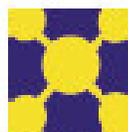




The Organisation of Asylum and Immigration Policies in Portugal



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2008



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Overview

This report begins by providing a brief outline of the prevailing **political scenario** in Portugal. Based on the Constitution of the Portuguese Republic, it examines the underlying institutional architecture governing the separation of powers, the diverse organs of sovereignty and their respective competencies, as stipulated in the fundamental text. It is especially important to understand the legislative function of the national Parliament and the government's legislative and executive powers while studying migratory phenomena and associated regulatory measures. It is the government that is responsible for defining and implementing immigration and asylum policies as well as policies to integrate foreign nationals into society. The Ministry for Internal Administration (MAI)¹ is specifically responsible for implementing policies pertaining to immigration and asylum. In this context, the **Aliens and Border Service** (SEF)², an administrative unit of the MAI, actually implements these policies and applies the legislation concerning matters of immigration and asylum. On the other hand, two other security forces – the **National Republican Guard** (GNR)³ and the **Public Security Police** (PSP)⁴ – also assist in the area of verifying immigrants present in the national territory of Portugal. Through its special unit known as the Fiscal Brigade, the GNR also functions at the level of patrolling the Portuguese coast and assists in controlling the entry and departure of individuals from Portuguese territory. The **Maritime Police**⁵ likewise has jurisdiction in terms of patrolling the coast, the area of the public maritime domain and Portuguese territorial waters.

The most important governmental institution in terms of implementing policies for integration is the **High Commission for Immigration and Intercultural Dialogue, A Public Institute** (ACIDI, IP)⁶. In terms of the labour aspects of immigration it is also important to highlight the role

1 Accessible at: <http://www.mai.gov.pt/>.

2 Accessible at: <http://www.sef.pt>.

3 Accessible at: <http://www.gnr.pt/>.

4 Accessible at: <http://www.psp.pt/>.

5 Accessible at: http://www.marinha.pt/Marinha/PT/Menu/DescobrirMarinha/EstruturaOrganizativa/Area_aut_maritima/policia_maritima/.

6 Accessible at: <http://www.acidi.gov.pt/>.

of the [Authority for Labour Conditions \(ACT\)](#),⁷ which is responsible for inspecting working conditions in Portugal. With regard to asylum, the [Portuguese Council for Refugees \(CPR\)](#)⁸ is a strategic partner of the Portuguese state in hosting asylum seekers and assisting with the integration of refugees. The CPR is a Non-Governmental Organisation and is an operational partner of the [UN High Commission for Refugees \(UNHCR\)](#)⁹. It is the entity responsible for managing the temporary residential centre for asylum seekers, which is funded by the Portuguese state.

With regard to the development of systems for immigration and asylum, it is important to note that the present regime for the entry, stay, departure and removal of foreigners from Portuguese national territory, approved in 2007, is a corollary to the diverse legal regimes for immigration that were in effect in Portugal during the last two decades. Portugal has traditionally been a nation of emigrants that, especially after the 1980s, also began to receive immigrants, as a result of the country's political stabilisation and its entry into the European Economic Community in 1986. This resulted in an increase in economic development and, concomitantly, a greater demand for labour, especially to meet the requirements of the vast programme for public works that was implemented at the time. Thus, the immigration laws that have been in effect since then must be understood in the context of dual imperatives, i.e. on the one hand to respond to the new realities of migratory fluxes and, on the other hand, the need to implement pertinent EU legislation. Moreover, the composition of the fluxes of foreigners has not remained constant over the course of the recent history of immigration to Portugal. If during the mid-1980s these fluxes essentially consisted of citizens from erstwhile Portuguese colonies in Africa, a more heterogeneous composition began to emerge during the 1990s. This change especially involved a very significant influx of immigrants from Eastern European countries, such as Ukraine and Moldavia, accompanied by a reinforcement of immigration from Brazil. In the meanwhile, the phenomenon of illegal immigration grew in terms of dimensions and visibility. Successive governments responded to these phenomena during the 1990s with special programmes to le-

