

## Memorandum on combating racism and violence against women in Portugal

1. The memorandum was prepared on the basis of regular monitoring work by the Council of Europe Commissioner for Human Rights (hereinafter, “the Commissioner”) and online exchanges held with representatives of the Portuguese authorities and of civil society organisations between 15 and 17 December 2020, replacing a country visit initially planned for November 2020, which had to be postponed owing to COVID-19-related constraints.<sup>1</sup>
2. The memorandum addresses the increasing level of racism and the persistence of related discrimination in the country and the response of the Portuguese authorities to this situation. It also covers the persistent problem of violence against women and domestic violence and the measures taken by the Portuguese authorities to combat such phenomena.
3. Online exchanges included meetings with the Minister of Justice, Francisca Van Dunem; the Minister of State and of Foreign Affairs, Augusto Santos Silva; the Minister of State and for the Presidency, Mariana Vieira da Silva; the State Secretary for Citizenship and Equality, Rosa Monteiro; the High Commissioner for Migration, Sónia Pereira; the President of the Commission for Citizenship and Gender Equality, Sandra Ribeiro; and the Minister of Internal Administration, Eduardo Cabrita. In addition, the Commissioner held talks with the Ombuds, Maria Lucia Amaral, and meetings with representatives of several civil society organisations. The Commissioner would like to express her appreciation to the Portuguese authorities in Strasbourg and in Lisbon for their kind assistance in organising and facilitating her meetings with officials. She is grateful to all the people in Portugal she spoke to for sharing their views, knowledge and insights.
4. The memorandum begins with an overview of the situation regarding racism and discrimination in Portugal (Chapter I), including the legal and institutional framework (sections a and b). It then examines reports of racially motivated misconduct by police officers (section c). Chapter II focuses on preventing and combating violence against women and domestic violence, with a first section on the institutional framework and recent developments, and a second highlighting specific challenges in this field. Each chapter is followed by the Commissioner’s conclusions and recommendations.

### I. Racism and discrimination

#### a. Overview of the situation

5. During 2020, the Commissioner noted a number of assaults on people of African descent and other persons perceived as foreigners, as well as against anti-racist and other civil society activists in Portugal. The incidents reported culminated in July 2020 with the murder of Bruno Candê, a Portuguese citizen of African descent, who was shot dead on the streets of Lisbon. His aggressor reportedly shouted racist slurs before killing him. The alleged perpetrator has since been indicted by the prosecution authorities for murder with racist motives and is awaiting trial.
6. In the same period, racist slurs and swastikas appeared on the walls of several public buildings, including schools, and on the walls of premises of certain NGOs, in particular SOS Racismo. Furthermore, the organisation’s president, together with other persons belonging to civil society

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<sup>1</sup> This memorandum was finalised on 10 March 2021.

organisations, received death threats and warnings to leave Portugal within 48 hours, in response to their public stance and work against racism in Portugal. These threats also targeted trade unions and three members of the Portuguese Parliament. In August, a “Ku Klux Klan-style” demonstration took place in front of the SOS Racismo premises.<sup>2</sup> Responsibility for these worrying developments was claimed by a far-right extremist group, the “Avis New Order-National Resistance”. Roma activists also reported harassment and threats, online and offline.

7. Roma have long been targeted by racist hate speech and continue to be routinely confronted with discriminatory practices, such as service denials, throughout Portugal.<sup>3</sup> Widespread hostility has at times resulted in incidents of mob violence against Roma communities. For instance, the Commissioner’s predecessor deplored, during a visit to Portugal in March 2017, a series of incidents, including threats, arson and attacks against property targeting the Roma community that had occurred in a locality in the south of the country.<sup>4</sup>
8. Moreover, racist rhetoric is increasingly used in the political arena, in particular by the “Chega” political party, set up in 2019, whose representatives are said to often play on xenophobia, Afrophobia and antigypsyism to garner public support and votes. Moreover, through frequent racist, homophobic and sexist outbursts and sometimes extreme political proposals, it has rapidly managed to increase its presence in the public space and media discussions. In May 2020, during the first lockdown imposed in the context of the Covid-19 pandemic, “Chega”’s leader proposed a special lockdown plan for Roma communities for example, claiming that they would not comply with the rules of social distancing.<sup>5</sup> A debate on this discriminatory proposal was then organised by a radio programme.<sup>6</sup> While the party obtained only one seat in Parliament in the October 2019 general elections, in January 2021, the party leader came third in the presidential elections with almost 12% of the vote.
9. According to civil society representatives spoken to by the Commissioner, all these developments have generated a tense atmosphere for the work of anti-racist and other human rights activists, who report a feeling of growing insecurity. They mentioned in particular high levels of hate speech and threats online against anti-racist activists who had spoken out to denounce racist acts or speech. They also stated that, up until the murder of Bruno Candê, the authorities’ reaction to hate speech, including in politics, and to racist attacks had been limited and somewhat belated and that the authorities tended to downplay the racist motive behind attacks. More recently, the Commissioner learnt with dismay about a petition requesting the expulsion from Portugal of the President of SOS Racismo,<sup>7</sup> and the fact that representatives of the “Chega” political party announced they would bring defamation charges against him after he expressed critical views on the occasion of the death of a former high-ranking Portuguese army official, involved in the colonial war in the 1960-70’s.<sup>8</sup>
10. The Commissioner also took note of an [alert](#)<sup>9</sup> of 27 January 2021 issued on the Council of Europe Platform to promote the protection of journalism and safety of journalists, reporting a “torrent of online abuse and threats”, including death threats, towards three Portuguese journalists who had investigated and reported on the “Chega” political party.

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<sup>2</sup> See for instance [Communication](#) by the Commission for Equality and Against Racial Discrimination (CICDR) of 12 August 2020.

<sup>3</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), [4<sup>th</sup> Opinion on Portugal](#), 2020.

<sup>4</sup> Commissioner for Human Rights, [Portugal: progress in participation of Roma in local decision-making should be sustained](#), 8 March 2017.

