pursued the same goals and was carried out in close cooperation with the local authorities of the Ministry of Education and operated in schools aiming the attribution or renewal of authorisations of residence in Portuguese territory. The project had as purpose the administrative regularisation concerning the stay/residence in Portugal of all foreign minors with school age and their respective parents in that situation.

The documental work is connected with the divulgation necessities. Therefore, SEF, through its Contact Centre, SEF Television, as well as through the multiple communication units and other activities of Communication and Public Relations, has been developing an

important effort to inform immigrants on their rights and obligations towards the Portuguese State, particularly through the campaigns on legal instruments, namely the presentation of the Foreigners Law published on 2007, the new Electronic Residence Visa – a Foreign Citizen Card; and the documental regularisation of minors with school age.

In addition to all this initiatives, an investment was made in a new technologic workflow toll which manages proceedings from the phase of application submission, with the dematerialization of documents, therefore allowing for enhanced rationalization of resources. Last but not least, one cannot fail to observe the rather fruitful dialogue and constant cooperation that SEF – as immigration authority – has maintained with ACIDI, which, in its turn provided a valuable contribution with the establishment of National and Local Immigrant Support Centres.

Refugees and Asylum seekers

Paragraph 151 *(page 32)*

The ECRI reiterated its recommendation "that the authorities give suspensive effect to appeals against a refusal to grant asylum in the admissibility phase, in order to avoid the danger of an asylum seeker being deported …"

The Portuguese Government considers that this recommendation is no longer necessary, as the current Asylum Law (Act 27/2008, of 30 June), in articles 25 and 30, specifically provides for the possibility of appeal against an administrative decision of non-admissibility of an asylum request, with suspensive effect, which prevents the possibility of any deportation until such time as the judicial decision is reached. This aspect was underlined in the meeting held with ECRI, in Lisbon, during its last visit to Portugal, and therefore one can only assume this is a misunderstanding.

Paragraph 157 *(page 33)*

ECRI refers that asylum seekers in Border Posts, while waiting for a judicial decision, remain in detention for long periods.

According to the provisions of the above mentioned current Asylum Law, the applicant remains in the international zone of the port or airport while awaiting a decision on the admissibility of his/her asylum request. Where an appeal is filed, the applicant must await in the international zone until such time as the judicial decision is taken.

Entry in national territory may only occur after a decision of admissibility of the application is delivered or in cases where such decision is not reached within the time-limit set out in the Law (tacit admission). This is with the exception of unaccompanied minors, families with minors and pregnant women that are allowed to enter national territory while awaiting a decision on the admissibility of their asylum request.

However, the Portuguese Government does not see this as a detention insofar as the applicant may, at any given time, and provided he/she withdraws the application, travel into another country, including the country where they have arrived from, which, in the Portuguese experience, in the majority of cases does not coincide with the country of nationality.

The competent national authorities see it as desirable that, in practice, judicial decisions are rendered in a shorter period of time. Meetings were held with the President of the Administrative Court of Lisbon, with a view to accelerate decisions at the level of the lower courts, which has had practical results. However, the Law rules that a decision rendered by a lower court may be object of an appeal, in the course of which both the suspensive effect and the free legal aid is maintained (barrister, costs and court fees). In these cases, and where the applicant decides to resort to all judicial levels (from lower to upper courts), the period of permanence in the international zone may not exceed the time-limit of 60 days.

Paragraphs 158 and 159 *(page 33)*

ECRI reminds the Portuguese authorities that the detention of asylum seekers should normally be avoided and be a measure of last resort.

On this issue, the current Asylum Law, in the provisions contained in articles 11 and 12, rules that "asylum applicants are allowed to remain in national territory for the purpose of going through the procedures leading to granting of asylum, up to the moment of the admissibility of the request."

The delivery of the asylum application is not jeopardized by the knowledge of any administrative or criminal proceedings for entry and permanence in national territory filed against the applicant and respective family members in his / her company.

This means that asylum applicants may not be detained, and must remain in freedom while awaiting the decision on the asylum request, even in those cases where administrative or judicial proceedings have been started against them on grounds of illegal entry and permanence. In case of insufficient financial capacity they may be lodged in the Refugees Accommodation Centre, run by the Portuguese Council for Refugees, which is an open establishment.

In short, there is no detention of asylum applicants in Portugal, on grounds of having applied for asylum and having entered and remained illegally in national territory.

Paragraph 164 *(page 34)*

The ECRI states that on 27 August 2012, there was a conflict in the Refugee Reception Centre (CPR) where the Police had to intervene.

This information is correct but it requires clarification as to the motive that led to a conflict. It resulted from the fact that applicants whose requests for admissibility had been granted, refused to leave the Accommodation Centre, despite it being overcrowded, and did not accept the proposal of the CPR of moving them into bedrooms and apartments while keeping the remaining social benefits. The applicants claimed that they had no intention of being separated from other applicants that they had met in the Centre. At a later stage they did accept this transfer into other lodgings.

It is important to clarify that asylum applicants whose admissibility request has been decided favourably are granted a Residence Title that enables them to work. The Social Security provides them with the necessary social support for their maintenance, subject to an evaluation of each specific case.

Paragraph 165 *(page 34)*

The ECRI notes that following this crisis point, and thanks to the intervention of the High Commissioner for Refugees, an agreement was reached with the Social Security Services to the effect that they would resume, with immediate effect, their obligations to provide welfare and housing assistance to those persons admitted to the asylum procedure.

