

**Council of Europe contribution for the 19th UPR session
regarding Portugal**

Prevention of torture

Periodic visit 2012

On 24 April 2013, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its sixth periodic visit to Portugal from 7 to 16 February 2012, together with the response of the Portuguese authorities. Both documents are attached below.

In the course of the 2012 visit, the CPT's delegation examined the treatment of persons deprived of their liberty by law enforcement agencies and of the safeguards against ill-treatment in place. The report on the visit highlights several cases of alleged ill-treatment and stresses the importance of the authorities carrying out effective investigations into such allegations. Further, the report makes recommendations about the right of detained persons to have access to a lawyer (including the right to talk to a lawyer in private), to notify their detention to a third party and to be informed of their rights.

In relation to prisons, the report notes the steady increase in the prison population and recommends a multi-pronged approach towards eradicating overcrowding. It describes the state of dilapidation at Lisbon Central Prison, made worse by chronic overcrowding, and the particularly poor conditions in the basement areas. The CPT recommends that urgent steps be taken to improve conditions in this prison. In respect of the high security units at Linhó and Paços de Ferreira Prisons, the report recommends that inmates in these units be provided with a programme of activities and not confined to their cells for up to 22 hours a day. Further, the authorities are requested to institute rigorous safeguards concerning the placement of prisoners in these units. Recommendations are also made to improve the disciplinary system, including to reduce the maximum period of solitary confinement as a punishment to 14 days, and to reinforce the health-care services in prisons, including as regards medical screening on admission, the recording of injuries and medical confidentiality.

As regards the treatment of forensic psychiatric patients, the report is critical of the Psychiatric Hospital of Santa Cruz do Bispo, stating that it is unsuitable for providing the necessary care and treatment to patients. It recommends urgent steps be taken to upgrade the material conditions and to improve the range of purposeful activities in order to foster a therapeutic environment. Recommendations are also made to reinforce the number of psychiatrists and nurses and to replace prison officers with nursing staff. The report also makes recommendations to strengthen the safeguards surrounding the use of means of restraint and consent to treatment for patients at this hospital and at the forensic departments of Sobral Sid and Lisbon Psychiatric Hospitals.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.¹



2013-04-report-eng.pdf



2013-05-response-eng.pdf

¹ pp. 65-78.

Ad hoc visit 2013

A delegation of the CPT carried out an ad hoc visit to Portugal from 13 to 17 May 2013.

The main objective of the visit was to examine the situation at Lisbon Central Prison to see to what extent the recommendations made in the report on the February 2012 visit had been implemented. Further, the delegation visited Monsanto High Security Prison for the first time since it became fully operational. It also examined among other matters the treatment and conditions of detention of a person held in this prison who had been convicted by the International Criminal Tribunal for the former Yugoslavia (ICTY).² The delegation also held a series of meetings with the Inspectorate General of Home Affairs (IGAI) and the General Prosecutor's Office, and looked into several files concerning complaints about ill-treatment by law enforcement officials.

The report from the 2013 visit has not been made public yet.

Execution of judgments and decisions of the European Court of Human Rights

At 31 December 2012, there were 123 cases against Portugal pending before the Council of Europe's Committee of Ministers for supervision of their execution. 76 of these cases were "leading cases", i.e. raising a new structural/general problem and requiring the adoption of general measures. The main case or group of cases revealing such structural problems is listed below:

- ❖ Excessive delay on civil, criminal, administrative and enforcement proceedings – *Oliveria Modesto v. Portugal, application No. 34422/97, judgment final on 10/09/2008*

The document attached presents a brief description of the violations and the latest detailed decisions taken by the Committee of Ministers and the responses given thereto by the respondent state.



Execution of Court
judgments decisions.c

Fight against racism and intolerance

On 9 July 2013, the European Commission against Racism and Intolerance (ECRI) published its fourth report on Portugal.³

The report notes positive developments in the country, but also details issues of concern. For example, the racial discrimination complaints procedure continues to be lengthy and complicated and the principle of sharing the burden of proof is not applied.

There is no criminal law provision expressly making racist motivation an aggravating circumstance for all offences; the High Commission for Immigration and Intercultural Dialogue does not have investigation powers nor the right to initiate and participate in court proceedings; a large number of Roma continue to live in barracks, shacks or tents, in isolated areas often lacking basic infrastructure and some Roma settlements have had walls built around them.