7 Accessible at: <http://www.act.gov.pt/>.

8 Accessible at: <http://www.cpr.pt>.

9 Accessible at: <http://www.acnur.org>.

galise clandestine immigrants, namely in 1992 and 1996. An increased influx of foreigners into Portugal between 1999 and 2001, mainly comprising citizens of Eastern European countries, resulted in changes being made to prevailing legislation, namely [Decree-Law No. 244/98](#), dated 8 August¹⁰, by means of [Decree-Law No. 4/2001, dated 10 January](#),¹¹ which enabled the legalisation of a large number of foreigners who were living and working illegally in Portugal. Over the course of this process, the question of labour increasingly assumed a central role in regulating migratory fluxes and, consequently, in subsequent legal diplomas pertaining to immigration. A common element of these diplomas is the fact that the acceptance of foreign workers is subject to the needs of the labour market in Portugal. This imperative was present in [Decree-Law No. 34/2003](#), dated 25 February,¹² which altered Decree-Law No. 244/98, dated 8 August, and is also present in the current [Law No. 23/2007](#), dated 4 July.¹³

As for the current **organisation of the system**, the prevailing regime for the entry, stay, departure and removal of foreigners from the national territory of Portugal has been defined in Law No. 23/2007, dated 4 July, which transposed a series of EU directives to the Portuguese juridical order. In contrast to the previous legislative regime, this law adopted a single typology of residence documents, viz residence permits, wherein it is important to highlight the creation of a residence permit for entrepreneurs and for highly qualified immigrants. The entry of foreigners to undertake employment on the basis of work contracts depends on the need for labour that is not met by Portuguese citizens or by the principle of preference for EU citizens. The [Institute for Employment and Professional Training](#) (IEFP, IP)¹⁴ is responsible for ascertaining and establishing the contingent of foreign labour that is necessary to meet the nation's labour requirements. The Asylum Law was approved in 2008, i.e. [Law No. 27/2008](#), dated 30 June,¹⁵ which establishes the nec-

10 Accessible at: <http://sites.google.com/site/leximigratoria/legisp%C3%A9dia-sef/links>.

11 Accessible at: <http://sites.google.com/site/leximigratoria/legisp%C3%A9dia-sef/links>.

12 Accessible at: http://www.sef.pt/portal/V10/EN.aspx/legislacao/legislacao_detalhe.aspx?id_linha=4198#0.

13 Accessible at: <http://www.sef.pt/documentos/56/Nova%20Lei%20de%20EstrangeirosEN.pdf>.

14 Accessible at: <http://www.iefp.pt>.

15 Accessible at: http://www.refugiados.net/cidadevirtual/legislacao/leis/lei_27_2008_lei_do_asilo.pdf.

essary conditions and procedures to acquire the status of refugee and the associated protection.

Finally, with regard to an analysis of systems for immigration and asylum, it is essential to note the efforts that have been made in order to consolidate a broad-based policy for immigration and asylum, both at the level of adopting a suitable legal framework as well as at the level of reinforcing the role of all the elements and interlocutors involved in these processes, in the light of the transversal nature of this phenomenon.

1. Introduction: Objectives and Methodology

This report seeks to provide a legal and institutional roadmap with regard to immigration and asylum in Portugal. Most of the text is dedicated to describing the legislative regimes that are currently in effect, but it also provides an overview of the evolution of these regimes over the course of the last three decades. The chronological scope of this study extends up to 2008, a year in which significant developments took place in these areas.

One of the main guidelines for this report was to provide readers with a description of the main institutional agents that operate in each of these areas – immigration and asylum – and the role played by each of these agents. This description of the main agents involved in these processes was prepared more on the basis of the diplomas that enshrine the legislative regimes pertaining to immigration and asylum than on studies or information provided by the respective entities. The objective was to trace the main institutional and legal procedures applicable to foreign citizens who seek to reside legally in Portugal, both by means of immigration as well as by seeking asylum.