As a matter of fact, it is important to underline that the Ministry of Home Affairs was the entity that had the initiative of signing this protocol, which was not aimed at laying down the obligations of the Social Security with regards the social support to be provided to duly admitted asylum applicants -since this was already provided for in the currently in force Asylum Law (article 72) and was always complied with by the Social Security, except after November 2011 for newly admitted cases. One is bound to clarify that all admitted applicants that were already receiving social support from the Social Security continued to receive that support. Only for new cases there was an interruption to this support, but even then the Social Security assisted some individual cases.

For this reason, asylum applicants whose application has been admitted continued to be supported by the Portuguese Refugee Council, whose funds have been reinforced by the Ministry of Home Affairs.

One must also clarify that the main purpose of the Protocol signed between SEF, the Social Security Institute (*Instituto da Segurança Social*), the Institute for Employment and Professional Training (*Instituto do Emprego e Formação Profissional*), the Lisbon House of Mercy (*Santa Casa da Misericórdia de Lisboa*), ACIDI, and the Portuguese Refugee Council (*Conselho Português para os Refugiados*), was that of defining the intervention of the various public entities and NGOs within the process of integration of admitted asylum applicants and beneficiaries of refugee or subsidiary protection status. Those entities were already involved in the process of integration, and the Protocol was intended at defining and improving the practical cooperation between them.

Paragraph 170 *page 35*

The ECRI encouraged the Portuguese authorities to provide the Portuguese Council for Refugees with all the necessary means to enable it to perform its task in the best possible conditions.

The Portuguese Government has, at all times, supported, financially and in other forms, the work carried out by the Portuguese Refugee Council for the benefit of asylum applicants and refugees. Examples of such a policy are various protocols through which, the Ministry of Home Affairs and the Ministry of Solidarity and Social Security support the running costs of the Bobadela Refugee Accommodation Centre; as well as the legal assistance provided by the Portuguese Refugee Council to applicants throughout all stages of asylum proceedings, which, in critical situations, includes a reinforcement of funds and the setting up of adequate conditions for the full exercise of its duties by the Portuguese Refugee Council.

VI. CONDUCT OF LAW ENFORCEMENT OFFICIALS

Paragraph 177 *(page 36)*

The Portuguese Government reiterates the information given by the GNR Representative to the ECRI during the meeting held with this Commission's Delegation during the visit to Portugal. In that occasion the GNR Representative informed that:

(i) The GNR is a military Security Force, with specific training in the support to vulnerable groups such as children, elder, women and victims of crime, there including ethnic minorities. Also in the scope of the proximity policing, the GNR pays special attention to the more vulnerable groups, developing proximity relations and trust relations with all the population, especially in this kind of population.
(ii) Also in what concerns training available by the GNR, both in initial training and in continuous training, this subjects are included. The GNR, in its *curricula*, has training in Fundamental Rights and Human Rights.

The Portuguese Government also reiterates the information given by the PSP Representative in the same meeting, where he informed that all Officials currently trained by the PSP have to have the Master Integrated Course in Policies Sciences (*Curso de Mestrado Integrado em Ciências Policiais*) that includes in its *curricula*:

(i) Constitutional Law (45 hours of training);
(ii) Communication Techniques (30 hours of training);
(iii) Criminal Law and Mere Social Ordering (224 hours of training);
(iv) Criminal Process and Judicial Organization (142 hours of training);
(v) Fundamental Rights and Human Rights (116 hours of training);
(vi) Strategic and tactics of the Security Forces (322 hours of training);
(vii) Command and Lead (64 hours of training);
(viii) Ethics (90 hours of training).

The Course of Agents Training (*Curso de Formação de Agentes*) in its *curricula*, includes:

(i) Police Deontology (35 hours of training);
(ii) Fundamental Rights and Citizenship (30 hours of training);

(iii) Communication and Reception (45 hours of training);
(iv) Techniques of Police Intervention (85 hours of training);
(v) Criminal Law and Criminal Process (115 hours of training).

In this last Course, the students have their specific competences evaluated also in:

(vi) Knowing how to make the reception in a Police Precinct (60 hours of training);
(vii) Knowing how to make identifications and detentions (60 hours of training);
(viii) Knowing how to police in a Quick Intervention Team (*Equipa de Intervenção Rápida*) (60 hours of training);
(ix) Knowing how to effectuate a patrol (90 hours of training).

The PSP Representative, in the same occasion, highlighted the gradual interest that the thematic of the ethnical minorities has raised in the PSP, being presented as an evident data the fact that in the past 5 years 8 studies were produced on this thematic, particularly concerning the following subjects: "Police activity in sensitive urban areas", "Local safety audits" or "Policing diversity". In what concerns this last subject, it was stressed the importance of the cooperation maintained with the Irish Police awarded in its project in this subject and that thanks to it became an international reference.

In order to make it clear, such quantity of training in this specific area, especially in what concerns the Officials, puts the Portuguese professionals with a time of training well above the European average, what constitutes a special reason of proud of an urban police of humanistic nature as it is the PSP.

Even crossing the content of paragraph 177 (page 35) with the one of paragraphs 20 to 23 (page 12) the Portuguese Government observes that the information given to the ECRI concerning the Security Forces' training was not taken into consideration with the relevance it really has in fact with important and very positive consequences in raising the quality of the GNR and the PSP activity.

Paragraph 179 *(page 36)*

The extrapolation that ECRI makes in this paragraph that the eventual increase of incidents reported by NGO involving police officers and African and Roma citizens results from racist violence is completely absent of rigour.

The incidents where the GNR and the PSP needed to use fire guns and that involved Africans or Roma were caused by the necessity to establish the public order due to the fact that those citizens had put in danger their lives, the lives of the members of their communities and of the citizens of the neighbouring communities.

Presenting these situations as a consequence of activities moved by xenophobic intentions is completely false as the GNR and the PSP, as well as the Portuguese Government, strongly repudiate and punish any eventual xenophobic or racial discrimination behaviour that may occur.