The report contains findings and recommendations regarding the following issues:

² This specific monitoring activity of the CPT flows from an Exchange of Letters between the ICTY and the CPT, dated 7 and 24 November 2000, and an Agreement between the United Nations and Portugal, dated 19 December 2007.

³ A summary of the report can be found on pp. 7-8.

- Existence and application of legal provisions⁴
- Discrimination in various fields, including education⁵
- Racism in public discourse⁶
- Racist violence⁷
- Vulnerable/target groups, including Roma, immigrants, refugees and asylum seekers, Muslim communities, Jewish communities⁸
- Conduct of law enforcement officials⁹
- Education and awareness raising¹⁰
- Monitoring of racism and racial discrimination¹¹

The following three recommendations were selected for priority implementation to be revisited two years later:

- To put in place a system of collection of data indicating whether particular groups may be disadvantaged or discriminated against on the basis of “race”, ethnicity, religion or membership of Roma or other vulnerable communities;
- To simplify and speed up procedures following the lodging of complaints with the High Commission for Immigration and Intercultural Dialogue and consider ways in which the principle of sharing the burden of proof could be put into effect;
- To eliminate all walls and other barriers segregating Roma communities.

ECRI’s report on Portugal, which includes Government observations, is attached below.



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Protection of minorities

Framework Convention for the Protection of National Minorities

On 15 June 2011, the Council of Europe’s Committee of Ministers adopted a resolution on the protection of national minorities in Portugal (attached below). The resolution contains conclusions and recommendations, highlighting positive developments¹² but also mentioning issues of concern¹³. Moreover, it mentions a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

In addition to the measures to be taken to implement the detailed recommendations contained in Sections I¹⁴ and II¹⁵ of the Advisory Committee’s opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- initiate a discussion on the Framework Convention with persons potentially concerned by its application;

⁴ paras. 1-51.

⁵ paras. 52-59.

⁶ paras. 60-78.

⁷ paras 79-80.

⁸ paras. 81-172.

⁹ paras. 173-186.

¹⁰ paras. 187-191.

¹¹ paras. 192-196.

¹² Part 1.a) of the resolution

¹³ Part 1.b) of the resolution.

¹⁴ paras. 6-25 of the second Opinion of the Advisory Committee on the Framework Convention on Portugal

¹⁵ paras. 26-116 *ibid*

- take resolute measures to improve the effectiveness and accessibility of domestic remedies against racial discrimination; take further steps to raise awareness in society on discrimination-related issues and continue to address them in the training programmes for officials of the judiciary and the law enforcement agencies;
- take further steps to improve the housing of those Roma who live in substandard conditions;
- identify and implement, as a matter of urgency, adequate solutions to the problems facing those Roma who are allegedly compelled to move from place to place; take measures to enable them to have access to stable residency and have equal access to rights and services;
- continue to implement policies and programmes to promote intercultural dialogue and tolerance, and to combat discrimination and racism; promote the role of socio-cultural mediators;
- continue to take measures to improve the relations between the police and persons belonging to ethnic minorities, namely the Roma; investigate and sanction adequately all cases of alleged police misconduct in relation to persons belonging to ethnic minorities;
- pursue and step up efforts to combat the dissemination of stereotypes and prejudices against persons belonging to ethnic minorities in the media;
- take further steps to develop intercultural teaching at school; promote the inclusion of information on Roma history, cultural heritage and language in school textbooks and improve teacher training in this respect;
- continue to promote consultation of persons belonging to the Roma ethnic community, including by developing further mediation programmes; take resolute measures to improve Roma participation in public affairs, in particular those of concern to them; take further positive measures to improve the employment situation of the Roma, with a view to increasing their participation in socio-economic life.

The Committee of Ministers' resolution is largely based on the corresponding second Opinion of the Advisory Committee on the Framework Convention on Portugal¹⁶. The concluding remarks, contained in Section III¹⁷, serve as the basis for the Committee of Ministers' Resolution. The Opinion of the Advisory Committee and the comments on the Opinion by the Government of Portugal are also attached below.