At the same time, this study aims to portray the migratory dynamics that have resulted from the various legislative regimes that have been in effect in Portugal during the last three decades. Hence, the descriptions of institutional and legal structures have always been complemented, whenever possible, with relevant statistics pertaining to immigration and asylum.

We therefore believe that this report is particularly relevant for all those who wish to understand, in a concise and schematic manner, the way in which immigration and asylum matters are processed in Portugal in the context of the current applicable legislative regime.

The choice of methodology was a natural outcome of the orientation of the contents, owing to which the approach used herein has focused especially on an analysis of the legal diplomas that constitute the framework for immigration and asylum in Portugal. From amongst these diplomas, Law No. 23/2007, dated 4 July (the so-called “Forei-

gners' Law”) and Law No. 27/2008, dated 30 June (the “Asylum Law”) are especially worthy of note.

The results of a wide variety of academic studies about immigration in Portugal during the last three decades were also used, so as to try and understand, albeit necessarily in a succinct manner, the underlying logic behind migratory movements that cannot be discerned merely by analysing legal texts. A realistic study of fluxes of foreign citizens to Portugal can only be achieved by using trustworthy data regarding the entry of citizens from other nations into Portuguese territory and the existing levels of foreign residents at any given moment. Therefore, the numerical data that has been used for this report has been obtained from the most reliable sources of information pertaining to matters of immigration and asylum, namely the SEF and the [National Institute for Statistics](#) (INE).¹⁶

This report has been prepared by the National Contact Point of the European Migration Network, under the aegis of the Aliens and Border Service - SEF (João Ataíde and Maria José Torres). Bruno Dias, Edite Rosário and Tiago Santos, researchers affiliated to Númena – Centre for Research in Social and Human Sciences, also assisted in the preparation of this study.

16 Accessible at: <http://www.ine.pt>.

2 An Overview of Portugal's Political, Legislative and Institutional Framework

2.1 Organs of Sovereignty

Under the terms of the [Constitution of the Portuguese Republic](#)¹⁷ the [President of the Republic](#),¹⁸ the [Parliament](#),¹⁹ the [Government](#)²⁰ and the Judiciary are organs of sovereignty. While exercising their functions, the organs of sovereignty must observe the principle of separation of powers and interdependence established by the Constitution.

The Portuguese Parliament follows a unicameral system and represents all Portuguese citizens. It is elected by universal suffrage for legislative terms that, in principle, extend over a period of four years. Members of Parliament are elected via ordered lists presented by parties or coalitions of parties in each electoral constituency. Notwithstanding this, they represent the entire country and not just the citizens of the constituencies from where they were elected.

The Parliament has political, legislative and regulatory functions, and is entrusted with the task of ensuring that the Portuguese Constitution and laws are upheld and assessing the acts of the Government and the Public Administration. Parliament can, without prejudice to the organisation and functioning of the Government, legislate on all subjects. It even has exclusive legislative functions in certain areas, such as political parties, elections, the state budget, referendums, the basic elements of general education and national defence. However, with the legislative authorisation of the Parliament, the Government can legislate in certain subjects that fall under the purview of exclusive legislation, such as in the case of rights, freedoms and fundamental guarantees, the definition of crimes and security measures, taxation and the fis-

17 Accessible at: http://www.portugal.gov.pt/Portal/PT/Portugal/Sistema_Politico/Constituicao.

18 Accessible at: <http://www.presidencia.pt/>.

19 Accessible at: <http://www.parlamento.pt/Paginas/default.aspx>.

20 Accessible at: <http://www.portugal.gov.pt/Portal/PT>.

cal system, agricultural and monetary policies and the jurisdiction of courts. Parliament also approves the Government's programme.

The Government has political, legislative and administrative functions and is constituted on the basis of the parliamentary election results, for a term of four years. The Government is headed by the Prime Minister, who is appointed by the President of the Republic.

The Judiciary is responsible for administering justice, in an independent manner and in conformance with the law. Apart from the [Constitutional Court](#)²¹ and the [Court of Audit](#),²² there is a [Supreme Court of Justice](#),²³ which is the apex of the hierarchy of general courts of first and second instance. Administrative matters are judged in specific courts, comprising the [Supreme Administrative Court](#)²⁴ and the administrative courts of first and second instance.