Paragraphs 180, 181, 182 *(page 36)* ***and 183*** *(page 37)* ***as well as recommendations at paragraphs 37*** *(page 14)*, ***125*** *(page 27*

The mentioned considerations and recommendations concern three major questions that are repeatedly raised in the Report, which are:

- The "*principle of sharing the burden of proof*", referred to in the Report, namely in the Summary, in paragraphs 25, 29, 32, 80 and in the recommendation at paragraph 37 and also in the second recommendation of the ECRI Interim Follow-up (*current page 41*);
- The "*effective investigations into alleged cases of racial discrimination or racially motivated misconduct by the police should be carried out*", referred to in the Report, namely in the Summary, in paragraphs 32, 34, 35, 36 (*page 14*), 80, 123, 124, 180, 181, 182 and 183 and in the recommendations at paragraphs 125 (*current page 41*);

(i) In the following paragraphs of this document the Portuguese Government will refer to the principle of sharing the burden of proof.
Law No. 18/2004, dated May 11, 2004, implemented in the national legal order the Directive 2000/43/EC of the Council of the European Union, dated June 29, 2000, which applies the principle of equal treatment among persons irrespective of racial or ethnical origin and whose purpose is to establish a legal framework to fight discrimination based on motives of racial or ethnical origin.

Article 6 of Law No. 18/2004 defines the burden of the proof as follows:

"1- It is incumbent upon who allegedly suffered discrimination to prove it by presenting elements of fact susceptible of being evidence of it, leaving to the other party to prove that the differences of treatment are not based on any one of the elements mentioned in article 3.

*2- **The provisions of no. 1 do not apply to either the criminal procedure or to the files in which the inquiry on the facts is incumbent upon the court of law or other competent body, according to the law.***

(...)"

Although no. 1 establishes the principle of sharing the burden of proof by ascribing to the respondent the effort to prove that no violation of the principle of equal treatment did occur – **establishing a guilty presumption** in relation to the respondent –, no. 2 dismisses that sharing, refusing its application to the criminal procedure and also to the cases in which the investigation of the facts is incumbent upon a court of law or is ascribed to another competent body.

It is important to understand the sense and scope of that principle as it was drawn in Directive 2000/43/EC and when its exclusion is allowed.

The burden of prove is referred to in article 8 of the Directive, which states:

"1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it

may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

(...)

3. Paragraph 1 shall not apply to criminal procedures.

(...)

5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case."

Member States were not forced to apply the principle of sharing the burden of proof, neither to the criminal procedures nor to the actions or processes in which the **inquiry** into the facts belongs to the court or **competent body**.

In Portugal the implementation of the Directive 2000/43/EC into the national law gave way to a legal framework to fight discrimination based in motives of racial or ethnical origin, which is based on the procedures of regulatory offence, according to article 10, no. 1, of Law No. 18/2004.

Law No. 18/2004, in its article 12, no. 1 subparagraph d) and no. 2, determines that the corresponding inspectorate general is the competent body to initiate that inquiry procedure. In the legal scope of the MAI, IGAI is the competent body to initiate those inquiry procedures.

In this case the procedures of regulatory offences are the responsibility of the ACIDI, the administrative authority with competence to open and lead the process, as well as to make the final decision on those processes, to determine its consignment to the archives and to apply a fine ("*coima*")[*] to the defendant, as set in article 13 of Law No. 18/2004.

It is very important to understand the legal nature of the procedures of regulatory offences in order not to formulate conclusions based on assumptions that have no grounds in the legal framework in force in Portugal.

The law of regulatory offences, in Portugal, was inspired by the German model of the «Ordnungswidrigkeiten», and created by Decree-Law No. 232/79, dated July 24, 1979. It was created to respond to "... *the necessity of disposing of a sanctionable law different from the criminal law*", gap that would "... *frequently made impossible to the legislator to make use of sanctions adjusted to the nature and severity of the illicit to repress or prevent.",* as reads in the preamble of Decree-Law No. 232/79.

IGAI's intervention or the intervention of any other inspectorate general in these procedures of regulatory offences include the inquiry into the facts and beginning of

[*] A pecuniary penalty that may not, as in the criminal procedure be converted into imprisonment. (N.da T.)

the respective cases, being that intervention procedure concluded with the formulation of proposals of decision that are then submitted to the ACIDI appreciation.

The procedures of regulatory offences only inappropriately may be qualified as an administrative procedure as, being true that the procedures of regulatory offences have two distinct phases, one administrative and another judicial, the fact that the initial phase of the process has an administrative aspect led by an administrative authority, by itself does not justify that in a simplistically way the procedures of regulatory offences are qualified as an administrative process when, in reality, regulatory offences law is public punitive law.

The procedures of regulatory offences, any procedures of regulatory offences, obey to the principle of legality and the agent of a regulatory offence assumes in the process the statute of defendant as results from article 15, no. 2, of Law No. 18/2004 and articles 43 and 50 of the General Regime of the Regulatory Offences (*Regime Geral das Contraordenações*), as amended by Decree-Law No. 433/82, dated October 27, 1982.

According to article 1 of the General Regime of the Regulatory Offences a regulatory offence is any illicit and objectionable fact that meets a legal type from which results a fine, therefore the procedures of regulatory offence may be concluded with the application of a sanction, the fine, that although having administrative nature and being applied by administrative authorities, is typically a punitive sanction that has the dissuasive sense of a censorship of social order.

We have to highlight that, in terms of subsidiary law; article 41, no. 1, of the General Regime of Regulatory Offences even foresees the application of the regulatory rules of the criminal process to the procedures of regulatory offences.