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European Charter for Regional or Minority Languages

Portugal has neither signed nor ratified the European Charter for Regional or Minority Languages. Thus, the country is not yet covered by the monitoring carried out by the Committee of Independent Experts under the Charter.

Council of Europe Commissioner for Human Rights

On 10 July 2012, the Commissioner for Human Rights, Nils Muižnieks, released the report on his visit to Portugal from 7 to 9 May 2012,¹⁸ The Commissioner's report, which is attached below, focuses on the following selected human rights issues:

- I. Effect of fiscal austerity measures on human rights of children¹⁹
- II. Effect of austerity measures on the human rights of the elderly²⁰

¹⁶ A summary of the report can be found on p. 1.

¹⁷ paras. 117-129.

¹⁸ A summary of the report appears on pp. 2-3.

¹⁹ pp. 5-8.

²⁰ pp. 8-10.

III. Protection of the human rights of Roma²¹

IV. Impact of the financial crisis on domestic organisations working for the protection and promotion of human rights²²

For each issue the Commissioner provides specific conclusions and recommendations.²³

Upon releasing his report Commissioner Muižnieks said that “the most vulnerable social groups have been hit hardest by the fiscal austerity measures implemented in Portugal. The government should strengthen its efforts to mitigate the negative impact of the financial crisis, in particular on children, elderly and the Roma”. Child poverty is on the rise in Portugal. The combination of growing unemployment and cuts in salaries, increased taxes and reduced social and unemployment benefits has resulted in reduced incomes and growing poverty among many Portuguese families. Evictions as a result of non-payment of mortgages have also had a particularly negative impact on children’s rights.

Budgetary restrictions in education can be harmful in an overall context which is still marked by a high rate of school drop-outs. “This situation, together with growing unemployment and shrinking family incomes holds the risk of leading to a resurgence of child labour, notably in the informal economic sector and agriculture. The authorities should be particularly vigilant and ensure that programmes aiming at preventing child labour are continued.”

The elderly are adversely affected by the fiscal austerity measures as well. “The freezing of pensions and cuts in social benefits, together with the hike in prices of health care, public transportation, gas, electricity and food products have led to deterioration in the living conditions of elderly persons with low incomes, especially those residing in isolated rural areas.”

Violence towards the elderly has increased. Reportedly almost 40% of the elderly population in Portugal has suffered abuse within the family. “The authorities should strengthen the measures taken to lessen the impact of austerity measures on older persons, who need more protection and adequate opportunities to lead a decent life and play an active role in society”.

As regards Roma, they continue to suffer from social exclusion and various forms of discrimination, particularly as regards housing, education and access to employment, resulting in the persistence of their social exclusion and poverty. “The authorities should substantially improve the housing conditions of Roma, ensure that all Roma pupils have equal access to quality education and eradicate all forms of anti-Gypsyism. The National Strategy for the Integration of the Roma Communities adopted last January is a step in the right direction; it should be approved and implemented with no further delay, in close co-operation with representatives of the Roma community”.

Lastly, the Commissioner invites the Portuguese authorities to continue providing adequate support to independent National Human Rights Structures and non-governmental organisations involved in human rights work.

Together with the report, the Commissioner also published a letter to the Minister of Justice of Portugal recommending tackling the problem of excessive length of judicial proceedings, strengthening anti-discrimination measures and eradicating abuse and violence against older persons. On 18 July 2012 the Commissioner published the subsequent comments received from the Portuguese authorities. The Commissioner’s report and letter and the comments by the

²¹ pp. 10-14.

²² pp. 14-15.

²³ pp. 15-18.

Portuguese authorities are attached below.



com.report.pdf



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com.comments.pdf

Action against trafficking in human beings

On 12 February 2013, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) published its first evaluation report on Portugal²⁴, together with the final comments of the Portuguese Government. Both documents are contained in the attachment below.

GRETA called on the Portuguese authorities to improve the assistance provided to victims of trafficking in human beings, and to provide them with appropriate and safe accommodation. In its report GRETA acknowledges that Portugal has taken important steps to prevent and combat trafficking in human beings, although it also urges the authorities to take further measures to improve the identification of victims and the prosecution of traffickers.

