

## **Contribution of the Portuguese Ombudsperson**

**on the Implementation of the International Convention on the  
Elimination of All Forms of Racial Discrimination**

**in the process of examination of the combined eighteenth and nineteenth  
periodic reports submitted by Portugal (24 June 2020), under Article 9 of  
the Convention, during its 109<sup>th</sup> session.**

**March 2023**



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## A. INTRODUCTION

The Portuguese Ombudsperson is the National Human Rights Institution accredited with A-status by GANHRI and was appointed as the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In addition to its mandate in handling individual complaints, the Ombudsperson may act on her own initiative, defending and promoting citizens' rights, freedoms and guarantees as well as their legitimate interests, particularly the most vulnerable citizens on account of their age, race or ethnicity, gender or disability (Article 4 (1) of the Statute of the Portuguese Ombudsperson).

The Portuguese Ombudsperson would like to stress the importance it attaches to the collaboration with UN monitoring bodies in the field of human rights and to welcome this opportunity to share with the Committee on the Elimination of Racial Discrimination (CERD) its experience and views in domains covered by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The present contribution/report is presented in accordance with ICERD and contains information on the implementation of ICERD in Portugal, namely statistical data, references to reports or comments of international and regional human rights system, and reliable media reports on specific cases.



## B. INFORMATION ON THE IMPLEMENTATION OF SOME OF THE PROVISIONS OF THE CONVENTION

### Article 2

#### *Data collection*

The Committee recommended Portugal to provide economic and social indicators, also based on ethnicity in order to have an understanding of the enjoyment of economic, social and cultural rights by various groups living in its territory.

In 2018, the Census 2021 Working Group - «Ethnic-Racial Issues» was established in Portugal, headed by the High Commission for Migration (ACM). It aimed to produce recommendations with a view to the incorporation, in the Census 2021 questionnaire, of a formulation characterizing the ethno-racial composition of the population in Portugal.

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However, ethnic-racial issues ended up not being included into the 2021 Census, as Statistics Portugal (INE) shared the view that the collection of this information could not be carried out at the desired quality levels and because it could jeopardize the census operation as a whole.

Statistics Portugal is currently conducting a separate «Survey on Living Conditions, Origins and Trajectories of the Resident Population». This survey aims to improve knowledge about the diversity of the population living in Portugal<sup>1</sup>.

The survey has a multidimensional nature, addressing several topics to more broadly characterize the population from the point of view of origins, trajectories and living

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<sup>1</sup> European Union Agency for Fundamental Rights, [Pilot survey on living conditions, origins and trajectories of the resident population in Portugal](#).



conditions: conjugality and family, education, professional life and relationship with the labour market (in particular issues related to inactivity and unemployment), languages spoken and learned, housing conditions (including internet access and comfort conditions in housing), mobility, commuting (means of transport used), health and limitations, income and social mobility, discrimination and social and family relationships<sup>2</sup>.

Respondents are asked to indicate which of eight options best identify them ethnically. The options are «Asian», «white», «Roma», «black», «mixed origin or background», «other», but also «prefer not to answer» and «don't know». Results are expected by the end of 2023.

#### *Anti-discrimination provisions*

The Portuguese State has continued to develop measures aimed at the full implementation of the ICERD in the country.

Law no. 55/2020, of 27 August, which defines the objectives, priorities and criminal policy guidelines for the 2020-2022 biennium, in compliance with Law no. 17/2006, of 23 May, which approves the Criminal Policy Framework Law, establishes as a priority the prevention of crimes motivated by racial discrimination (Article 4 (g)).

In 2021, the Government set up the Working Group on Preventing and Combating Racism and Discrimination, with the mission of delivering a final report with contributions and recommendations for public policies on preventing and combating racism and ethno-racial discrimination (Order no. 309-A/2021, of 8 January).

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<sup>2</sup> Statistics Portugal, [Survey on Living Conditions, Origins and Trajectories of the Resident Population](#).



Also in 2021, Portugal approved its first-ever National Plan to Combat Racism and Discrimination 2021-2025—Portugal against Racism (PNCRD 2021-2025) (Resolution of the Council of Ministers no. 101/2021, of 28 July)<sup>3</sup>.