It is also important to understand that in the General Regime of the Regulatory Offences the principles of **officiousness** and of **investigation** are in force (article 54), which means that, assuming the character of a duty, it is incumbent upon the competent administrative authority to find all the facts reported, that in this case is deferred to the competent inspectorate general; therefore, the effort of finding the evidence belongs to the administrative authority and not to any victim or person concerned by the procedures of regulatory offences, which is a characteristic of the accusatory processes.

In other words, to the victim of discrimination, based on motives of racial or ethnical origin, it will be enough to present a complaint, duly grounded, presenting elements susceptible of indicting it.

The victim will not need to present proves; he/she will only have to claim the existence of the censurable illicit fact or facts committed against him/her that resulted in discrimination based in motives of racial or ethnical origin.

The complaint may be presented before any of the bodies mentioned in article 12 of Law No. 18/2004.

But the agent of the regulatory offence, the person concerned, the one that may be indicted with the statute of defendant in the procedure of regulatory offence (if that is the conclusion of the probative data obtained), will neither need to present any evidence that no violation of the principle of equal treatment took place. The person concerned will not need to prove that he/she is innocent. It is the competent body to find the facts that will have to prove that the defendant is guilty.

Because the procedures of regulatory offences have an accusatory nature, it is the competent body, that is to say, the competent inspectorate general by reason of the matter, that has the responsibility and duty to find out the facts and obtain all the evidences that may lead to the material truth.

Like any other sanctionable process, as the criminal process or the disciplinary process, the procedures of regulatory offences only result in the application of a fine after it has been guaranteed to the defendant the right of hearing and defence regarding the facts alleged against him/her and when, concluded the case, the proof obtained is unequivocal and enough to allow the conclusion that the illicit and censurable fact occurred. Otherwise, the case must be dismissed. This is the way these matters are dealt with in a civilized country.

Therefore, what is referred in paragraph 32 of the ECRI Report "... *It appears that it is entirely up to the plaintiff to prove that racial discrimination has occurred. As a result, the vast majority of cases are closed on account of lack of proof*." does not make sense. The first sentence, of a speculative nature, does not have a factual base to support it. The second sentence, of a conclusive nature and only based in the preceding sentence, is a complete nonsense.

Summarising, the implementation of the Directive 2000/43/EC into the national legal order created in Portugal a legal framework to fight discrimination based on motives of racial and ethnical cause that corresponds to procedures of regulatory offences, as results from article 10, no. 1, of Law No. 18/2004.

The repetitive and unrelenting way ECRI sates that the principle of sharing the burden of proof is not applied does not make sense and forgets, namely, what is set in article 8, no. 5, of the Directive 2000/43/EC, implemented into the national legal order by article 6, no. 2 of Law No. 18/2004.

Therefore, it has no grounds and is out of the legal framework in force in Portugal the statement that ECRI repeatedly makes in the Report saying that the principle of sharing the burden of proof is not applied by us (this reference is made in the Summary of the ECRI Report, in its paragraphs 25, 29, 32 and 80, in the recommendation made at paragraph 37 and in the second recommendation of the Interim Follow-up.

For the reasons above mentioned, we suggest that ECRI should remove such statement, in its several formulations, from the Report.

(ii) In the following paragraphs of this document we will refer to the effectiveness of investigation and powers of the authority that is responsible to investigate.

ECRI also questions the effectiveness of the investigations conducted in the scope of Law No. 18/2004 and, consequently, the way the general inspectorates conduct the enquiry processes, questioning, namely, their autonomy and independence (we will be back to this issue later on), and, at the same time, it objects that those authorities have the necessary and sufficient powers to that purpose. Based on that assumption, paragraph 183 refers to the ECRI's General Policy Recommendation No. 11 and, in particular, to paragraphs 58 to 61 of the explanatory memorandum, knowing that, specifically in paragraphs 59 to 61 are enounced the powers that ECRI considers necessary to allow the competent body to effectively investigate this type of cases that involve the police, and that reads as follows:

"59. This body entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police should be given all the necessary powers to exercise its task effectively. Therefore, it should have powers such as requesting the production of documents and other elements for inspection and examination; seizure of documents and other elements for the purpose of making copies or extracts; and questioning persons. When the facts brought to its knowledge are of a criminal nature, this body must be required to bring the case before the prosecuting authorities.

60. The body entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police may take different forms. It might be a national institution for the protection and promotion of human rights, a specialised police Ombudsman, a civilian oversight commission on police activities, or the specialised body which ECRI recommends be established in its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

61. In addition to investigation powers, this body could be given the following powers for cases which do not entail criminal responsibility: friendly settlement of disputes; monitoring the activities of the police and making recommendations for improving legislation, regulations and practices in order to combat racism and racial discrimination in policing; and the establishment of codes of conduct…".

Therefore, it is important to look to the legal framework applicable to the generality of the general inspectorates, in the case set forth in Decree-Law No. 276/2007, dated 31 July, 2007, which establishes the legal framework of the activity of inspection, auditing and control of direct and indirect Public Administration Services to which have been attributed the mission of accomplishing the responsibilities of the internal **or external** control to identify those that are operative skills of the general inspectorates, and assess the relevance of the objections and critics that are made by ECRI.