GRETA expresses concern with the low number of convictions for human trafficking in Portugal and requests the authorities to identify gaps in the investigation procedure and in the presentation of cases in courts, so the offences can be effectively investigated and prosecuted.

Portugal has established a system to improve the identification of victims of human trafficking involving a multi-disciplinary team based in Porto. However, GRETA considers that this team has limited capacity to intervene and notes some reluctance among NGOs to report human trafficking cases for fear it may expose victims to the traffickers or to expulsion from the country.

To address this problem, GRETA urges the Portuguese authorities to ensure that in practice the identification of victims is dissociated from their participation in investigation and court proceedings, and that front-line professionals adopt a more proactive approach to the detection of victims.

The report also underlines that the Portuguese authorities should pay increased attention to detecting trafficking for the purpose of labour exploitation and involve NGOs more in the planning and implementation of anti-trafficking measures.

The police and NGOs reported 479 possible victims between 2008 and 2011, but only 122 of them were officially recognised as victims of human trafficking. The majority of the identified victims came from Brazil (35%), Mozambique (15%) and Eastern European countries, Romania in particular (16%). There are also a growing number of Portuguese victims who are exploited in Portugal or in neighbouring countries.

In its report GRETA provides concluding remarks²⁵ as well as a complete list of proposals to the Portuguese authorities.²⁶



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²⁴ A summary of the report can be found on pp. 7-8.

²⁵ p. 44

²⁶ Appendix I.

Preventing and combating violence against women and domestic violence

Portugal has ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Portugal will thus be covered by the monitoring procedure to be carried out once the Convention will enter into force.

Fighting corruption

On 17 December 2012, the Council of Europe Group of States against Corruption (GRECO) published its third round compliance report on Portugal. In its report GRECO assesses the implementation of the 13 recommendations addressed to Portugal in 2010. Although criminal legislation in respect of domestic bribery complies with Council of Europe standards, it needs to be amended to better cover such offences in the international context. GRECO also calls for more transparency in relation to political financing, in particular if the system is to allow more private based funding in the future.

Following the adoption of new legislation regarding the criminalisation of corruption²⁷, Portugal covers all forms of domestic corruption offences contained in the Council of Europe Criminal Law Convention on Corruption and the Additional Protocol.

However, not all the corruption offences in the international context are covered, which is a major shortcoming. Sanctions for bribery concerning public officials have recently been aligned with European standards, but the sanctions for private sector bribery and trading in influence are weak and need to be revised. GRECO notes that only limited practice is available in applying bribery legislation and calls for training of the professionals involved.

Concerning transparency of party funding²⁸, GRECO acknowledges that Portugal, currently, has a relatively developed system in place, including detailed rules establishing the basis for and limits of private financing of political parties and election campaigns.

The monitoring of political financing, which is carried out by the Entity for Accounts and Political Financing and the Constitutional Court, appears rather cumbersome and its results are made available to the public at a very late stage. Allowing more private funding into the system, which is currently under debate in Portugal, would need to be connected to appropriate rules on transparency and monitoring.

The conclusions of the compliance report from 2012²⁹, which is attached below, should be read in conjunction with GRECO's two reports from 2010. They have also been attached below.



GrecoRC3(2012)20_ GrecoEval3(2010)6_ GrecoEval3(2010)6_
Portugal_EN.pdf Portugal_One_EN.pdf Portugal_Two_EN.pdf

Social and economic rights

Portugal ratified the European Social Charter on 30/09/1991 and the Revised European Social Charter on 30/05/2002, accepting all of its 98 paragraphs.

It accepted the Additional Protocol providing for a system of collective complaints on 20/03/1998, but has not yet made a declaration enabling national NGOs to submit collective complaints.

²⁷ 2010 Evaluation Report on Portugal on Incriminations (Theme I).

²⁸ 2010 Evaluation Report on Portugal on Transparency of Party Funding (Theme II).

²⁹ Section III of the report, paras. 56-59.

Cases of non-compliance

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ Article 1§2 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

Sections 132 and 133 of the Merchant Navy Penal and Disciplinary Code providing for sanctions against seamen who abandon their post even where the safety of the vessel or the lives or health of persons on board are not at risk remains in force.