The PNCRD 2021-2025 is premised on a coordinated approach with other national strategies, plans and programs targeting specific groups and vulnerabilities, namely the National Strategy to Combat Poverty and Social Exclusion, the National Strategy for Equality and Non-Discrimination 2018-2030, the National Implementation Plan of the Global Compact for Migration, the National Roma Communities Integration Strategy 2013-2022 and the National Program around Holocaust Remembrance.

The Plan is structured around four principles (Deconstruction of stereotype; Coordination, integrated governance and territorialization; Integrated intervention in the fight against inequalities; and Intersectionality) and it is broken down into 10 areas of public intervention (Governance, information and knowledge for a non-discriminatory society; Education and Culture; Higher Education; Labor and Employment; Housing; Health and Social Welfare; Justice, Security and Rights; Participation and Representation; Sport; Media and Digital).

One of the measures established in the PNCRD 2021-2025 is to assess a potential amendment to the legislation concerning the crime of discrimination and incitement to hatred and violence (Article 240 Penal Code) in order to bring it into line with international standards (Measure 7.3).

The Office of the Ombudsperson was heard in the context of the drafting of the PNCRD 2021-2025, having participated in a meeting of the Working Group that preceded the approval of the final report and having presented its contribution.

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<sup>3</sup> [National Plan to Combat Racism and Discrimination 2021-2025—Portugal against racism \(PNCRD 2021-2025\)](#).





The Office of the Ombudsperson raised awareness to the importance of focusing on the effective *promotion* of human rights and *prevention* of human rights' violations (and not just repression). Additionally, it singled out highly sensitive contexts where the effects of discriminatory practices can be particularly dramatic. This is the case of law enforcement but also in other instances where people find themselves in a situation of vulnerability (access to health care, social security benefits, social housing, etc.).

In March 2023, the Portuguese Government established the Observatory on Hate Speech, Racism and Xenophobia, with a view to produce, collect, process and disseminate information and knowledge on racism, xenophobia and discrimination in the various areas covered by the PNCRD 2021-2025. The Observatory will work closely with the Commission for Equality and Against Racial Discrimination (CICDR), which is getting ready to become an autonomous body, separate from the High Commission for Migration (ACM).

#### Article 4

##### *Administrative complaints mechanisms*

The High Commission for Migration (ACM), through its Commission for Equality and Against Racial Discrimination (CICDR) is responsible, inter alia, for receiving complaints and open the respective administrative offence proceedings<sup>4</sup>. The CICDR also has the responsibility to coordinate interventions in the areas of prevention and repression of discriminatory practices, and to manage mediation procedures.

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<sup>4</sup> Article 8 (2) (i) of Law no. 93/2017, of 23 August, which establishes the legal framework for the prevention, prohibition and fight against discrimination on the basis of racial and ethnic origin, color, nationality, ancestry and territory of origin.



During 2021, the Commission reported having received 408 complaints<sup>5</sup>. The Commission notes that these numbers do not represent the real universe of ethnic and racial discrimination in the national context, considering that not all situations are effectively reported, either to CICDR or to other entities.

The most frequent factor or protected characteristic for the alleged discrimination was nationality (39.2% of the complaints). Skin color was invoked in 17.2% of the complaints received and Racial and Ethnic Origin in 16.9%.

In 2021, the largest group of people identified as victims included «Brazilians or those of Brazilian nationality»<sup>6</sup>, and it was reported in 26.7% of complaints. With less expressive values, the use of discriminatory expressions referring to «Roma ethnicity» (16.4%) and «skin color» (15.9%) come next, and it should be noted that in the latter category all references to «black» are included, regardless if they refer only this expression or associate it with skin color or racial and ethnic origin. The contexts of the alleged discrimination referred to in the complaints were essentially: Commerce (15%); Internet/social media (14.7%); Laboral context (7.1%); Traditional Media (6.6%); Education (5.4%) Housing (2.9%).

Complaints filed against private sector accounted for 34.6% of the total. A substantial part of the complaints reported to the CICDR relate to situations allegedly occurring among individuals (31.9%). Complaints against the public sector had less expression

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<sup>5</sup> Commission for Equality and Against Racial Discrimination (CICDR), [2021 Annual Report – Equality and Non-Discrimination on the grounds of racial and ethical origin, nationality, ancestry and territory of origin](#), p. 52.

<sup>6</sup> The Brazilian nationality is the main foreign community living in Portugal, representing 29.3% of the total. See Portuguese Immigration and Borders Service (SEF), [2021 Immigration, Borders and Asylum Report](#), p. 31.