Those operative skills are, mainly, those that result from the legal framework of the activity of inspection, auditing and control of the direct and indirect Public Administration Services, which qualify them as **"guaranties of the exercise of the inspection activity".**

According to article 17 of the Decree-Law No. 276/2007, the inspectors have the right to a professional identification badge and to a free-pass that they must show during

their activity. To develop their activity, according to article 16, the inspectors have **prerogatives.** In concrete, these prerogatives are:

- The right to access and free-pass, according to the law, during the time and in the necessary schedule to develop their activities, in all services and premises of public or private bodies subjected to their attributions;
- Demand for examination, consultation and junction to the file the books, documents, records and archives, and other relevant data the bodies may possess and whose activity is the object of an inspection action;
- Gather information on the activities inspected, do exams to any infraction traces, as well as expertise examinations, measurements and sampling for laboratorial examination;
- Carry out investigations, in order to obtain probative data, to the places where actions subjected to their range of activity occur and that may be considered illicit actions, without depending on a previous notice;
- To promote, according to the applicable legislation, the sealing of any facilities, as well as the apprehension of documents and evidence possessed by the bodies inspected or by their personnel, when it is indispensable to the inspection action, after which the competent notice must be drawn;
- To require the cooperation of police authorities, in the cases of refuse of access or obstruction to the inspection activity by the targeted persons, to remove that obstruction and ensure the performance and safety of the inspective actions;
- To require the adoption of provisional remedies that are necessary and urgent to ensure the means of proof, when necessary and according to the Code of Criminal Procedure;
- To obtain, in order to support the activities in course in those services, the provision of material and equipment, as well as the cooperation of the necessary personnel, namely to have executed or complemented the services in delay, whose lack makes impossible or difficult those actions;
- To use, in the inspected places, granted by the respective inspected bodies, premises in conditions of dignity and of effectiveness to the development of their activities;
- To exchange communications in service with all public or private bodies concerning subjects of their competence;
- To make, alone or with recourse to a police or administrative authority, the necessary notices, in accordance with all the legal requirements;
- To be considered as public authority to the effects of criminal protection.

Besides this large number of prerogatives, Decree-Law No. 276/2007 also establishes that the direct and indirect Public Administration Services, as well as the **natural and artificial persons of public and private law**, who are the object of inspective action, are bound to the **duties of information and cooperation**, namely by giving the information that is necessary for the inspective activity, in the terms, supports and with the regularity and urgency required (article 4, no. 1).

At the same time, leaders and workers of the inspected bodies have the **duty** to deliver, in the delay determined for that purpose, all the explanations, opinions, information and cooperation that the inspections require of them (article 4, no. 2).

The same Decree-Law No. 276/2007 also establishes that, to accomplish their attributions, the inspections may require the direct and indirect Public Administration Services to provide them with specialized personnel to assist the inspective actions (article 4, no. 4).

It must be highlighted that, according to Decree-Law No. 276/2007, the violation of the duty of information and of cooperation with the inspection actions makes the offender susceptible of disciplinary and criminal responsibility, according to the applicable law (article 4, no. 5).

The Decree-Law No. 276/2007 also establishes that artificial persons of public law must provide the inspections with all the cooperation required (article 5, no. 1), and inspections may demand for information to any artificial persons of private law or to any natural person, whenever necessary to establish the facts (article 5, no. 2).

We also stress that, according to Decree-Law No. 276/2007, the heads of the bodies and agencies of the direct and indirect Public Administration Services, as well as enterprises and societies that are the object of inspection actions may receive a notice from the inspector in charge of the inspection action to provide the declarations or testimonies considered necessary (article 13, no. 1); it must also be mention that the notice to hear other persons may be required to police authorities, after all the applicable provisions of the Code of Criminal Procedure have been met (article 13, no. 3).

Therefore, the general inspectorates in Portugal have all legal tools they need to perform deep and exhaustive investigations on subjects of their competence.

The ECRI Report refers specifically to IGAI in paragraphs 123 and 180. We consider relevant to pay attention to some important information on this matter, namely concerning IGAI's Organic Law and the specific legal framework applicable.

IGAI's Organic Law is currently based in Decree-Law No. 58/2012, dated March 14, 2012, and Decree-Law No. 146/2012, dated July 12, 2012. The preamble of Decree-Law No. 146/2012 reads as follows:

"IGAI is, since its creation, an operational body of auditing and control especially dedicated to audit legality in one of the most delicate area of the intervention of the Democratic State Based on the Rule of Law, as it is the exercise of powers of authority and the legitimate use of coercion measures by the forces and services of security whose action, given its special characteristics, may conflict with the rights, freedom and fundamental guarantees of citizens…."

As referred in the preamble of Decree-Law No. 227/95, dated September 11, 1995, which created IGAI, since its origin this body was conceived to be composed by: "*individuals with big maturity and professional experience, highly qualified and with credibility to perform the delicate tasks that are committed to them, with exemption, independency, neutrality, dedication and abnegation…*"

According to IGAI's Organic Law, this Inspectorate is a central body of the direct Public Administration Services with **technical and administrative autonomy** (article 1). IGAI has, therefore, the mission of ensuring the **high level** functions of auditing, inspection and control regarding all the **entities, services and bodies, dependent on or whose activity is legally under the responsibility or regulated by the member of the Government in charge of the area of Home Affairs** (article 2, no. 1).

Given its specificities and the delicate area where IGAI exercises its competences, IGAI is, among all the general inspectorates, the only Inspectorate General whose inspectors, all of them, exercise their inspective functions in a regime of assignment ("*comissão de serviço*") with the duration of 3 years (article 2, no. 2 of Decree Law 170/2009, dated August 3, 2009).

Also according to its Organic Law, IGAI is required, namely:

- To ascertain all the news of severe violation of the fundamental rights of citizens by the services or their agents, that IGAI has knowledge of, and to appreciate the complaints, reclamations and denouncements presented concerning alleged violations of legality and, in general, the suspicions of irregularity or malfunctioning of the services (article 2, no. 2, subparagraph c);
- To do inquiries, investigations and expert examinations, as well as investigation and disciplinary procedures (article 2, no. 2, subparagraph d);
- To propose to the member of the Government in charge of the area of Home Affairs legislative measures concerning the improvement of the quality and effectiveness of entities, services and bodies under the jurisdictions of the MAI (article 2, no. 2, subparagraph e);
- To communicate to the competent bodies for the criminal investigation the facts with legal-criminal relevance and to cooperate with these bodies in obtaining proof whenever this is required (article 2, no. 2, subparagraph f).