<sup>5</sup> See for instance Noticias ao minuto, [Ventura apresentará plano de confinamento para ciganos mesmo sem apoios](#), 6 May 2020.

<sup>6</sup> A complaint on grounds of racist discrimination was filed against the radio programme with the media regulatory authority (ERC) by a number of NGOs.

<sup>7</sup> A citizens’ petition addressed to Parliament and requesting Mamadou Ba’s expulsion from Portugal has gathered more than 30 000 signatures.

<sup>8</sup> See for instance Diário de Noticias, [Quase 15 000 pessoas exigem deportação de ativista Mamadou Ba](#), 17 February 2021.

<sup>9</sup> Alert “Torrent of Online Abuse and Threats over Portuguese Journalists Pedro Coelho, José Silva and Andres Gutierrez”, 27 January 2021 (as of 10 March 2021, no reply from government yet).

11. The Commissioner's interlocutors have stressed that the recent spike in racist hate speech and hate crimes partly builds on the lack of a thorough review of the narrative of Portugal's colonial history, which does not adequately acknowledge the legacy of the repressive structures put in place by past colonial policies and inherent racist biases.<sup>10</sup> There is a reported need to rethink in particular the teaching of history, and school textbooks, when it comes to colonialism, the history of slavery and the presentation that is usually made of the "discovery of the new world" in order to challenge biased assumptions and stereotypes, especially relating to people of African descent.
12. According to civil society activists, deeply rooted stereotypes contribute to perpetuating discrimination against people of African descent, but also Roma and other persons perceived as being foreigners, whether they are Portuguese citizens or not. The Commissioner understands that the most problematic area remains discrimination in housing, where concentrations of people of African descent, immigrants and Roma in certain geographical areas and often in substandard housing conditions continues to be reported. It is reportedly difficult for persons belonging to these groups to access adequate, mainstream housing.<sup>11</sup> The Commissioner's interlocutors also reported discrimination in areas such as education. In its 2020 Concluding Observations on Portugal, the UN Human Rights Council expressed concern at the high school dropout rates and the low employment rate among Roma and African descent communities.<sup>12</sup>
13. Moreover, several of the Commissioner's interlocutors deplored the fact that in public debates and in the institutional set-up, racism and discrimination are mostly viewed as a problem in the context of migration-related work, an approach which fails to accurately embrace the full dimension of racism. In particular, such an approach does not adequately acknowledge the fact that racism and discrimination seriously affect Portuguese Roma, as well as many Portuguese citizens of foreign descent, in particular those of African descent. Furthermore, correlating racism with migration is likely to limit societal awareness that racism is a challenge for society as a whole, not only for migrants.
14. At the same time, the Commissioner was informed that there is growing awareness of the problem of racism within Portuguese society. A parliamentary hearing on racism and discrimination was held in July 2019. The recent worrying developments referred to above have prompted public debate on this issue. Civil society has actively mobilised against racism in the context of the global "Black Lives Matter" movement. For example, large anti-racist demonstrations took place in Lisbon and other cities in June 2020.
15. The Portuguese authorities also shared their view with the Commissioner that more substantial action is needed to combat racism, including institutional racism, and to raise awareness of the multicultural nature of Portuguese society. The Commissioner notes with particular interest information concerning the ongoing preparation of a national strategy to combat racism, in co-operation with civil society organisations. She has also been informed of plans to launch an awareness-raising campaign on online hate speech and to set up an observatory of racism.

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<sup>10</sup> See for instance Open Democracy, [Portugal, colonialism and racial justice – From denial to reparation](#), Rui Braga, 31 August 2020.

<sup>11</sup> See, for example, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, [Mission to Portugal](#), 28 February 2017. See also Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), 2020, *ibid*; EU Fundamental Rights Agency (FRA), [Being Black in the EU](#), Minorities and Discrimination Survey, November 2018; and FRA, [A persisting concern: anti-Gypsyism as a barrier to Roma inclusion](#), 2018.

<sup>12</sup> UN Human Rights Committee, Concluding observations on the fifth periodic report of Portugal, 28 April 2020, paragraphs 12-13. See also Commissioner for Human Rights, 2017, *ibid*.

## **b. Legal and institutional framework for combating racism and discrimination**

16. In 2017, amendments were made to reinforce Portuguese legislation against hate crimes<sup>13</sup> and a new anti-discrimination law was passed,<sup>14</sup> introducing in particular the reversal of the burden of proof in cases of discrimination on grounds of racial or ethnic origin, colour, citizenship, ancestry and place of origin. Moreover, in 2017 Portugal acceded to Protocol No. 12 to the European Convention on Human Rights providing for a general prohibition of discrimination.
17. While these developments substantially improved the legal framework for combating racist hate crimes and racial discrimination, some shortcomings persist in criminal law as noted by the European Commission against Racism and Intolerance (ECRI) in its 2018 report on Portugal.<sup>15</sup> In particular, there is no criminal law provision stipulating that racist motives constitute an aggravating circumstance for all crimes. The Commissioner also wishes to highlight ECRI's recommendation that racial discrimination in the exercise of one's public office or occupation should be made a criminal offence and its recommendation to provide for the suppression of public financing of political parties and the organisations promoting racism.
18. The Commissioner was informed by several interlocutors that law enforcement practice persistently falls short of taking into account racist motives of crimes even in cases where this is specifically criminalised. As a result, alleged hate crimes are rarely considered as such by the police and the judiciary and, in turn, victims tend not to report racially motivated crimes, a situation also highlighted by ECRI in its 2018 report on Portugal.<sup>16</sup>
19. Consequently, convictions for hate crimes under Article 240 of the Criminal Code on discrimination and incitement to hatred and violence remain very few and far between. The Commissioner was informed that, between 2017 and 2019, not a single conviction was issued on grounds of Article 240 by first instance courts.<sup>17</sup>
20. The Portuguese authorities have informed the Commissioner that a process of legislative review of Article 240 of the Criminal Code is under way with a view to enhancing the scope of the prohibition of incitement to hatred. She hopes that such a review will further expand the possibilities for the judiciary to respond adequately to hate crimes and that the legislator will take due account of the recommendations made by ECRI regarding the scope and content of Article 240.<sup>18</sup>
21. Information provided by civil society organisations indicate low rates of reporting of hate speech and a lack of data collection by the authorities on it as well as, overall, an inadequate response to hate speech, especially online hate speech. The Commissioner was informed by the authorities of the forthcoming launch, in the course of 2021, of an awareness-raising campaign on the dissemination of hatred online, with the participation of the Portuguese media regulatory authority (Entidade Reguladora para a Comunicação Social). She wishes to receive information on the scope and content of the campaign once launched and, at a later stage, its impact.
22. As regards the institutional framework for dealing with discrimination, the Commissioner welcomes the fact that, in 2017, the powers of the Commission for Equality and Combating Racial Discrimination (CICDR) operating under the High Commissioner for Migration (ACM), were substantially enhanced, enabling it to deal with complaints from the investigation phase up to the imposing of sanctions. In 2019, the number of complaints for discrimination received by the CICDR (436) increased by 26% in comparison with the previous year.<sup>19</sup> However, the

