



ACFC/SR(2004)002

**REPORT SUBMITTED BY PORTUGAL
PURSUANT TO ARTICLE 25, PARAGRAPH 1
OF THE FRAMEWORK CONVENTION FOR THE PROTECTION
OF NATIONAL MINORITIES**

(received on 23 December 2004)

Section 1

Introduction: historical and political background

The Framework Convention for the Protection of National Minorities (hereafter “Framework Convention”), which came into force on 1 February 1998, was drawn up in pursuance of a decision taken at the first Summit of Heads of State and Government of the Council of Europe in Vienna in October 1993. At the time, in the light of the recent far-reaching political, economic and social changes in central and east European countries, the representatives of the Council of Europe member States had decided to introduce a convention-type legal instrument geared to protecting national minorities settled in central and eastern Europe because of the “historical upheavals”, thus helping to secure peace and stability continent-wide. Portugal shares the concern to respect the rights, fundamental safeguards and freedoms of individuals belonging to such national minorities, as well as the general aims of peace and security in Europe. This is why, even though Portugal is geographically quite remote from the countries for which the Convention is intended and has a very different historical, social, cultural and legal background, the Portuguese Republic has, in an act of political solidarity, signed and ratified the Framework Convention, which came into force in respect of Portugal on 1 September 2002.

General information on “national minority” protection policy in the Contracting State

The Portuguese Republic has no policy on “national minorities” because the concept of such minorities is unknown in its legal system. Of course, public international law, in its current state, embraces no universally recognised definition of the “nation” concept or of its corollary, the “national minority” concept; nor does the Framework Convention itself attempt any such definition. This may be explained by the fact that the States Parties to the Framework Convention use widely diverging interpretations of these concepts, in line with their widely diverging political and legal traditions. Portugal, for its part, has historically adopted a civic conception of the term “nation”, thus precluding recognition of “national minorities” within its territory. The Portuguese constitutional system draws no distinction between nationality and citizenship: the “nation” consists of the community of citizens, and the Constitution provides that “All persons are Portuguese citizens who are regarded as such by law or under international convention”. The Nationality Act lays down no ethnic, religious or language criteria for attribution of Portuguese nationality. The centuries-old application of the *jus soli* principle to the attribution of nationality has helped, and is still helping, to enrich culturally the Portuguese “nation”, which is thus defined as a set of citizens of multiple origins centred around a unified political community implementing the constitutional principles of equality and non-discrimination on the grounds of descent, place of birth, ethnic origin, language or religion.

The fact of not recognising the existence of politically significant “national minorities” does not preclude the existence of *de facto* social minorities, which are defined on the basis of a wide variety of criteria, including ethnic, religious or linguistic aspects, or different lifestyles, etc. The Constitution of the Portuguese Republic nowhere refers to the existence of political minorities (“national minorities”), or even social ones; however, several laws do refer to *de facto* social minorities such as ethnic ones (there is a High Commissioner responsible for promoting the integration of immigrants and ethnic minorities into the national community) or religious minorities (given the dominant status, in social rather than legal terms, of the Roman Catholic Church, the law sets out certain safeguards for minority religious denominations, for instance in terms of access to the media). Moreover, since civil society is organised independently on the basis of exercise of the fundamental right of association, all kinds of minority groups enjoy freedom of expression, within the limits established by law. Nevertheless, the Portuguese constitutional system does not divide up the body politic in terms of the citizens’ various origins and options, which are expressed in social terms and some of which enjoy legal recognition, but which are not deemed politically decisive. One example of the consequences of this principle is the explicit constitutional prohibition of political parties based on religion – which is manifestly in keeping with the exercise of religious freedom, a principle which is obviously respected in Portugal. As the Explanatory Report to the Framework Convention so aptly puts it, the mere existence of objective differences which create *de facto* social minorities does not necessarily lead to the creation of “national minorities” – and the Portuguese authorities consider that such *de facto* minorities do not fall within the scope of the Framework Convention.

Status of public international law in the Contracting State’s legal system

In connection with relations between domestic law and the standards set out in international treaties or agreements, the current doctrine in Portugal is that the latter are “supra-legal” in nature in that they prevail over domestic law, but also “infra-constitutional” in that they can under no circumstances contradict any provision of the Constitution of the Republic.