(Conclusions 2012, p. 9)

- ▶ Article 1§3 - Right to work - Free placement services

It has not been established that employment services operate in an efficient manner.

(Conclusions 2012, p. 10)

- ▶ Article 10§4 - Right to vocational training- Long term unemployed persons

It has not been established that the right to vocational training for long term unemployed is guaranteed.

(Conclusions 2012, p.16)

- ▶ Article 18§1 - Right to engage in a gainful occupation in the territory of other States Parties- Applying existing regulations in a spirit of liberality

It has not been established that the existing regulations are applied in a spirit of liberality.

(Conclusions 2012, p. 27)

- ▶ Article 20 (and Article 4§3) – Right to equal opportunities and treatment in employment and occupation without sex discrimination

In equal pay cases, legislation only permits comparisons of pay between employees working for the same company.

(Conclusions 2012, p. 32)

Thematic Group 2 "Health, social security and social protection"

- ▶ Article 3§3 – Right to safe and healthy working conditions – Enforcement of safe and healthy working conditions

The number of fatal accidents is manifestly high.

(Conclusions 2009, p.11)

- ▶ Article 12§1 – Right to social security – Existence of a social security system

The minimum monthly invalidity and old age pensions for persons who contributed less than 15 years, the minimum monthly invalidity and old age pensions for persons contributing to the Special Social Security Scheme for Agricultural Activities as well as the monthly Non-Contributory and Equivalent scheme are manifestly inadequate.

(Conclusions 2009, pp. 22-23)

- ▶ Article 13§1 – Right to social and medical assistance - Adequate assistance for anyone in need

It has not been established that the level of social assistance paid to a single person without resources is adequate.

(Conclusions 2009, p. 30)

- ▶ Article 23 – The right of the elderly to social protection

The level of minimum old-age pensions – both contributory and non-contributory – was manifestly inadequate for a large part of the elderly population during the reference period.

(Conclusions 2009, p. 39)

Thematic Group 3 “Labour rights”

- ▶ Articles 2§4 – Right to just conditions of work - Elimination of risks in dangerous or unhealthy occupations

There is no provision for reduced working hours, additional paid holidays or another form of compensation in dangerous and unhealthy occupations.

(Conclusions 2010, p. 7)

- ▶ Article 4§1 – Right to a fair remuneration – Decent remuneration

The minimum wage is manifestly unfair.

(Conclusions 2010, p. 9)

- ▶ Article 4§4 – Right to a fair remuneration – Reasonable notice of termination of employment

Fifteen days’ notice is insufficient for employees with over six months’ service.

(Conclusions 2010, p. 11)

- ▶ Article 6§3 – Right to bargain collectively – Conciliation and arbitration

It has not been established that mediation is voluntary and recourse to compulsory arbitration is only permitted within the limits of Article G of the Revised Charter.

(Conclusions 2010, p. 15)

- ▶ Article 6§4 – Right to bargain collectively – Collective action

The right to call a strike is reserved in principle only to trade unions while the forming of the latter is subject to an excessive timeframe.

(Conclusions 2010, p. 16)

Thematic Group 4 “Children, families, migrants”

- ▶ Article 7§3 – Right of children and young persons to protection – Prohibition of employment of children subject to compulsory education

The daily and weekly working time for children subject to compulsory education is excessive.

(Conclusions 2011, p. 7)

- ▶ Articles 19§8 and 19§10 – Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation, and, - Equal treatment for the self-employed
Migrant workers may be expelled if they abusively interfere with the exercise of rights of political participation that are reserved to Portuguese citizens and there are serious reasons to believe that they have committed serious criminal acts, or intend to commit such acts, particularly within the territory of the European Union, which as such go beyond what is permitted by the Charter.

(Conclusions 2011, p. 28)

- ▶ Article 31§1 - Adequate housing

The measures taken by public authorities to improve the substandard housing conditions of most Roma in Portugal are inadequate.

(Conclusions 2011, p. 36)

Please find attached below the Conclusions regarding Portugal from 2009, 2010, 2011 and 2012, as well as the country fact sheet.



Portugal2009_en.pdf Portugal2010_en.pdf Portugal2011_en.pdf Portugal2012_en.pdf Portugal_en.pdf