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<sup>13</sup> Law no. 94/2017 of 23 August 2017 amending Article 240 of the Criminal Code, which punishes anyone who engages in organised propaganda activities inciting discrimination, hatred or violence against individuals or groups of people on grounds of their race, colour, ethnic or national origin, ancestry, religion, sex, sexual orientation, gender identity or physical or mental disability. Article 240 also punishes anyone who, through a medium intended for dissemination, insults or defames an individual or group on the aforementioned grounds.

<sup>14</sup> Law no. 97/2017 of 23 August 2017 on the prevention and prohibition of racial discrimination.

<sup>15</sup> European Commission against Racism and Discrimination (ECRI), 5<sup>th</sup> [Report](#) on Portugal, 2018.

<sup>16</sup> ECRI, 2018, *ibid.*, paragraphs 46-47.

<sup>17</sup> Information provided by the Ministry of Justice.

<sup>18</sup> ECRI, 2018, *ibid.*, paragraph 9.

<sup>19</sup> CICDR, Relatório Anual 2019.

number of cases investigated and sanctions remains small, thereby not fully reflecting the reality of discrimination in Portugal. In 2019, investigations were launched in 22% of the complaints lodged for racial discrimination, and four sanctions were adopted by the Commission.<sup>20</sup> Moreover, as stressed by ECRI and other international bodies,<sup>21</sup> the CICDR still lacks full independence. Against this background, the Commissioner notes with interest the information provided by the authorities that a new reform of the CICDR and of the ACM is being considered with a view to strengthening work on racism and discrimination and giving it more visibility.

23. Portugal's Ombudswoman ("Provedora de Justiça") receives few complaints of racially motivated discrimination committed by public bodies. This number is particularly low when it comes to the most vulnerable and marginalised groups of society. This is reportedly due to both a lack of awareness of the institution among these persons and a lack of outreach capacity of her office. The Commissioner therefore welcomes the campaign to promote the institution launched in early 2020<sup>22</sup> with a view to reaching out to schools, civil society organisations, local authorities and other relevant entities which might benefit from the institution's human rights protection mandate.

### **c. Racism in the police**

24. Reports brought to the Commissioner's attention point to an increasing number of cases of racially motivated misconduct by police in Portugal.<sup>23</sup> The Commissioner has also received worrying allegations of infiltration of the police by far-right extremist movements, in particular through police trade unions.
25. Moreover, the Commissioner is informed that some police trade unions have initiated court proceedings for defamation, which is yet to be decriminalised in Portuguese law, against anti-racist activists who have spoken out on allegations of racially motivated misconduct within police forces.
26. The Commissioner's interlocutors also reported the growing use of force in police operations targeting areas with large populations of persons of African descent, migrants and Roma. They mentioned the frequent deployment of special forces and armoured vehicles in such operations, resulting in a growing perception of militarisation of police operations and increasingly tense relations between those residing in such areas and the police.
27. Concerns regarding racism in the Portuguese police were also stated in the reports of several international human rights bodies, including ECRI, the European Committee for the Prevention of Torture (CPT) and the UN Committee against Torture (CAT).<sup>24</sup> ECRI stressed in its 2018 report that the level of police brutality towards people of African descent had reportedly increased in recent years<sup>25</sup> and the CPT stated, in 2020, that the inflicting of ill-treatment, particularly against persons of African descent and foreign nationals, could not be considered an infrequent practice.<sup>26</sup> Instances of police brutality against Roma have regularly been reported over recent years, including violent police raids targeting Roma settlements.<sup>27</sup>

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<sup>20</sup> Ibid. In the four decisions two fines and two warnings were issued. Seven additional sanctions on grounds of racial discrimination were handed down by the Authority for preventing and combating violence in sports (APCVD). The media regulatory authority (ERC) also issued 8 decisions, out of 12 complaints on grounds of racial discrimination received in 2019.

<sup>21</sup> ECRI, 2018, *ibid.* and Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), 2020, *ibid.*

<sup>22</sup> Temporarily suspended owing to the COVID-19 pandemic.

<sup>23</sup> The information received by the Commissioner concerns mostly the National Republican Guards (GNR), the Public Security Police (PSP) and the Borders and Immigration Police (SEF).

<sup>24</sup> UN Committee against Torture (CAT), [Concluding observations on the seventh periodic report of Portugal](#), 2019.

<sup>25</sup> ECRI, 2018, *ibid.*, paragraph 56.

<sup>26</sup> European Committee for the Prevention of Torture or Inhuman or Degrading Treatment and Punishment (CPT), [Report to the Portuguese Government on the visit to Portugal from 3 to 12 December 2019](#), published in November 2020, paragraph 20.