Information on the federal or unitary nature of the State Party

The Constitution defines the Portuguese Republic as a unitary State, although this definition must be taken in conjunction with respect for the principles of local and regional self-government. Recognition of such self-government led the Constitution to provide for the Autonomous Regions of the Azores and Madeira, which have broad powers and responsibilities and their own specific legislative and executive bodies. It must, however, be said that the main reason for the setting up of these Autonomous Regions was their geographical distance from the rest of the territory rather than any (actually non-existent) difference between their populations and the rest of the national population.

Brief overview of the Contracting State's history

Historians disagree on the date of Portugal's independence: some put forward the year 1139 (when the first Portuguese monarch adopted the title of "King of Portugal"); others would suggest 1143 (when the title was recognised by the neighbouring kingdom and the Holy See). At any event, Portugal is one of the oldest European States, with some nine centuries of uninterrupted existence (including a period of sixty years, from 1580 to 1640, of royal union with Spain). The Portuguese borders were basically traced in the 13th century, and are probably the oldest land borders in Europe. The Portuguese Republic was proclaimed in 1910 (making it the fourth oldest republic in Europe). The current Constitution dates back to 1976, having been drafted and approved after the 25 April 1974 Revolution which put an end to an authoritarian regime that had ruled for 48 years. A founder member of the Atlantic Alliance, Portugal joined the Council of Europe in 1976 and the European Union in 1986. Portuguese maritime expansion began in 1415, taking in territories in Africa, South America, Asia and Oceania, and as a result a whole series of countries adopted Portuguese as their official language. These countries currently make up the Community of Portuguese-Speaking Countries (CPLP), with which Portugal maintains very close relations based on friendship and co-operation. The maritime expansion also originated a community of over 200 million Portuguese-speakers throughout the five continents, which makes the Portuguese language the third most widely spoken European language worldwide.

Information on the Contracting State's demographic situation

Portugal currently has a population of approximately 10 500 000 persons, giving a population density of 114 inhabitants/km². The ageing population and decreasing birth rates noted in the latest population census (2001) mean that the slight increase in population highlighted is exclusively due to increased immigration (mainly from African countries whose official language is Portuguese, Brazil and the east European countries, especially Moldova and Ukraine). These statistics confirm the structural change over recent decades, turning Portugal from a traditional emigration country into one that attracts immigrants. Despite its highly heterogeneous ethnic origins, which stem from the multiple migration flows into Portugal over the centuries, the Portuguese population shows enormous cultural homogeneity, particularly in terms of language. In this connection, apart from Portuguese and the languages used by the more recent immigrants, the country's only dialect is "Mirandês", which is spoken by several hundred persons in the Miranda do Douro region in the north-east of the country.

Information on the Contracting State's economic situation

Portugal had a gross domestic product of approximately € 130 000 million in 2003, corresponding to some € 12 500 per head of population. In terms of purchasing power parity, Portuguese GDP corresponds to almost 75% of the European Union average, and should grow by an estimated 1% in 2004. The rate of inflation in Portugal is currently 2.5%, and some 6.5% of the working population are unemployed. Where other macro-

economic indicators are concerned, the budget deficit should total 2.9% and the public debt almost 60% of GDP in 2004.

Section 2

Article 1 – Portugal has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on Action against Discrimination in the Educational Field.

Article 2 – There are no Spanish “national minorities” in Portugal or Portuguese “national minorities” in Spain. The excellent relations based on good neighbourliness, friendship and co-operation between Portugal and Spain are the result of the respect by both countries for human rights and the principles of the rule of law and democracy, and their joint endeavours in favour of European integration.

Article 3 – As mentioned above, the concept of “national minorities” does not appear in the Portuguese legal system. Rather than dividing up the body politic by attributing any political value to *de facto* social differences, the current Constitution of the Portuguese Republic and the legal and political tradition leading up to its adoption have concentrated on ensuring that all the country’s inhabitants have access to citizenship, whatever their ethnic, linguistic, religious or other origins. In order to attain this objective, which is based on an open, universalistic conception of citizenship and on a civic rather than an exclusively ethnic conception of the Portuguese “nation”, the various Portuguese laws on nationality have traditionally adopted the *jus soli* principle, as also mentioned above. The law currently provides for automatic granting of nationality to all so-called “second-generation” immigrants provided that the parents in question have been lawfully resident in Portugal for over ten years (six years in the case of nationals of Portuguese-speaking countries). The same periods are applicable to the voluntary naturalisation of so-called “first-generation” immigrants (also applying the same legal presumption to the effect that Portuguese-speaking immigrants tend to integrate more quickly into the national community). It should be pointed out that Portuguese law does not expressly prohibit “dual nationality”: the authorities merely follow the equality principle and apply domestic law equally to Portuguese citizens who hold a second nationality. It should also be noted that on the basis of the same humanistic, universalistic principles that traditionally underpin Portuguese nationality legislation, the law stipulates that no stateless person can be born in Portuguese territory, which is why all new-born babies in Portugal who have no other nationality automatically acquire Portuguese nationality.