(21.6%). 17.9% of the complaints gave rise to administrative offense proceedings and 26.7% were referred to the Public Prosecutor's Office for criminal prosecution.

Between 2018 and 2020, there was a progressive increase in the number of complaints received by the CICDR: 346 in 2018, 436 in 2019, 655 in 2020. In 2022, the number of complaints received by the CICDR was 491, more than in 2021. In the last two years the complaints rose above pre-pandemic levels.

According to the explanation given by the CICDR<sup>7</sup>, in 2020 there was an exponential increase in complaints that did not necessarily result from an increase in situations of discrimination, but rather from atypical phenomena widely mediated and a reinforcement of the use of digital media (in the pandemic context) which resulted in some situations having been the subject of complaints by more than one complainant, inflating the total number of complaints<sup>8</sup>.

The number of complaints filed to the Ombudsperson on the grounds of race or ethnic discrimination has been low. In 2021, the Ombudsperson received a total of 14 complaints specifically addressing racial or ethnic discrimination, in which racial and ethnic origin was alleged to be a factor of discrimination in 9 and nationality in 5. This number decreased in 2022: only 4 complaints on these issues were received.

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<sup>7</sup> CICDR, *supra* footnote 5, p. 53.

<sup>8</sup> In 2020, five main mediated incidents significantly contributed to raise awareness to the issues of racism in the public debate. See Centre for Social Studies, [Franet National contribution to the Fundamental Rights Report 2021 – Portugal](#), p. 43.



*Hate speech and behavior*

The (last) annual report published by the CICDR states that, in 2020, 132 crimes of discrimination and incitement to hatred and violence were registered by police authorities. In 2021 (preliminary results), the number of crimes of discrimination and incitement to hatred and violence has increased up to 150<sup>9</sup>. It should be noted that this crime includes discrimination based on other factors beyond racial or ethnic origin, such as color, nationality, ancestry, religion, gender, sexual orientation, gender identity or physical or mental disability. Furthermore, the registration of information carried out by police authorities is based on the elements available in the initial stage of criminal proceedings and is done in accordance with the types of crimes provided for in the Penal Code, with no isolated record of the underlying motivation.

In November 2022, the Minister of Internal Administration determined the opening of a disciplinary inquiry to investigate the practice of alleged hate crimes by members of law enforcement officials on social networks.

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This inquiry was based on news published in the media stating that almost 600 members from the National Republican Guard (GNR) and Public Security Police (PSP) operatives used social networks to disseminate racism, discriminatory and hateful content, among others<sup>10</sup>.

The Public Prosecutor's Office also announced the opening of an inquiry, to investigate the practice of hate crimes. Both investigations are still running.

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<sup>9</sup> CICDR, *supra* footnote 5, p. 126.

<sup>10</sup> Público «[Almost 600 members of law enforcement officials use social media to break the law](#)», 16 November 2022.



In 2021, the Inspectorate General of Home Affairs (IGAI), along with the existing law enforcement bodies adopted a plan for preventing manifestations of discrimination in the law enforcement bodies. One of its objectives consists of setting good practices in the use of social networks by law enforcement officials related to the prevention of expressions of discrimination (e.g. hate speech).

## Article 5

### *Use of force by law enforcement officials*

The above-mentioned plan for preventing manifestations of discrimination in the law enforcement bodies is a comprehensive document covering many different subjects (recruitment; human rights training; interaction with citizens and other colleagues, also on social networks; promoting the image of the police forces and communication; preventive mechanisms and monitoring and follow-up)<sup>11</sup>. It provides an overview of some achievements and also of the main challenges ahead.

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One of the most important steps already taken by Public Security Police (PSP) is the adoption of Resolution no. 02/INSP/2020, of June 23 (denunciation and participation of discriminatory practices based on racial and ethnic origin, color, nationality, ancestry and territory of origin, by police officers, to the police inspection services), which reinforced the responsibility for communicating facts that could be classified as discriminatory practices, in order to collect information and apply sanctions, within disciplinary action<sup>12</sup>.

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<sup>11</sup> Inspectorate General of Home Affairs (IGAI) et al., [Plan for preventing manifestations of discrimination in the law enforcement bodies](#), 2021.

<sup>12</sup> Ibid., p. 14.