<sup>27</sup> ECRI, 2018, *ibid.*, paragraph 50. Commissioner for Human Rights, [Report of the Commissioner following his visit to Portugal from 7 to 9 May 2012](#). CERD, [Concluding Observations on Portugal](#), CERD/C/PRT/CO/15-17, 31

28. Against this background, all the Commissioner's civil society interlocutors deplored the lack of a clear acknowledgment by the authorities, including high-level police management, of the existence of racism within the police and of the racist motives behind many cases of misconduct.
29. The lack of firm and public condemnation of racism and discrimination within the police and persistent denial that there might be more than isolated cases of abuse has led to a perception of impunity for racially motivated abuse, which reflects an overall feeling of impunity for any kind of police misconduct.
30. Several international human rights bodies have underlined the failure to recognise the systemic problem of misconduct in the Portuguese police. The CPT, in its report of November 2020, stressed that the authorities should recognise that ill-treatment was a fact and "not the result of a few rogue police officers".<sup>28</sup>
31. The Commissioner is also informed that police training - basic and in-service - on the prohibition of racism and discrimination and, more generally, of ill-treatment is not sufficient and that the content of curricula on these subjects, both theoretical and practical, should be improved. She notes with interest the information on the preparation of a new plan for the prevention of risks of discriminatory practices in the police.
32. The Commissioner takes note of the convictions handed down in May 2019<sup>29</sup> to eight of the 17 police officers involved in a case of serious ill-treatment of six young black people, which took place in 2015 in the Lisbon suburb of Cova da Moura (Amadora). The police officers were convicted for insults, serious bodily harm, sequestration, false accusations and false testimonies. The Commissioner considers that these convictions are a step forward in combating impunity for police misconduct, although she regrets that the racist motive of abuses was not retained. She notes that in January of this year, the Inspectorate General of Home Affairs (IGA) considered reopening the disciplinary proceedings against six of the convicted police officers.<sup>30</sup>
33. A serious case of excessive use of force by law enforcement officials came to the fore in public debate at the time of the Commissioner's online dialogue. It concerns the death, in March 2020, of a Ukrainian man in the custody of the border and immigration police (SEF) at Lisbon airport. He died after two days of detention during which three police officers allegedly repeatedly beat him and kept him tightly handcuffed to a chair for 15 hours. The Commissioner is informed that the police officers responsible have been taken into custody, that criminal proceedings are under way and that an extra-judicial scheme was put in place to offer compensation to the victim's family. It appears from initial investigations that, in addition to the three police officers directly responsible for the death of the victim, 12 other officials witnessed the ill-treatment inflicted on the victim at different stages of his detention but did not intervene or report what was going on. They have now been indicted.
34. The Commissioner was informed that, until recently, not enough had been done to remedy the multiple shortcomings highlighted by the Ombuds following several visits to the SEF premises in her capacity as National Preventive Mechanism under the Optional Protocol of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). She has repeatedly pointed to shortcomings and deficiencies which could increase risks of ill-treatment.
35. The Commissioner takes note of the unanimous adoption by Parliament, in January 2021, of a decision expressing regret for the death of the victim and hopes that this public condemnation will translate into concrete action to strengthen the existing legislative framework concerning

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January 2017. The Commissioner has also received such information from civil society organisations as part of the regular country monitoring work carried out by her Office.

<sup>28</sup> CPT, 2020, *ibid.*

<sup>29</sup> Confirmed by the Lisbon Court of Appeal in November 2020.

<sup>30</sup> Diário de Notícias, [IGA avalia reabertura de processos disciplinares a agentes condenados da PSP de Alfragide](#), 28 January 2021.

the prevention of ill-treatment and ensure accountability for serious human rights violations by the police, in line with the [2011 Guidelines](#) on Eradicating impunity for serious human rights violations of the Committee of Ministers of the Council of Europe.

36. The reported feeling of impunity within police forces is exacerbated by weaknesses in the system of investigating and sanctioning police misconduct. Several of the Commissioner's interlocutors underlined a lack of effective investigations into cases of police misconduct, irrespective of whether a racist motive was alleged, a concern also stressed by the CPT in its last three reports on Portugal.
37. The Commissioner wishes to draw specific attention to some of the November 2020 findings and recommendations of the CPT on shortcomings in both the system of investigation of police misconduct and of disciplinary sanctions. Issues of particular concern include the fact that the Inspectorate General of Home Affairs (IGAI), which operates under the authority of the Ministry of the Interior, fails to meet the criteria of an independent police complaint mechanism and that there are still gaps in its investigative powers and resources. In addition, the CPT deplored the fact that disciplinary proceedings were not carried out in parallel with criminal investigations, leading in many cases to disciplinary sanctions being suspended or dropped. The CPT also stressed that very few cases resulted in charges being brought against police officers, mostly owing to lack of resources of the prosecution authorities in charge of investigating cases of police misconduct.
38. The Commissioner notes that a new Organic Law on the IGAI is being prepared. She trusts that it will fully take into account the CPT's recommendations on the need for an independent and effective police complaint body.

### **Conclusions and recommendations**

39. The Commissioner is concerned about the rise in the number of racially motivated hate crimes and hate speech but also in discrimination targeting especially Roma, people of African descent and persons perceived as foreigners in Portugal. The existence of racism in the police is an issue of particular concern. She considers that the Portuguese authorities should urgently take measures in the following fields to remedy this situation.