The Organic Law also foresees that IGAI does not interfere with the operational action of the security forces and services, having nevertheless the competence, whenever convenient, to investigate the way it is carried out and the respective consequences (article 3).

Among the competences of the Inspector General, foreseen in IGAI's Organic Law, we would like to highlight the following:

- To propose to the member of the Government in charge of Home Affairs the legal measures concerning the improvement of quality and effectiveness of the services and the improvement of the institutions of security and of protection and rescue (article 5, no. 2, subparagraph b);
- To determine the performance of thematic inspections without previous notice, according to its Plan of Activities, as well as the performance of control actions (article 5, no. 2, subparagraph c);
- To open and pronounce a decision on investigation and inquiry procedures, as well as to propose disciplinary procedures and enquiries (article 5, no. 2, subparagraph d).

In what specifically concerns the IGAI, we need to have the exact perception of the implications and the entities susceptible to be covered by all these attributions, competences and powers given by the law. According to data of the National Institute

of Statistics (*Instituto Nacional de Estatística*), in 2011 the number of personnel in the security forces and services and in other bodies of support to the investigation corresponded to 50,455 persons. Among those, 23,209 belonged to the GNR, 21,558 to the PSP and 695 to the SEF. The three security forces and services in that year had a total of 45,462 professionals in active duty, all of them integrated in the MAI, and therefore, subjected to the exercise of the competences of the IGAI. In terms of percentage, the referred 45,462 professionals represented 90.1% of the mentioned 50,455 that correspond to the total of the professionals that in 2011 worked in the security forces and services and in the bodies of support to the investigation.

IGAI systematically carries out visits without previous notice to the GNR posts, the PSP precincts and the SEF Temporary Reception Centers, in any day of the week, at any time of the day or the night. These visits aim to have a preventive nature concerning the security forces and services' behavior, having always special care and attention in the inspection of the detention areas (cells) and of the conditions given to the detainees, which are regulated in detail by the Regulation on the Material Conditions of Detention in Police Premises (*Regulamento das Condições Materiais de Detenção em Estabelecimentos Policiais*), approved and annexed to Decision No. 8684/99, dated April 20, 1999.

It is also important to mention that IGAI has competence to audit the activity of private security and to inspect the societies that carry out that type of services. In Portugal, in 2011, there were 192 enterprises working in this field.

IGAI is also competent to audit and initiate regulatory offences procedures regarding restaurants and bars in which a system of private security is mandatory (article 8, no. 1 of Decree-Law 101/2008, dated 16 June.

Therefore, IGAI has a very large scope of attributions, competences and inspective powers that, contrary to the image that ECRI intends to give in its Report, are far from being insufficient or ineffective. And in case there is any functional contingency, it will only be the result of a great scope of entities and agents susceptible to be audited and inspected by IGAI.

Also concerning the IGAI's effectiveness, the procedures carried out show the deep and exhaustive way they have been carried out, aiming to obtain proofs and to discover the material truth. These procedures are always available to be consulted and appreciated by ECRI anytime this Commission wants to do it.

In paragraph 31 ECRI says: *"… since no investigatory powers have been granted either to ACIDI or to the CICDR, investigations continue to be carried out by the competent inspection body. For example, a case involving discrimination in employment will be examined by the Labour Inspectorate. In this respect, ECRI notes that there is an important lacuna in the procedure; where the case relates to an area in which there is no competent inspection body, no investigation can be carried out."* This affirmation reveals that ECRI does not know how a process of regulatory offence develops in Portugal and, more specifically, a misinterpretation of Law No. 18/2004. It is important to make clear that, to the law, it is irrelevant if the facts occurred in the street, in a close precinct or any other place. To the law, what is relevant is the knowledge of the facts and of the offenders, irrespectively of the place where the

facts may have occurred (articles 3 and 12 of Law 18/2004). It is relevant and important to know who was the agent who committed the alleged discriminatory act since it will be the identification of the offender that will determine which inspectorate general is the competent one to carry out the investigation. Therefore, the quoted affirmation of ECRI is a technical assessment error.

In that respect, IGAI, among other investigations carried out according to Law No. 18/2204, may point out several procedures in which the facts that motivated the complaint of the citizen occurred in the street, normally in the context of traffic inspections conducted by the GNR or the PSP officers. This clearly demonstrates that the affirmation made by ECRI at paragraph 31 has no factual fundament, neither support in the law; therefore, the conclusion is not correct.

As a result of what was previously referred, we may conclude that the assessment made by ECRI has no grounds and is not legally based when this Commission doubts the effectiveness and powers attributed to the authority in charge of investigating cases of alleged racial discrimination.

(iii) In the following paragraphs of this document we will refer to the autonomy and independence of the authority in charge of the investigation.
IGAI is an external inspection body of the Security Forces and Services and is totally autonomous and independent from those Forces and Services.

Besides all what was previously said concerning the autonomy and independence of the general inspectorates and of IGAI itself, it is also important to mention that the leaders of the general inspectorates, including those of IGAI, and the respective inspectors have **technical autonomy** in their inspective tasks (article 10 of the Decree Law 276/2007, dated July 31, 2007) what is also underlined in IGAI's Organic Law (article 1 of Decree Law 58/2012, dated March 14, 2012).