The Government is responsible for conducting the nation's general political affairs and is the apex organ of the public administration. It is politically accountable to Parliament.

2.2 Main Institutions and Agents in the Areas of Asylum and Immigration

In Portugal, the Government of the Republic is the organ responsible for defining policies pertaining to immigration, asylum, hosting and integration.

Within the framework of policies to manage immigration, the MAI is responsible for monitoring the circulation of individuals across national borders, i.e. the entry, stay, departure and removal of foreigners from Portugal. The MAI is also responsible for assessing asylum cases and for deciding whether or not to grant the status of refugee to asylum seekers.

21 Accessible at: <http://www.tribunalconstitucional.pt/tc/index.html>.

22 Accessible at: <https://www.tcontas.pt/>.

23 Accessible at: <http://www.stj.pt/>.

24 Accessible at: <http://www.stadministrativo.pt/>.

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The SEF is specifically responsible for implementing immigration and asylum policies in Portugal, in conformance with constitutional and legislative dispositions and the guidelines provided by the Government. In this context, the following aspects provide a brief summary of the SEF's functions: to monitor the circulation of individuals through national borders and the stay and activities of foreigners in Portugal; to investigate criminal activities pertaining to illegal immigration; to institute and decide on cases for administrative expulsions of foreigners from Portuguese national territory, as well as to implement decisions resulting in administrative and judicial expulsions; to process and implement readmission procedures; to issue opinions in processes to issue consular visas and Portuguese nationality. In the area of asylum seekers, the SEF is responsible for organising and processing the cases: granting asylum and residence permits for humanitarian reasons; determining the State that is responsible for analysing the respective applications; and transferring candidates between the Member States of the European Union.

In the context of the EU, as determined by the Government, the SEF represents the Portuguese State at the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), at the High Level Group on Asylum and Migration and other working groups and committees of the European Council and European Commission in the area of immigration and asylum.

The GNR and PSP also participate in the process of verifying and monitoring immigrants in Portugal, especially in terms of verifications and checks within the national territory and as part of joint operations within the framework of police co-operation between Spain and Portugal. Through its special unit known as the Fiscal Brigade, the GNR also has functions at the level of monitoring the Portuguese coast for customs violations and assists in monitoring the entry and departure of individuals from Portuguese territory. The Maritime Police has jurisdiction in terms of patrolling the coast, the area of public maritime domain and Portuguese territorial waters.

With regard to the labour aspect, the role of the IEFP, which functions under the tutelage of the [Ministry of Labour and Social Solidarity](#)

(MTSS)²⁵, is particularly worthy of note. This is especially true in terms of monitoring the process of contracting and preparing the reports concerning the annual contingent of foreign workers to be admitted. Likewise, the ACT is the competent entity entrusted with the task of inspecting the working conditions of foreigners in Portugal.

It is also important to note the role of the [Ministry for Foreign Affairs](#) (MNE)²⁶ in regulating and promoting legal immigration in terms of the international dimension and external relations in the area of immigration and visa policies. These activities are developed more precisely through the [Directorate-General for Consular Affairs and Portuguese Communities](#) (DGACCP),²⁷ with jurisdiction in matters involving the granting of consular visas.

The aspect of integrating immigrants has been entrusted to the ACIDI, headed by the High Commissioner for Immigration and Intercultural Dialogue. ACIDI's mission is to assist in defining, implementing and assessing relevant public policies pertaining to the integration of immigrants and ethnic minorities, as well as to foment a dialogue between religions, cultures and ethnicities and to develop actions to combat racism and xenophobia²⁸.

While defining public policies in this area, the Portuguese State is assisted by the [Advisory Council for Immigration Affairs](#) (COCAI)²⁹, headed by the High Commissioner for Immigration and Intercultural Dialogue. This body's main objective is to ensure the participation of associations representing immigrants, social partners and institutions for social solidarity in the process of defining policies for social integration and policies aimed at combating exclusion.