#### *Legal and institutional framework for combating racism and discrimination*

40. The Commissioner considers that the Portuguese authorities should scale up their response to racism, and to hate speech and hate crimes in particular, by adopting and implementing a comprehensive action plan against racism and discrimination, which adequately meets existing challenges. Such a strategy should aim inter alia at raising awareness in Portuguese society of the existence of racism, the risks it entails for social cohesion and the devastating impact it has on the persons and communities affected by it. Moreover, it should be drawn up on the basis of an in-depth analysis of the situation as regards discrimination and should provide for regular data collection on racially motivated discrimination and racist hate speech and crimes. It is also crucial to ensure that adequate resources are made available to ensure effective implementation of the planned actions.
41. Anti-racist and other human rights NGOs should be closely involved in devising and implementing such a strategy. In general, the Commissioner believes that the work of these organisations should be adequately valued and supported as they play an important role in raising awareness in society of racism and discrimination, can usefully contribute to mapping the situation and, most importantly, act as a bridge between the communities concerned and the authorities.
42. In this respect, the Commissioner notes with interest that the Portuguese authorities have announced their intention to launch an action plan to combat racism and discrimination in 2021 and to set up an observatory of racism. If drawn up in line with the above recommendations, these tools could usefully contribute to implementing the required comprehensive anti-racism strategy.

43. Among the measures to be taken, the Commissioner urges the Portuguese authorities in particular to firmly and publicly condemn all instances of hate speech by actively disseminating the message among the general public that hate speech cannot be tolerated in a democratic society. While freedom of expression is a fundamental value of democracy, it cannot be exercised in a manner that fails to respect the rights of others. It entails duties and responsibilities, especially for political leaders, media and public authorities.
44. Therefore, the Commissioner calls on Portuguese political leaders to refrain from using or tolerating racist rhetoric as, by using it, they are contributing to trivialising and normalising racist hate speech in Portuguese society. Self-regulation by media and public bodies should be further promoted and supported. The Commissioner also wishes to draw attention to ECRI's General Policy [Recommendation No. 15](#), which provides comprehensive guidance on measures to prevent, reduce and remedy the harm caused by hate speech.
45. As concerns racial discrimination, the Commissioner considers that the strategy she calls for above should be comprehensive enough to cover the impact of discrimination in several areas of life, such as housing, employment and access to health care. It should also adequately tackle the impact of intersectional discrimination on certain categories of persons, i.e. situations in which racial discrimination intersects with other forms of discrimination, including on the basis of gender, age, ethnic or social origin, language, religion, disability, sexual orientation or gender identity.
46. The Commissioner welcomes the substantial steps that have been taken in recent years to improve the legal and institutional framework for tackling discrimination. She invites the Portuguese authorities to pursue their efforts and ensure that civil, administrative and criminal legislation fully complies with ECRI's recommendations. She finds it particularly important to give more visibility to sanctions in cases of discrimination, further streamline the work of the CICDR and ensure that it is fully independent. Disconnecting the work of the CICDR from migration-related work with a view to making it more encompassing would significantly contribute to boosting its visibility and efficiency.
47. As regards criminal law to combat racism and discrimination, including hate speech and hate crime, the police and prosecution services should adopt a wider understanding of what constitutes a racist offence, including by taking into account any incident perceived to be racist by the victim or any other person.<sup>31</sup> This would enable them to thoroughly investigate all allegations of racially motivated crime, in line with the well-established case-law of the European Court of Human Rights, which emphasises the importance of prompt, rigorous and impartial investigation into an incident with racial overtones so as to reassert continuously society's condemnation of racism and to maintain the confidence of minorities in the authorities' ability to protect them from the threat of racist violence.<sup>32</sup> It is also important that police officers, prosecutors and judges all be trained on existing provisions on combating racism and discrimination and on identifying and duly tackling hate-motivated offences.
48. The Commissioner believes that further efforts are necessary for Portugal to come to terms with past human rights violations and to tackle racist biases against people of African descent inherited from a colonial past and historical slave trade. In order to tackle Afrophobia more vigorously, it is important to provide society with narratives that adequately shed light on the historically repressive structures of colonialism, ingrained racist biases and their present-day ramifications. School curricula, including citizenship education, are a particularly useful tool to achieve this goal. Against this background, the Commissioner stresses that the [International Decade for People of African Descent 2015-2024](#) offers a relevant framework for state initiatives to eradicate ingrained social injustices and to combat racism and racial discrimination against people of African descent. She invites the Portuguese authorities to make increased use of this framework.

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<sup>31</sup> See ECRI, [General Policy Recommendation N°11](#) on combating racism in policing.

<sup>32</sup> See for instance [Anghelova and Iliev v. Bulgaria](#), Application No. no 55523/00, Judgment of 26 October 2007, paragraphs 98 and 105.



49. Noting with appreciation the substantial steps taken by the authorities in recent years to combat discrimination against Roma, especially in the area of education and through partnerships at the local level, the Commissioner recommends that these efforts be pursued and enhanced, especially with regard to tackling antigypsyism, which remains pervasive in Portuguese society and present in the public discourse of some politicians.

*Racism in the police*

50. The Commissioner is deeply concerned at reports of racially motivated police misconduct and allegations of infiltration of some segments of the police by far-right extremist movements. One of the main duties of law enforcement is to protect the human rights of all persons in the country. Discriminatory attitudes and ill-treatment on grounds of origin or skin colour are not only unlawful but also deeply undermine public confidence in law enforcement and state institutions in general.
51. The Commissioner urges the Portuguese authorities to apply a policy of zero tolerance towards any manifestation of racism in the police. It is particularly crucial that the leadership of the police sends out an unequivocal message that racism and discrimination have no place in a democratic police force. They should also step up efforts to promote a police culture of strict adherence to human rights standards and of rejection of any form of misconduct.
52. The Commissioner strongly recommends that the Portuguese authorities take additional substantial measures to improve basic and in-service training of police officers regarding their obligations to protect the human rights of all and the need to combat racism and discrimination, as this would contribute to eradicating racism from the police. Moreover, it would be useful to involve human rights and anti-racist organisations in devising and implementing training courses for police officers, not least to improve confidence and strengthen co-operation between police and civil society.
53. The Commissioner also recommends that Portuguese authorities improve recruitment procedures and selection criteria, promote access of persons belonging to minority groups to the police and their representation at all levels of management and, more generally, ensure that police officers benefit from adequate working conditions and that their social and economic rights are duly protected.
54. The Commissioner considers that persistent gaps in the system of investigating and sanctioning police misconduct have resulted in a perception of impunity for police misconduct, including in cases in which racist motives are alleged. She recalls that state authorities have an obligation to combat impunity for serious human rights violations, as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system as a whole. She therefore urges the Portuguese authorities to ensure that all investigations of police misconduct are prompt and effective and that effective investigations are carried out in all instances where a racist motive is alleged.<sup>33</sup>
55. The Commissioner strongly calls on the Portuguese authorities to establish a fully independent police complaint mechanism to investigate all complaints of ill-treatment by the police. This can be achieved either by substantially revising the current mandate, powers and status of the Inspectorate General of Home Affairs with a view to ensuring its full independence from the executive authorities, or by setting up a new institution meeting relevant criteria of independence. Useful guidance can be found in the Commissioner's [Opinion](#) concerning Independent and Effective Determination of Complaints against the Police.<sup>34</sup>
56. The Commissioner also wishes to reiterate the CPT's recommendation that disciplinary proceedings should be carried out in parallel with criminal investigations and that fast-track