Within the scope of the Public Security Police Strategic Plan approved for the three-year period 2023-25, one of the ethical pillars set out for the coming years is the rejection of any form of extremism and discrimination. In this context, two major objectives are established: combating all forms of extremism, radicalism and discrimination and holding accountable police officers who, intentionally or seriously, violate their legal obligations and the hierarchically issued instructions, namely not referring to the use of public force and statements made on social networks (eg. hate speech)<sup>13</sup>.

In 2017, improved dialogue and cooperation between police forces and communities was referred as a transversal objective shared by all Portuguese law enforcement bodies. In order to develop a culture of proximity the latter have invested in community policing and in carrying out awareness campaigns for students, teachers, parents, guardians, and citizens in general<sup>14</sup>.

Indeed, Integrated Model of Proximity Policing is a very useful instrument for bringing together security forces and various communities, particularly those belonging to ethnic minorities. The aim is to draw attention to fundamental security aspects, where behaviours of racial discrimination are pointed out to promote awareness of safe behaviours. Yet, despite appearing as one of the reference documents of the plan for preventing manifestations of discrimination in the law enforcement bodies, at the moment, there is no information available on the number of staff on the ground in this context and it is still unknown whether the project is still ongoing and maintains its initial objectives.

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<sup>13</sup> Public Security Police (PSP), [Public Security Police Strategic Plan 2023-2025](#), p. 7.

<sup>14</sup> Concluding observations on the combined fifteenth to seventeenth periodic reports of Portugal - Addendum Information received from Portugal on follow-up to the concluding observations (CERD/C/PRT/CO/15-17/Add. 1), para. 1 and 2.



The Inspectorate General of Home Affairs (IGAI) is responsible for independent inquiries that should be carried out into widespread allegations of police brutality with a view to identifying the victims and affording them redress. IGAI entitles disciplinary powers, which emanate from the law and are external to the law enforcement bodies to which officers belongs. There are no hierarchical ties between IGAI and the law enforcement officers held accountable and disciplinary power exercised by IGAI does not abrogate disciplinary powers from the hierarchical chain of each of the law enforcement bodies.

Nevertheless, as public authorities recognize, IGAI's investigations are carried out by a small number of inspectors (as of March 2023, eleven inspectors). The information provided in the previous report, according to which «[...] the criteria for selecting cases is narrower today than it has been in the past» is just as accurate as it is alarming<sup>15</sup>. Overall, there is a staffing shortage. In its 2021 activity report, IGAI itself states that «of the 55 posts foreseen in the IGAI staff map for 2021, only 36 posts are filled, which translates to a filling deficit of 19 posts compared to the planned»<sup>16</sup>.

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Due to a lack of human resources, IGAI ends up opening, for the most part, administrative procedures, called «indirect» or «second degree control», which aim to monitor the disciplinary processes initiated by security forces.

Public authorities stated that IGAI's investigations are *selective, and it focuses on and directly investigates the most serious cases, such as police ill-treatment, torture, bodily harm and death of citizens*. But, in 2019, on bodily harm facts noticed (ill-treatment, assault and battery), 289 administrative proceedings were opened and only 8 disciplinary proceedings were triggered by IGAI. Concerning Breach of statutory duties (incorrect behaviors or

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<sup>15</sup> Combined eighteenth and nineteenth periodic reports of Portugal (CERD/C/PRT/18-19), para. 111.

<sup>16</sup> Inspectorate General of Home Affairs (IGAI), [2021 Activity Report](#), p. 47.



proceedings, failure or refusal of service or to supply information, illegalities, irregularities, blunders, omissions), 275 administrative proceedings were opened and IGAI only triggered 14 disciplinary proceedings.

In the years 2020 and 2021, IGAI refers to having opened 7 and 20 disciplinary proceedings, respectively, due to alleged offenses to bodily harm facts<sup>17</sup>.

On the other hand, this indirect control may jeopardize the principle that IGAI must be made aware of any serious situation of violation of human rights. In several cases monitored by the Ombudsperson, we found out that IGAI was unaware of the reported situation, only taking steps after receiving our notice.

All this seems to demonstrate an insufficient exercise of the disciplinary prerogatives attributed to IGAI by law.

Now, on a positive note, and also in regard to prevention, the 2022 annual monitoring report of the plan for preventing manifestations of discrimination in the law enforcement bodies, published by IGAI, refers that police forces reinforced the publication of content on social networks and the official website, which include military personnel belonging to minorities, based on ethnic, racial and social origin. According to that report, in 2023, IGAI will provide training to senior officials of the law enforcement bodies, specifically addressing discrimination. These trainings will take place across the country at district headquarters who «will take on the commitment to raise awareness to their subordinates for the learning received and to dedicate particular attention to any type of expression of discrimination that arises under their command»<sup>18</sup>.