It is also important to note the role of the [Commission for Equality and Against Racial Discrimination](#) (CICDR)³⁰, which, amongst other func-

25 <http://www.mtss.gov.pt/>.

26 Accessible at: www.min-nestrangeiros.pt.

27 Accessible at: www.min-nestrangeiros.pt/mne/portugal/dgaccp.html.

28 Law No. 202/2006, dated 27 October, Article 20. Accessible at: http://www.portugal.gov.pt/NR/rdonlyres/607D5616-DC5F-453B-B58F-D918523537A1/0/LO_PCM_2006.pdf.

29 COCAI website. Accessible at the ACIDI website at the following link: <http://www.acidi.gov.pt/modules.php?name=Content&pa=showpage&pid=105>.

30 Accessible at: <http://www.cicdr.pt/>.

tions, is responsible for: gathering information about the occurrence of discriminatory acts and applying the respective penalties; preparing an annual report about the situation of equality and racial discrimination in Portugal; and recommending measures to prevent discrimination on the basis of race, colour, nationality or ethnic origin. The CICDR is an independent entity presided over, ex officio, by the High Commissioner for Immigration and Intercultural Dialogue. It also includes representatives from the Portuguese Parliament, Government, immigrant associations, human rights and anti-racist associations, trade unions, employer associations and three individuals nominated by the body's other members³¹.

2.3 Other Important Institutions

Some Non-Governmental Organisations (NGOs) play an important role in the area of implementing immigration and asylum policies – both through their participation in governmental advisory bodies, as well as through partnerships with public organisations or entities. Such NGOs include the [Jesuit Refugee Service](#),³² the [Portuguese Catholic Mission for Migration](#)³³ and several others, which will be enumerated shortly.

The role of the CPR must be highlighted in the area of asylum. The CPR is a Developmental Non Governmental Organisation whose main objective is to promote a “humane and liberal asylum policy at a national and international level”. The CPR is the operational partner of the UN-HCR for Portugal and, under the terms of the Asylum Law, has a legal mandate to provide counselling, legal support and assistance to asylum seekers. The CPR is also responsible for managing and operating the temporary residential shelter for housing asylum seekers (Asylum Shelter in Bobadela, near Lisbon), financed by the Portuguese State.

The [International Organisation for Migrations](#) (IOM)³⁴ co-operates with the Portuguese State and is the entity that develops the Programme

31 Internal CICDR regulations. Consulted on 11 September 2008, at the following link: http://www.acime.gov.pt/docs/Acime/CicdrCocai/Regulamento_CICDR.pdf.

32 Accessible at: <http://www.jrsportugal.pt/>.

33 Accessible at: <http://www.ecclesia.pt/ocpm/>.

34 Accessible at: <http://www.iom.int/jahia/Jahia/pid/1386>.

for Voluntary Repatriation in Portugal. In the context of voluntary repatriation, the IOM and the SEF, in partnership with diverse other public and private entities, have recently developed a network for information and counselling for immigrants who intend to return to their country of origin of their own will and volition.

Some of the more important Portuguese NGOs working in the area of immigration, such as [Immigrant Solidarity](#)³⁵ and [SOS Racism](#),³⁶ are amongst the approximately 770 institutions that participate in the [Choices Programme](#)³⁷. Within the scope of its objectives³⁸, the Choices Programme promotes various projects, each of which represents a partnership between a promoting institution and various partners.

35 Accessible at: <http://www.solimigrante.org/>.

36 Accessible at: <http://www.sosracismo.pt/>.

37 Accessible at: <http://www.programaescolhas.pt>.

38 The Choices Programme seeks to promote the social inclusion of children and youths from more vulnerable socio-economic backgrounds, keeping in mind the greater risk of social exclusion, especially in terms of the offspring of immigrants and ethnic minorities, in an attempt to reinforce equal opportunities and social cohesion.

3. The Development of Immigration and Asylum Systems

3.1 Asylum

Just like the legislation that frames the area of immigration, the legal framework for asylum in Portugal has undergone several changes, especially after the 1980s. In general, the alterations in these norms were conditioned by the evolution of prevailing social values to be ensured in this area, as well as the need to transpose EU norms.