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<sup>33</sup> See for instance the ECtHR Registry [Factsheet on Roma and Travellers](#). See also Eric Svanidze, [Effective investigation of ill-treatment, Guidelines on European standards](#), Council of Europe/European Union, second edition, 2014.

<sup>34</sup> Commissioner for Human Rights, Opinion concerning Independent and Effective Determination of Complaints against the Police, 2009.

court proceedings for cases of alleged ill-treatment by police officers should be put in place, in order to ensure that there is no place for impunity.

57. In addition, the Commissioner considers it important that the Ombudsman's Office is given adequate resources and support so that it can effectively carry out its mission, including its work as National Preventive Mechanism under OPCAT.
58. Lastly, the Commissioner draws the Portuguese authorities' attention to ECRI [General Policy Recommendation N°11](#) on combating racism in policing, which points to the measures to be taken to improve the police response to racism and to combat racism among police forces.

## II. Combating violence against women and domestic violence

### a. Institutional framework and recent developments

59. High levels of domestic violence and violence against women continue to be reported in Portugal. In 2020, 26 women were killed in the context of domestic violence, compared with 27 in 2019, 24 in 2018 and 15 in 2017.<sup>35</sup> In 2019, there were 29,473 reports of domestic violence, an increase of more than 11% on 2018 and the highest figure since 2010, when the prohibition of domestic violence was enshrined in the Criminal Code.<sup>36</sup> 82% of the victims were women and 85% of the reported cases occurred in the context of intimate relationships.<sup>37</sup>
60. The Portuguese authorities have for years demonstrated strong commitment to eradicating domestic violence. Since 2009, domestic violence has been considered in the Criminal Code as a public crime, for which public prosecutors may initiate criminal proceedings regardless of whether the victim presses charges. The authorities have drawn up and implemented comprehensive policies to tackle violence against women and, more generally, foster gender equality in Portuguese society. The Commission for Citizenship and Gender Equality (CIG), in charge of coordinating and monitoring the implementation of gender equality policies and plans to combat gender-based violence, enjoys high-level political support as it operates under the authority of the Presidency of the Council of Ministers.
61. Moreover, the Portuguese authorities have consistently expressed their strong commitment to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), to which Portugal has been a party since 2013. The Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), entrusted with monitoring implementation of the Istanbul Convention, published in January 2019 a first baseline evaluation of implementation of the Convention in Portugal.<sup>38</sup> This report contains detailed findings and recommendations on how to more effectively combat violence against women and domestic violence. The Commissioner welcomes the strong commitment of the Portuguese authorities to achieving the goals of the Convention and implementing GREVIO's recommendations.
62. The Action Plan on violence against women and domestic violence is integrated in a comprehensive national strategy for equality and non-discrimination for the period 2018-2030.<sup>39</sup> The Commissioner notes with interest that Portugal has adopted, through the strategy, a broad approach combining tackling violence against women with policies to promote gender equality and combat gender-based stereotypes, in line with the underlying principle of the Istanbul Convention according to which tackling gender inequalities and gender-based discrimination is a necessary corollary to effectively combating violence against women. Moreover, and also in line with the Istanbul Convention, the strategy extends beyond domestic violence and encompasses actions to eliminate other forms of violence against women, such as female genital mutilation, forced marriage and trafficking and exploitation for sexual purposes. The Commissioner also takes note of the acknowledgment, in the strategy, of the need to give due

<sup>35</sup> Commission for Citizenship and Gender Equality (CIG), quarterly [data](#) regarding crimes of domestic violence (for 2020).

<sup>36</sup> Ministry of Internal Administration, [Violência doméstica: relatório anual de monitorização](#) 2019.

<sup>37</sup> Including spouse or partner, former partner and dating. Ibid.

<sup>38</sup> GREVIO, [Baseline Evaluation Report](#), Portugal, 2019

<sup>39</sup> Estratégia Nacional para a Igualdade e a Não Discriminação 2018-2030, [ENIND](#).

consideration to the impact on gender inequalities of intersectional discrimination. Finally, the national strategy also covers discrimination on the basis of sexual orientation, gender identity and sex characteristics, which gives it an inclusive and encompassing approach that would enable it to address intersecting forms of discrimination.