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<sup>17</sup> Ibid., p. 30.

<sup>18</sup> Inspectorate General of Home Affairs (IGAI), [2022 Annual monitoring report of the plan for preventing manifestations of discrimination in the police force](#), pp. 3-4.





The Working Group of Experts on People of African Descent recommends that «An independent inquiry should be carried out into widespread allegations of police brutality with a view to identifying the victims and affording them redress. The Government should constitute an independent oversight mechanism to address allegations of police misconduct»<sup>19</sup>.

While Portugal is not planning to create an independent oversight body as recommended by the Working Group, as previously mentioned the relevant authorities came up with a comprehensive plan for preventing manifestations of discrimination in the law enforcement bodies, within the existing internal oversight structure (IGAI and internal inspections of each law enforcement body), which is now being enforced.

Additional reinforcement of means and resources, namely the recruitment of highly qualified inspectors, would perhaps be a less controversial albeit still promising way to solve the existing problems concerning police misconduct and its follow-up by the disciplinary bodies of the law enforcement bodies and by IGAI.

The Ombudsperson receives a very limited number of complaints concerning allegations of police misconduct. In 2023, a complaint was received regarding police violence against a black citizen in the context of a police raid. A complaint was made to the Public Prosecutor's Office and also to IGAI. The Ombudsperson is following the case.

The Ombudsperson is also paying attention to the monitoring of the implementation of the plan for preventing manifestations of discrimination in the law enforcement

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<sup>19</sup> Visit to Portugal, Report of the Working Group of Experts on People of African Descent (A/HRC/51/54/Add.2), para. 77.



bodies. The last annual report, published in 2023, presents the results regarding the implementation of the measures foreseen in the plan for 2022<sup>20</sup>.

*Discrimination against Roma*

The National Strategy for the Integration of Roma Communities was updated in 2018 by Council of Ministers Resolution no. 154/2018 of 29 November, which extended the duration of the Strategy until 2022. The priorities of the Strategy are: i) The reinforcement of schooling and professional integration; ii) Improvement of housing conditions for Roma people in situations of social exclusion; iii) Recognition and reinforcement of intercultural mediation intervention, improvement of information and knowledge and fighting discrimination against Roma people; iv) Reinforce the relevance of the theme of Roma people integration in the political and public agenda, as well as the concertation of different sectors in the promotion of this same integration, highlighting, in particular, the central role of the national strategy for the integration of Roma communities in local policies and integration of the most vulnerable Roma populations.

Statistical data on the schooling rate of Roma students show an increase at all levels of education, particularly in the 3<sup>rd</sup> cycle (which covers students who are between the age of 13 and 15 attending 7<sup>th</sup> to 9<sup>th</sup> grades), increasing by 4,7% between the school years 2016/2017 and 2018/2019. Furthermore, school performance rates for those years also indicate improvement in this cycle, with an increase of 24% and 23% respectively<sup>21</sup>.

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<sup>20</sup> *Supra*, footnote 18.

<sup>21</sup> [ECRI Conclusions on the Implementations of the Recommendations in Respect to Portugal Subject to Interim Follow-up](#), p. 5.



Despite these positive steps, according to the latest available data, the overall enrollment rate of Roma pupils in 3<sup>rd</sup> cycle and secondary education level (twelve years of compulsory education) is still low and remains at 18,6% and 2,6% respectively.

Housing remains one of the greatest difficulties for many families. According to a survey launched by the European Union Agency for Fundamental Rights (FRA) in eight EU Member States, in 2021, 66% of Roma households in 2021 experience housing deprivation<sup>22</sup> in Portugal (comparing to 70% in 2016). Housing deprivation in general population in Portugal was 29%<sup>23</sup>.

In 2021, the European Committee of Social Rights noted that, although the authorities further developed and adjusted their policies to improve the living conditions of Roma communities, many persons continue to be subject to direct and indirect discrimination and continue to live on the margins of society, sometimes in very poor housing conditions<sup>24</sup>.

The Ombudsperson continues to receive —although in a low number— complaints regarding the precarious housing situation of people of Roma ethnicity.