Article 4 – The Constitution of the Portuguese Republic enshrines the equality principle, which states that all citizens enjoy the same social dignity and are equal before the law, and that no one may secure preferential treatment or advantages, or be discriminated

against, deprived of a right or exempted from an obligation on the grounds of descent, gender, race, territory of origin, religion, political or ideological convictions, education, economic situation or social status.

Article 5 – Notwithstanding the fact that there are no national minorities in Portuguese territory, the rights, freedoms and fundamental guarantees set out in the Constitution enable all persons – nationals and foreign nationals – to exercise, in Portuguese territory, the cultural, linguistic and religious practices mentioned in this Article, within the limits established by law.

Article 6 – Under the terms of its Constitution, Portugal undertakes to pursue a foreign policy based on friendly relations and co-operation with all other States. As a result of this principle, the successive governments of the Republic have prioritised dialogue with other peoples and cultures (reflected in particular in the support which has been afforded to the Council of Europe’s North-South Centre ever since its inception). It must, however, be noted that intercultural dialogue is both a foreign and domestic policy objective, and where domestic policy is concerned, such dialogue is an important dimension of the policy geared to integrating immigrants into the national community. In 1991, for example, a Programme entitled “Education for All” was initiated, primarily in order to promote success at school as a condition for acceding to full citizenship, for children belonging to ethnic and linguistic minorities, but also with an eye to promoting the values of tolerance, dialogue and solidarity among different ethnic and cultural groups. It should be noted that acts of racial or religious discrimination are punishable under Portuguese law with prison sentences of up to 8 years. The prohibition of discrimination covers the setting up of racist or xenophobic organisations, incitement to racial or religious hatred or violence and slander or insults against individuals or group on the grounds of their ethnic or religious affiliation (including denial of crimes against humanity).

Articles 7 to 10 – The freedoms of assembly, demonstration, association, conscience, religion and worship, expression and information, and cultural creation, and the right to learn and teach mentioned in these provisions of the Framework Convention are secured under the Portuguese Constitution. By virtue of the constitutional principle of universality, all Portuguese and foreign nationals resident in Portugal enjoy these rights and freedoms, within the limits established by law. The Constitution and the law also guarantee media pluralism, which must reflect the country’s ethnic, cultural and religious diversity. Even though Portuguese is the country’s official languages and is *de facto* the only language used by the administration, Portugal (in addition to free access to the foreign media) has a number of foreign-language media (including newspapers and radio broadcasts in Russian, used by what is probably the largest non-Portuguese-speaking immigrant group). It should be noted that the media are not subject to any form of prior scrutiny, and this in fact applies to all cultural works produced nationwide.

Article 11 – In accordance with current legislation, the names of Portuguese citizens must be written using the Roman alphabet, must not contain obscene expressions or terms liable to injure personal dignity, and must contain a minimum of two and a maximum of

six forenames and surnames in combination, corresponding to two forenames, two surnames from the mother's side and two surnames from the father's side. In accordance with the constitutional principle of gender equality, the inclusion of the names of either of the parents and the order in which they appear is a matter to be agreed by both (similarly, the law prohibits any discrimination between children born within or out of wedlock). Under the same equality principle, each of the spouses can adopt one or two of the other spouse's names, under the same conditions.

Articles 12, 13, 14, 15, 17, 18, 19 and 22 – Even though Portugal has no “national minorities”, these articles refer to general matters likely to be the subject of observations by the Portuguese authorities (freedom to learn and teach, freedom of expression and information, constitutional principles of equality and universality, external relation and rights, freedoms and fundamental guarantees); nevertheless, the content of any such observations already appears in the foregoing observations, to which we would refer the reader.

Article 16, 20, 21 and 30 – Since there are no “national minorities” in Portugal and in view of the specific content of these articles of the Framework Convention, the Portuguese authorities consider that these articles call for no particular comment.