63. With 61.3 out of 100 points, Portugal ranks 16th in the EU on the Gender Equality Index. Its score is 6.6 points below the EU's score. The Commissioner notes that, according to this index, Portugal's score has increased by 7.6 points since 2010 and that the country is progressing towards gender equality faster than other EU Member States. Its ranking has improved by four places since 2010.<sup>40</sup> In order to further advance gender equality, specific emphasis is placed on gender mainstreaming in the areas of education, especially as regards IT, and labour, with a specific focus on tackling gender-based labour segregation and bridging the gender pay gap. In this regard, the Commissioner draws attention to a 2019 [Decision on the Merits](#) of the European Committee of Social Rights<sup>41</sup> which found Portugal to be in violation of the Revised European Social Charter on grounds of insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay.
64. Moreover, the Commissioner appreciates the efforts made by the authorities over the years to promote a change in mentalities and to raise awareness regarding gender inequalities and women's rights more generally. She takes particular note of the comprehensive [national strategy on citizenship education](#), launched in 2017, which puts a specific focus on gender equality and encompasses comprehensive sexuality education. She believes that comprehensive sexuality education is a powerful tool for preventing gender-based violence and discrimination against women. It helps to convey strong messages advocating equality between women and men, promoting non-stereotyped gender roles and educating people about mutual respect, consent to sexual relations, non-violent conflict resolution in interpersonal relationships and respect for personal integrity, as requested by the Istanbul Convention.<sup>42</sup>
65. More specifically on the subject of domestic violence, the Commissioner commends the specific measures taken by the authorities in the context of the Covid-19 pandemic to ensure that victims of domestic violence, especially in times of lockdown, can access support and protection.<sup>43</sup> Measures include the setting up of new helplines providing security advice and information about existing services, as well as a new SMS line and a new e-mail address which victims can use to ask for help. The police launched a programme of early detection of persons at risk and set up emergency response procedures. The maximum length of stay in shelters was extended and all facilities were kept open. Information on support for victims of domestic violence in eight different languages was widely disseminated in public places and shops. A civil society organisation also set up a contact network for women in need of support during lockdown.

**b. Specific challenges related to preventing and combating violence against women and domestic violence**

66. In the light of the exchanges the Commissioner held with representatives of civil society and the authorities during her online dialogue, she would like to highlight some remaining challenges as also highlighted in GREVIO's findings and recommendations from their 2019 baseline evaluation of implementation of the Convention in Portugal.<sup>44</sup>
67. The Commissioner's interlocutors shared serious concerns over persistently low levels of convictions for domestic violence. They stressed that investigations into domestic violence were often not thorough enough, resulting in no further action being taken in many cases of

<sup>40</sup> EIGE Gender Equality Index 2020 – [Portugal](#).

<sup>41</sup> European Committee of Social Rights, *Decision on the Merits* (Complaint No. 136/2016), *University Women of Europe v. Portugal*. Similar complaints were launched against 14 other member states, for more information see the [Factsheet](#) "Right to equal pay: Gender pay gap is still persistent in Europe".

<sup>42</sup> See Commissioner for Human Rights, [Human Rights Comment](#) on: Comprehensive sexuality education protects children and helps build a safer, inclusive society (translated into [Portuguese](#)).

<sup>43</sup> See [Council of Europe Gender Equality webpage](#) on measures taken by the member states to mitigate the impact of the COVID 19 crisis on women's rights.

<sup>44</sup> GREVIO, 2019, *ibid*.

violence against women and domestic violence. The Commissioner notes that, in 2019, charges were brought in only about 16% of the cases for which investigations were initiated, and there was no further action in about 60% of the cases.<sup>45</sup> Moreover, domestic violence, as prohibited by Article 152 of the Criminal Code, is reportedly often considered in criminal proceedings as subsidiary compared to more serious offences (such as rape), resulting in a limited number of charges for domestic violence and a low profile for domestic violence offences in the courts' case-law. This concern was highlighted in the 2019 report of GREVIO, which also deplored the frequent use of suspended proceedings and suspended sentences. In 2019, 90% of the prison sentences handed down were suspended.<sup>46</sup> All these factors reportedly contribute to a feeling of impunity for perpetrators of domestic violence which has, according to civil society organisations, led to an increase in domestic violence cases over the last decade. Moreover, such a climate is not conducive to encouraging victims to report incidents.

68. The Commissioner notes from information brought to her attention that the low level of convictions and the limited number of custodial sentences have their origins in enduring gender stereotypes against women in some sectors of judiciary where victims of domestic violence are concerned, and the lack of a gendered approach to violence against women. Despite an increasing amount of training on domestic violence and violence against women provided in recent years to law enforcement officials and members of the judiciary, victims can still be confronted with mistrust and assumptions that they are lying, or that they bear responsibility for violence against them because of their behaviour or past conduct, as evidenced by some controversial judgments of recent years.<sup>47</sup>
69. Biased views are not only apparent in cases regarding violence against women and domestic violence but, more widely, seem to reflect broader, persistent stereotypes when it comes to women's rights and gender equality. This was evidenced in a 2017 [judgment](#) of the European Court of Human Rights (ECtHR) in which the Court found Portugal in breach of Article 14 (prohibition of discrimination) combined with Article 8 of the Convention (right to private life) in a case in which an appeal court had reduced the level of compensation to be paid to a woman for damage to her health (gynaecological complications) following a medical error, on grounds of her alleged "limited sexual life due to her age (over 50)" and of her alleged limited needs for full-time housekeeping help as, given the age of her two children, she "probably only needed to take care of her husband." In the ECtHR's views, these considerations "show[ed] the prejudices prevailing amongst the judiciary in Portugal."<sup>48</sup>
70. Moreover, GREVIO deplored a persistent lack of a gendered understanding of violence against women in the work of some entities providing protection and support services to victims, and the lack of human rights-based approaches focusing on the protection of victims, despite the existence, since 2016, of minimum standards for the delivery of specialist support services. Women's rights organisations stressed their need for more financial support and for increased co-operation with the authorities in the implementation of policies to counter violence against women.
71. Another issue of concern to which the Commissioner would like to draw particular attention is the status of children witnessing domestic violence, who are reportedly often not considered as victims because the considerable impact violence against women has on them appears not to be fully acknowledged. This lack of consideration for children as victims of violence leads in practice to a lack of protection and safety gaps, especially when it comes to measures concerning visitation rights or the custody of children. The Commissioner's interlocutors have described cases in which a child could be called as a witness in court proceedings resulting in the sentencing of the violent father and then had to visit the aggressor in compliance with family court orders on visitation rights. Cases in which women victims of violence were considered unfit for the custody of their child because of the impact of domestic violence on them were also brought to the Commissioner's attention.