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<sup>22</sup> Four dimensions are used to determine housing deprivation in 2021: accommodation is too dark, has problems with humidity, has no shower/bathroom inside the dwelling or has no (indoor) toilet. Housing deprivation requires at least one of these dimensions.

<sup>23</sup> European Union Agency for Fundamental Rights, [Roma in 10 European Countries – Main Results](#), Roma Survey 2021, p. 52.

<sup>24</sup> European Committee of Social Rights, [Follow-up to Decisions on the Merits of Collective Complaints, Findings 2021](#), p. 146.



*Discrimination against people of African descent*

In 2019, FRA presented a comparative Report on the experiences of African descent in EU Member States<sup>25</sup>. Concerning overall prevalence of discrimination based on ‘ethnic or migrant background’ in 12 months and 5 years before the survey, by country, respondents of African descent living in Portugal answered affirmatively in 17% and 33% of cases, respectively. Few respondents (9%) who felt racially discriminated against reported or made a complaint about the most recent incident.

Regarding severely deprived housing conditions of respondents of African descent, compared with the general population, by country, the measured discrepancy founded was 21% (African descent) to 5% (general population).

The Ombudsperson met with the Working Group of Experts on People of African Descent, during its visit to Portugal, in 2021. The session was intended to share the work and experience of the Ombudsperson in regard to the promotion and protection of the rights of persons of African descent in Portugal and it was an opportunity to discuss questions raised by the experts.

One of the recommendations addressed by the Working Group to Portugal was that «the amendment of the Nationality Act should be complemented by institutional adjustment in the Immigration and Border Service to expedite documentation and a reduction in the backlog and management of the influx of cases as a result of the legal reforms»<sup>26</sup>.

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<sup>25</sup> European Union Agency for Fundamental Rights, [Being Black in the EU, Second European Union Minorities and Discrimination Survey](#).

<sup>26</sup> *Supra*, footnote 19, para. 72.



Currently, Portugal is granting an automatic one-year residence permit to migrants from countries of the Community of Portuguese Speaking Countries (CPLP).

As a result, from 13/3/23 to 21/3/2023, the Border and Immigration Service received 85 770 applications for residence permit from citizens from states belonging to the Community of Portuguese Speaking Countries<sup>27</sup>.

Another recommendation was a clear and effective distinction between migration policy and policies against racism. To this end, the Commission for Equality and against Racial Discrimination should be separated from the High Commission for Migration and elevated to the status of a national equality body, with independence and financial autonomy<sup>28</sup>.

One of the envisaged measures of the National Plan to Combat Racism and Discrimination 2021-2025—Portugal is precisely to separate and strengthen the Commission for Equality and Against Racial Discrimination in the prevention and fight against all forms of discrimination in its various areas of competence (Measures 7.2).

The Ombudsperson is a Member of the Network of Ombudspersons and National Human Rights Institutions of the Community of Portuguese-Speaking Countries, currently chaired by the Ombudsperson of Angola.

The Ombudsperson and her staff are invited to present communications in human rights seminars, conferences and classes, on the theme of fighting racism. This was the case of a conference organized by the Council of Europe under the theme «On

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<sup>27</sup> <https://www.portugal.gov.pt/pt/gc23/comunicacao/comunicado?i=mais-de-85-700-pedidos-de-autorizacao-de-residencia-ja-recebidos-no-novo-portal-do-sef->

<sup>28</sup> *Supra*, footnote 19, para. 74.



the Road to Effective Equality: New responses to racism and intolerance needed? » that took place, in 2019, and a seminar organized by the European Commission against Racism and Intolerance that took place in 2018.

*Situation of migrants*

In 2021, there were 698 887 foreign citizens holding a residence permit<sup>29</sup> (6.8% of the Portuguese population). Preliminary statistical data from the Portuguese Immigration and Borders Service (SEF) shows that, in 2022, for the seventh consecutive year, there was an increase in the resident foreign population in Portugal, totaling 757 252 foreign citizens holding a residence permit.

The Portuguese Ombudsperson carries out initiatives and intervenes on behalf of migrants in Portugal, namely in order to protect and promote their rights and to avoid situations of discrimination, ensuring the full implementation of the constitutional principle of equality and non-discrimination.

The Ombudsperson and the High Commissioner for Migration signed a Protocol in order to improve assistance to migrants, comprising the dissemination of relevant information, support to prospective complainants, supply of documentation and referral to Legal Support Offices.