In 1980, [Law No. 38/80](#), dated 1 August³⁹, came into force regulating the Right to Asylum and the Status of Refugee. Requests for asylum were lodged with the SEF, which was responsible for processing the applications. At the time, the responsibility for deciding upon requests for asylum was entrusted to the MAI and to the [Ministry of Justice \(MJ\)](#)⁴⁰, while the Advisory Commission for Refugees was also heard in this regard.

1991 was a landmark year in the recent history of asylum matters in Portugal, with the creation of the CPR, which is essentially aimed at providing tutelage for refugees.

In the meanwhile, Law No. 38/80, dated 1 August, was revoked by [Law No. 70/93](#), dated 29 September. Within the scope of this law, requests for asylum, as well as the processing of the applications, still came under the purview of the SEF. Once a case had been processed, the SEF would send its report to the National Commission for Refugees (CNR), which, in its turn, would present a proposal and justifications to the MAI, while simultaneously informing the UNHCR representative. The MAI was responsible for making the final decisions.

One of the criticisms of this legislative solution concerned the elimination of the right to asylum for humanitarian reasons (Leitão, s.d.). In Law No. 38/80, dated 1 August, this right had been enshrined in Article 2, which stipulated that, “Asylum could be granted to foreigners and stateless individuals who did not wish to return to the State of their nationality or their habitual residence for reasons of insecurity owing

39 Accessible at: <http://www.dre.pt/pdf1sdip/1980/08/17600/19421946.PDF>.

40 Accessible at: <http://www.mj.gov.pt>.

to armed conflicts or the systematic violation of human rights taking place there”. Law No. 70/93, dated 29 September, stated that in similar conditions the exceptional regime for humanitarian reasons could be applied (Article 10) as envisaged by Article 64 of [Decree-Law No. 59/93](#), dated 3 March,⁴¹ which established the regime in effect for the entry, stay, departure and expulsion of foreigners from Portuguese national territory. Another aspect that was viewed as a negative feature and considered to be a setback in terms of regulations pertaining to the right to asylum concerned the extension of the effects of asylum. Law No. 38/80, dated 1 August, established that: “The effects of asylum must be declared to extend to the spouse and children of the asylum seeker and can also be declared to extend to other members of the asylum seeker’s family unit as long as the individual in question requests it and can prove the quality of such individuals”. Article 5 of Law 70/93, dated 29 September, only stipulated that: “The effects of asylum can be declared to extend to the spouse and unmarried minor or incapacitated children of the petitioner or, if the petitioner is younger than 18 years, to the father or mother” (Leitão, s.d.; CPR, 1996).

The number of applications for asylum peaked in 1993 with 1,659 requests⁴². The majority of applications were from Europeans (78%), with individuals from Romania accounting for 63%. 15% of applications were from African citizens⁴³. In 1994 there was a considerable decrease, with 614 applications lodged, while 332 applications were lodged in 1995 (Neves, 1996). The dissuading effect of the new law was thus confirmed, after the peak of applications witnessed in 1993. In 1995, Romanians still continued to represent a majority (195 plus 97 family members, a long way from the 1,034 applications in 1993), while the numbers for individuals from Liberia (19), Bangladesh (17), Bosnia (12 plus 6) and Angola (7 plus 4) were also worthy of note (Carvalho, 1996).

41 Accessible at: <http://sites.google.com/site/leximigratoria/legisp%C3%A9dia-sef/links>.

42 According to José Leitão (s.d.), in order to introduce legislative changes, the Government used, “An argumentative strategy that manipulated statistical data and also exploited preconceptions regarding foreigners”.

43 In total, 71% arrived in Portugal by car or train, 17% by ship and 12% by plane.

During the mid-1990s, the subject of asylum was widely debated at a public and political level⁴⁴.