<sup>45</sup> Sistema de Segurança Interna: Relatório Anual de Segurança Interna (RASI) 2019.

<sup>46</sup> Ministry of Internal Administration, Relatório anual de monitorização 2019, *ibid.*

<sup>47</sup> See GREVIO, 2018, *ibid.*, paragraph 177; see also for example [PÚBLICO](#), 9 March 2019.

<sup>48</sup> *Case of Carvalho Pinto de Sousa Morais*, App. No. 17484/15, judgment of 25/10/2017.

72. The Commissioner notes with interest that amendments to the legislation on domestic violence are being prepared with a view to establishing victim status for children who witness domestic violence, to better assess their protection needs and regulate parental responsibilities accordingly.<sup>49</sup> She was also informed of the existence since 2016 of a mechanism to review cases of femicides in order to identify possible failings in the prevention system and devise new prevention tools.<sup>50</sup>
73. Information brought to the Commissioner's attention indicate that, despite the important role played by the Commission for Citizenship and Gender Equality, there is a persistent lack of coordination in the implementation of the action plan against violence against women and domestic violence. Concern was raised in particular about differences in the levels of commitment at the local level and a subsequent lack of consistency in the implementation of legislative and practical measures, resulting in victims of violence not having the same access to support and protection measures across the country. The Commissioner was informed for example that some local authorities are reluctant to implement the individual security plans drawn up for domestic violence victims.
74. Additionally, the Commissioner would like to highlight certain gaps in the law and practice regarding sexual offences, and in particular rape. The definition of rape in the Portuguese Criminal Code has long emphasised the use of coercion for the offence to be qualified as rape. Consequently, Portuguese courts have tended to require proof of the victim's resistance in order to convict the perpetrators. In 2015, the definition of sexual crimes, including rape, was amended in order to improve compliance with the Istanbul Convention. However, GREVIO deplored the fact that the offending conduct (rape/sexual crime) was still qualified by the use of the verb "constrain". In 2019, a subsequent reform further reduced the significance of violence, threat etc in the definition of rape/sexual crimes. Nonetheless, the Commissioner notes that the term "constrain" (*constranger*) remains in the 2019 amended provision on rape and sexual offences to qualify the offending conduct, which, according to NGOs, perpetuates the expectation that, for the offence to be classified as rape, victims have to express their lack of consent.
75. In this context, the Commissioner wishes to reiterate GREVIO's view that the very low rates of reporting and convictions for the offence of rape demonstrate the pressing need for the legislation on rape to place a firm focus on the absence of consent of the victim. Criminalising non-consensual sexual acts is a key step in combating sexual offences, which could significantly strengthen measures already taken by the Portuguese authorities to promote a change of approach within the judiciary and ensure greater accountability for sexual offences. It is also a tool for helping to achieve a wider change of mentalities in society as regards important notions such as bodily integrity and consent.

## Conclusions and recommendations

76. The Commissioner welcomes the longstanding commitment of the Portuguese authorities to eliminate domestic violence, and more generally, their resolute action to overcome deeply rooted patriarchal attitudes and gender-based stereotypes and to work towards gender equality in all areas of life. This political will has translated over the years into substantial improvements in the legal framework and ambitious action plans and awareness-raising campaigns.
77. Levels of violence against women remain nonetheless alarmingly high in Portugal. The authorities should therefore pursue their efforts to eradicate domestic and other forms of violence against women, while taking full account of GREVIO's recommendations. In particular, the Commissioner considers it essential to take additional steps to challenge biased mindsets and patriarchal attitudes and to raise further awareness in society that violence against women, including domestic violence, is a serious human rights violation and therefore a crime, for which perpetrators must be held accountable.

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<sup>49</sup> [Bill](#) No. 630/XIV.

<sup>50</sup> Equipa de Análise Retrospectiva de Homicídio em Violência Doméstica: [EARHVD \(mai.gov.pt\)](#). The team is composed of representatives appointed by the relevant ministries and the police.

78. In order for this important message to be heard, the Commissioner urges the authorities to take measures to ensure that domestic violence offences are adequately investigated and prosecuted, and that sentencing is commensurate with the gravity of offences and sufficiently dissuasive.
79. While acknowledging that changing mentalities requires time, the Commissioner invites the authorities to continue improving training of members of the law enforcement agencies, the judiciary and, more widely, those providing services to women victims of violence, with a view to ensuring that they adopt approaches which fully recognise the gendered nature of violence against women, in line with the principles of the Istanbul Convention. Such approaches should aim to avoid secondary victimisation and empower victims by adequately meeting their protection needs and upholding their rights.
80. The Commissioner also invites the authorities to ensure that women's rights civil society organisations, which can usefully contribute to disseminating a more human rights-based approach to combating violence against women, have adequate access to public funding and can build their capacity to engage in work in this field.
81. It is positive that the authorities acknowledge the need to take further steps to improve coordination in the implementation of their strategy to eliminate violence against women. The Commissioner considers, in particular, that it is necessary to focus efforts on the implementation by local authorities of the legislation and policies on violence against women, so as to ensure equal protection of the rights of victims of violence across the country.
82. The Commissioner welcomes steps, including the preparation of new legislative provisions, recently taken by the authorities to ensure that children who witness domestic violence are considered primarily as victims and receive adequate protection. She strongly hopes that they will result in more effective protection of the rights of these children. The safety and protection of children who have witnessed domestic violence, and of their mothers, should be a primary consideration for family courts when taking decisions regarding their custody or visitation rights.
83. The Commissioner recommends that the authorities further amend the definition of rape in the Criminal Code and ensure that it is entirely based on the absence of the free consent of the victim. They could draw inspiration from good practices in other member states, in which all non-consensual sexual acts are criminalised.<sup>51</sup> Moreover, as for domestic violence offences, they should take steps to ensure more effective prosecution and sentencing of sexual offences.

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<sup>51</sup> For an example of good practice, see [First General Report of GREVIO's activities](#), 2020, paragraph 62.