In this respect, we recall that the facts susceptible of constituting discrimination based on motives of racial or ethnical origin follow the procedures of regulatory offences headed by the **principle of legality** (article 43 of Decree Law No. 433/82, dated October 27, 1982) so, also through that process the general inspectorates, IGAI included, must comply with the law.

On the other hand, the leaders of the general inspectorates and the inspectors have to respect the **principle of the proportionality**, and consequently, their behavior must be that of adopting procedures adequate to the purposes of the action, and are also subject to the **principle of the contradictory** (articles 11 and 12 of Decree Law No. 276/2007, dated July 31, 2007).

The said principles, to which the general inspectorates and their respective inspectors must obey, are a guarantee of autonomy, independence and impartiality of their respective action.

Together with that, if we take in consideration the large number of attributions, competences and powers (referred to in the previous paragraph (ii) of this document)

that are attributed to the general inspectorates in general, and to IGAI in particular, we understand how wrong is the assessment made by ECRI.

But ECRI goes as far as to put in question the autonomy and the independence of the general inspectorates due to the fact that in their leadership are judges and public prosecutors, and, once more, is wrong in its analysis. In fact, the judges and public prosecutors that are in the leadership of the general inspectorates remain linked to their respective statutes of origin and to the accomplishment of the duties resulting from them, a link that the Statutes themselves underline with the expression *"… in any situation in which they may be."*.

Therefore, as far as public prosecutors are concerned, their respective Statute (Law No. 47/86, dated October 15, 1986, with the last amendment made by Law No. 9/2011, dated April 12, 2011) establishes that: *"The Public Prosecutor has autonomy in relation to the other bodies of the central, regional and local powers, according to the law, being that autonomy characterized for its subjection to criteria of legality and objectivity and for the exclusive subjection of the Public Prosecutor to the directives, orders and instructions foreseen in the law."* (Article 2). It also results from the Code of Criminal Procedure (applicable to the procedures of regulatory offences through article 41, no. 1 of Decree Law No. 433/82, dated October 27, 1982) that the public prosecutor obeys *"in all procedural interventions to criteria of close objectivity"* (article 53, no. 1, of the Code of Criminal Procedure).

And, as far as the judges are concerned, we have to consider articles 4 and 7 of their respective Statute (Law 21/85, dated July 30, 1985, with the last amendment made by Law No. 9/2011, dated April 12, 2011) that set and define, respectively, the independence and the guarantee of impartiality that are required of them. And if not considered enough, we can also mention article 202 and followings of the Constitution of the Portuguese Republic, important to highlight its article 2 – *"In justice administration it is incumbent on the court to assure the defense of the legally protected rights and interests of the citizens, to repress the violation of the democratic legality and to resolve conflicts of public and private interests."*. – and also article 203, where is reinforced as warrant holders of sovereign bodies – Courts – their independency and subjection **only** to the law.

Paragraph 181 *(page 36)*

In what concerns the conclusions taken by ECRI, the Portuguese Government does not deem it acceptable that negative conclusions should be drawn from mere intuition.

In what concerns the number of complaints of racism and racial discrimination, the competent national authorities consider as positive these residual numbers and also the final results of the investigations resulting from them, that successively prove what is clear: that there are no racial motivations in the situations where the GNR and the PSP need to use the force to establish public order, either in situations involving members of these communities or any other citizens. As proved by the facts, ethnicity is not a criteria used to distinguish the GNR or the PSP standards of activity.

Paragraph 182 *(page 37)*

Concerning the observations made by ECRI in this paragraph, the Portuguese Government considers important to point out that the presumption of innocence is the back-bone principle of Portugal's penal system. There must be no accusation or conviction without evidence that avert such presumption beyond reasonable doubt.

Observations made by the Ministry of Solidarity and Social Security:

The Ministry of Solidarity and Social Security takes note with interest of the Draft ECRI Report on Portugal (Fourth monitoring Cycle) comments, conclusions and recommendations relating to all forms of racism and intolerance in Portugal.

The Ministry of Solidarity and Social Security would like to highlight a general, and also a specific remark related to part V "Refugees and Asylum Seekers".

I- General Remarks

The Portuguese Government believes that respecting human rights — namely the right to non-discrimination — is not a secondary but a basic main issue. Therefore, the Portuguese Government firmly believes that all forms of racism and intolerance are equally unacceptable. Therefore, they must be fought in a non-discriminatory way, granting the same level of protection to all.

But we consider that the way to overcome this is not necessarily trough the adoption of affirmative action directed at one particular group, based on racial or ethnic grounds.

Firstly, because it conflicts with our constitutional principle of equal treatment and non-discrimination and, secondly, because we think that positive discrimination measures contain the risk of having the counterproductive effect of stimulating divisions and clashes in societies where they currently do not exist.

In its report the ECRI also addresses of the lack of disaggregated data in Portugal based on racial or ethnic origin. We are aware that collecting disaggregated data can be a way for policy-makers to establish indicators and monitor the state of implementation of these policies, namely in the field of human rights.

Portugal collects disaggregated data based on sex, age, economic conditions, level of education and nationality, among others. However, our Constitution prohibits the collection of data based on racial or ethnic grounds. This prohibition derives from the constitutional principle of equality and non-discrimination. Notwithstanding, we take note of this recommendation and will examine the issue carefully.

II-Specific remarks

Part V - Refugees and Asylum Seekers

In Portugal, as far as Social Security concerns, the benefits to refugees and asylum seekers, including economic support, have been recently reassessed concerning the support strategy,

nevertheless, without ceasing the actual benefits. As for the specific support given in this area, The Portuguese Government highlights the Protocol between the Portuguese Centre for Refugees (CPR) and Social Security Institute (ISS) to provide Counselling and professional support, and also the financial rubric "Social Benefits - Actions supporting the homeless, refugees and others" to be used by social services. It should be highlighted the joint action established with the Jesuit Service for Refugees - Pedro Arrupe Centre, in areas such as legal aid, psychosocial and employment support.