In 1998 new changes were introduced to the prevailing juridical regime with the implementation of [Law No 15/98](#), dated 26 March⁴⁵, which established a new juridical-legal regime for asylum and refugee matters. According to this law, the SEF is now the entity that receives the application, decides whether or not to accept the request and processes the case. During the processing of the case representatives from the UNHCR or the CPR can add reports or information about the respective country of origin to the case file and obtain information about the status of the application. The SEF prepares a report that it sends, along with the case file, to the CNR. In its turn, the CNR prepares a project proposal with justifications to grant or refuse asylum within a period of ten days from the day the case file is received. The UNHCR and CPR representatives are informed about this proposal and, should they so wish, they can comment on its contents within a period of five days. The petitioner is notified about the contents of the proposal and can comment on it during the same period. In case the petitioner or the said entities comment on the proposal, the CNR must reassess the project in the light of the new elements and present a justified proposal to the Minister for Internal Administration within a period of five days. The Minister for Internal Administration takes a decision within a period of eight days after the date the proposal is presented (Article 23).

Law No. 15/98, dated 26 March, was complemented by [Law No. 20/2006](#), dated 23 June⁴⁶, which transposed the [Council's Directive No. 2003/9/EC](#),⁴⁷ dated 27 January, to the Portuguese juridical system, concerning the minimum norms for hosting asylum seekers in Member States. Amongst other aspects, it defined the material conditions for hosting asylum seekers and healthcare, administrative and jurisdictional guaran-

44 E.g. International Meeting of Specialists about the Juridical Regime of Asylum in Portugal, held on 29 June 1995; Round Table on the CIG'96 - Revision of the EU Treaty and the Asylum Law, 17 October 1995; Parliamentary Hearing about the Situation of Refugees in Portugal, 26 February 1996; International Conference - Refugees: Their Future in Europe after 1996?, 04-05 June 1996. Accessible at: www.cpr.pt.

45 Accessible at: http://www.sef.pt/portal/V10/EN/asp/legislacao/legislacao_detalhe.aspx?id_linha=4219#0.

46 Accessible at: http://www.sef.pt/portal/V10/PT/asp/legislacao/legislacao_detalhe.aspx?id_linha=4573#0.

47 Accessible at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:PT:HTML>.

tees. In articulation with the UN High Commissioner for Refugees and the CPR, measures were also adopted to make the system of hosting asylum seekers more effective. In order to simplify procedures, Article 24 of this diploma extinguished the CNR, which was responsible for issuing a justifying opinion within the scope of processing asylum requests. Under the terms of Article 24, once the applications are processed by the SEF⁴⁸, they are sent directly to the MAI for a final decision (SEF, 2007b).

In 2006, the mechanism of reinstatement was used for the first time, functioning as a complementary instrument to the common asylum system. In this context, Portugal hosted 17 refugees on the basis of a request from the UNHCR (SEF, 2007a). Likewise in 2006, [Decree-Law No. 222/2006](#), dated 10 November⁴⁹, defined the organic structure to implement the European Refugee Fund (ERF) for the period 2005-2010 and the regime for public funding for the activities that were to be developed within the scope of this Fund. To this end, the figure of a Manager was created, an authority responsible for the ERF, for the purposes of [Council Decision 2004/904/EC](#), dated 2 December⁵⁰.

In 2007, in the area of asylum issues, it is important to note [Cabinet Resolution No. 110/2007](#), dated 12 July⁵¹, which regulates the conditions for annually hosting 30 individuals, within the framework of applications for the reinstatement of refugees, as outlined in Article 27 of the national asylum law.

In 2008, the 1998 asylum law was revoked after Law No. 27/2008, dated 30 June, was approved, which establishes the conditions and procedures for granting asylum and subsidiary protection along with the statutes for asylum seekers, refugees and subsidiary protection, transposing two Council Directives to the Portuguese juridical regime, viz [2004/83/EC](#), dated 29 April⁵², and [2005/85/EC](#), dated 1 December⁵³.

48 With a proposal to grant or deny asylum, attribute or renew a residence permit for humanitarian reasons and declarations of the loss of the right to asylum.