Complaints received by the Ombudsperson about the rights of foreigners are mostly associated with the processing/delays of residence permits' procedures.

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<sup>29</sup> Migration Observatory, [2022 Annual Statistical Report](#), p.43.



In the context of the pandemic, exceptional measures<sup>30</sup> were adopted by the Portuguese State according to which the permanence in national territory of foreign citizens with requests pending at the Portuguese Immigration and Borders Service (SEF) was considered regular. As a result, access to various rights was guaranteed, namely to the National Health Service, to welfare benefits, to the signing of rental and employment contracts, to the opening of bank accounts and to the contracting of essential public services.

Still, in this context, the Ombudsperson received several complaints concerning foreigners who have faced obstacles in accessing public health services and social benefits.

According to data released by the Migration Observatory, in 2021 the rate of foreigners living in overcrowded accommodation in Portugal was 20.3%, one percentage point higher than in the previous year. In Lisbon, the lack of conditions in which many migrants live, gained prominence after the occurrence of fires in dwellings, which caused the death of residents.

In its capacity as NPM, the Ombudsperson visits temporary installation centers of the international airports. The NPM has an advisory body that includes a representative of the Jesuit Refugee Service (JRS), an NGO committed to accompany, serve, and advocate on behalf of refugees and other forcibly displaced persons, and a representative from the Portuguese Association for Victim Support (APAV) which has a Migrant Victim Support and Discrimination Unit.

The State took over the compensation for the death of a Ukrainian citizen for his widow and two children. This incident occurred in a space equivalent to a temporary

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<sup>30</sup> Order no. 363-B/2020, of 27 March. The effects of this diploma were extended until 31/12/2023 by Decree-Law no. 90/2022, of 30th December (Article 16).



detention facility at the Lisbon Airport, on March 12 2020, and it involved inspectors from the Portuguese Immigration and Borders Service (SEF). According to the prosecution, the Ukrainian citizen who wanted to enter Portugal and was barred by SEF (for not having a work visa) died in the detention facility of the Lisbon Airport in the hand of SEF inspectors two days after he landed in Portugal. His death was only made public 17 days later (when the suspects were arrested). The Public Prosecutor's Office charged the SEF inspectors of first-degree murder, obstruction to justice and other crimes.

Council of Ministers Resolution no. 107/2020 of 14 December acknowledged the state's liability for the death of a citizen in its custody and in public facilities and entrusted the Ombudsperson with the task of proposing an adequate compensation. The Ombudsperson proposed an immediate compensation to the family in the amount of 712 950 euros, followed by additional installments to cover education expenses of the victim's two children.

The Ombudsperson, addressing the national Parliament, regretted that the Government had ignored her warnings about detention conditions in those facilities<sup>31</sup>.

In the aftermath of this tragic event, the Government approved the restructuring of the Portuguese border control system<sup>32</sup>, reallocating police powers from the Portuguese Immigration and Borders Service (SEF) to the National Republican Guard, the Public Security Police and the Judiciary Police and administrative powers to the Portuguese Agency for Migrations and Asylum and the Institute of Registration and Notary Affairs. The reform is currently being implemented.

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<sup>31</sup> For more information: <https://www.provedor-jus.pt/en/compensation-process-for-the-family-of-ihor-homeniuk/>.

<sup>32</sup> Law no. 73/2021, of 12 November.





Also, following the death of the Ukrainian citizen, the space equivalent to a temporary detention facility at the Lisbon Airport was renovated and its overall condition significantly improved, which resulted in the reduction of its capacity. Nevertheless, some of the changes announced in 2020 by the Minister of Internal Affairs were not yet implemented. The NPM, in its visit of January 31 2023 to the Lisbon Airport, found out that the rooms were still missing emergency buttons, no cultural mediator had been hired, the showers were still lacking privacy and video surveillance had not been installed in all interview rooms in the border zone.

Regarding the treatment of migrants, both the Ombudsperson and the NPM have been expressing their concern over the delay in creating alternatives to the current places of detention, especially in the Lisbon area. In Portugal, the only Detention Center for Migrants is located in Oporto and the facilities at the Lisbon, Faro and Oporto airports are considered “spaces equivalent to a temporary detention facility”, conceived for the administrative detention of foreign citizens up to 48 hours. With the return of normal air traffic after the pandemic, the existing detention facilities are often at the limit of their capacity.