Lately, there has been an effort to deal with certain situations in a better and more quickly way by decentralising «case management» social services. It is possible to diversify local partnerships in order to overcome the saturation of support deliverance.

Recently a policy measure specifically towards the social integration of people who find themselves in a situation of asylum seekers, or benefit from international protection or have a status of reinstalled refugees led to an interministerial Protocol, in September 2012. ISS stands as coordinator (for the matters regarding this specific Protocol) and several other entities assumed responsibilities of institutional cooperation and commitment in this area namely: Immigration and Borders Service; Institute for Employment and Vocational Training; High Commission for Immigration and Intercultural Dialogue; Portuguese Centre for Refugees; and Santa Casa da Misericórdia de Lisboa.

Observations made by the Ministry of Education and Science:

Paragraph 54 e 55 *(Page 17)*

Many schools regularly develop planned initiatives such as the following ones:

- Use of cultural and/or language mediators (students, family or human resources of the municipality or of several NGOs) so as to facilitate the hosting and integration of new students;
- Actions aimed at the exchange of knowledge and traditions in an intercultural perspective.

Under Measure 30 of the II PII and in the scope of a working partnership with several institutions, including the ACIDI, the DGE-MEC is developing a series of actions to promote the development of school projects and initiatives to foster Education for Interculturality;

- *Selo da Escola Intercultural* (Intercultural School Seal) – It is an initiative whose goal is to identify and distinguish schools that implement good intercultural practice with their local and school communities;
- Reference document for Education for Interculturality – The preparation of a reference document for Education for Interculturality is planned, so as to become a reference for schools, teaching staff and other educational agents; (**paragraph 192**)
- Teacher training – The design of a teacher training course under this theme is planned. The teacher training course will be implemented by the CFAE. (comment for **paragraph 195, page 39**)

Paragraph 56 *(Page 35)*

The Portuguese Government must deny this statement, as curricula for both basic and secondary education include Portuguese as a Foreign Language (PFL).

In this context, and regarding the 1st cycle of basic education, PFL is made available within the scope of Supervised Study. In 2nd and 3rd Cycles of basic education, as well as in secondary education, if a minimum of 10 pupils exist the school offers PFL classes. If the set minimum of 10 pupils, allowing for different levels of language proficiency, isn't reached, the school must, within the scope of its autonomy, provide PFL support activities.

Pupils not included in PFL proficiency level classes are subject to an internal assessment on Portuguese Language / Portuguese, under the responsibility of this subject's teacher, following an established individualised strategy.

PFL pupils included in the starting (A1, A2) or intermediate (B1) levels are assessed at 6th and 9th school grades, and at the 12th grade they must sit through the PFL final national.

Paragraph 193 *(Page 38)*

The Portuguese Government develops other programmes whose strategies may not have Interculturality has an explicit goal. However, although these programmes are mainly targetted at preventing early school dropout and promoting school success, they include Interculturality in their actions:

- *Programa TEIP - Territórios educativos de intervenção prioritária*) (Programme for Educational Territories of Priority Intervention)
- *Português Língua não Materna* (Portuguese as a Second Language)
- *Programa Mais Sucesso Escolar* (More School Success Programme)
- Diverse education and training paths - *Percursos curriculares alternativos, CEF - Cursos de Educação e Formação, etc. (*Alternative Curriculum Paths; Education and Training Courses, etc.)

Observations made by the High Commissioner for Immigration and Intercultural Dialogue (ACIDI):

SUMMARY

Paragraph 2 *(Page 7)*

Is mentioned that ***"…….A National Strategy for the Integration of Roma Communities, running until 2020, has been adopted"***.

The Portuguese Government proposes the following: *A National Strategy for the Integration of Roma Communities has not been formally approved, although some of the measures foreseen in the Strategy are already being implemented."*

Paragraph 50 *(Page 16)* ***and*** ***Paragraph 83*** *(Page 21)*

Please refer to comments to Paragraph 2 *(Page 7)*.

Recommendation at Paragraph 15 *(Page 11)*

"ECRI strongly recommends that the authorities adopt a provision expressly making racist motivation an aggravating circumstance for all offences."

Regarding this recommendation, please note that the Article 71º of the Portuguese Criminal Code, already states that:

"*Article 71*

Determination of the penalty measure:

1- The determination of the penalty measure is done according to the agent's guilt and prevention

needs, within the law's defined limits.

2- On determining the concrete penalty, the court considers all circumstances that, not being elements of the type of crime, are in favour of the agent or against him, taking into consideration, namely:

a) The degree of unlawfulness of the act, its form of execution and the seriousness of its consequences, as well as the degree of violation of the duties imposed on the agent;

b) The strength of the intent or of the negligence;

c) The feelings manifested on the perpetration of the crime and the aims or motives that determined it;

d) The agent's personal situation and his economic condition;

e) The conduct prior to the act and after it, especially when the latter is aimed at repairing the consequences of the crime;

f) The lack of preparation to maintain a lawful conduct, manifested in the act, when that lack of preparation must be censured by the imposition of a penalty;

3- The reasons for the measure of the penalty are expressly mentioned in the sentence."

Therefore, it is clear that a judge, when has to apply a *penalty measure,* has already to take in consideration "*The feelings manifested on the perpetration of the crime and the aims or motives that determined it"* and the racist motivation will be an aggravating circumstance.

http://www.verbojuridico.com/download/portuguesepenalcode.pdf