49 Accessible at: <http://dre.pt/pdf1sdip/2006/11/21700/77987804.PDF>.

50 Accessible at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004D0904:PT:HTML>.

51 Accessible at: http://www.refugiados.net/cidadevirtual/legislacao/leis/resol_conselho_ministros_21ago2007.pdf.

52 Accessible at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:PT:HTML>.

53 Accessible at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:PT:HTML>.

3.2 Immigration

Portugal has traditionally been a nation of emigrants⁵⁴. However, especially from the last decade of the 20th century onwards, the number of immigrants entering the country increased significantly and Portugal now also numbered amongst the nations receiving immigrants (Almeida *et al.*, 2004). As in the case of other countries in Southern Europe, this was a phenomenon that was part of new migratory trends on a global scale by which countries that had traditionally supplied labour now also began to receive immigrants (Entzinger, 2001). In fact, although there was a reduction in the number of citizens leaving the country, Portugal did not cease to be a nation of emigrants. In effect, over the course of the 20th century, the balance of migrations proved to be positive in only three decades, i.e. decades in which the number of individuals entering the country was greater than the number of citizens leaving the country viz the 1930s, 1970s and 1990s (Rosa & Vieira, 2003). There is a situational explanation for each of these decades, namely: the programme of public works associated with the Portuguese World Fair (1940); decolonisation; and the programme of public works associated with the EXPO'98 in Lisbon (1998 World Fair). In recent times it has been estimated that there has been a revival in Portuguese emigration. OECD data indicates that there has been an increase in the number of Portuguese citizens moving abroad, especially to other European countries (Malheiros, 2006b). Based on data compiled by Eurostat, we have concluded that in 2006 the sum total of immigrant Portuguese nationals who moved to other countries covered by the Eurostat system was 44,445. A Portuguese researcher, Helena Rato, has even estimated that for every 15 new immigrants who come to Portugal, 100 Portuguese leave to go work abroad (Rato, 2008).

The legal framework for immigration and the management of fluxes (entry, stay, departure and removal of foreign citizens from Portuguese national territory), as well as the acquisition of Portuguese nationality and access to social and political citizenship, underwent diverse reforms, especially from the 1980s onwards. In general, these changes have been related to the evolution of migratory fluxes bound

54 According to an estimate by the DGACCP presented in 2008, the Portuguese population and individuals of Portuguese origin resident abroad comprise a total of 4,964,755 residents (Ombudsman, 2008).

for Portugal and the need to implement EU policies and respond to EU directives (CSE, 2006).

Until the mid-1970s, the foreign population in Portugal was a negligible presence, being less than 0.3% of the total population residing in the country (Almeida *et al.*, 2004). The process of decolonisation, which began in 1975 after the 25 April 1974 democratic revolution in Portugal, marked a new phase in immigration to Portugal. Apart from the repatriation of Portuguese citizens resident in the former colonies – Rui Pena Pires has estimated that about half a million Portuguese were repatriated, who were known as the *retornados*, constituting the largest movement of population in Portugal's recent history (Pires, 2003) – the country attracted a large contingent of Africans. In search of better living conditions or fleeing the civil war in newly independent countries, these immigrants sought out Portugal for political (easy entry into Portugal), socio-cultural (affinities resulting from centuries of history and a common language) and economic (immigration of labour) reasons (Rosário, 1999).

The end of the Portuguese colonial regime resulted in regulations for the process of acquiring Portuguese nationality by individuals born in the erstwhile colonies who, until then, had been considered to be Portuguese citizens, published in [Decree-Law No. 308-A/75](#), dated 24 June⁵⁵. This law considered the “convenience of granting or enabling individuals to maintain their Portuguese nationality in cases where a special connecting relationship with Portugal or an unequivocal manifestation of desire” justified this.

In this scenario, the fact that the processes of returnees and immigration properly speaking occurred simultaneously, the changes in the nationality law that took place in 1975 and the flux of illegal entries make it difficult to precisely ascertain the volume of immigrants from Portuguese Speaking African Countries (PALOP) during the second half of the 1970s and the early 1980s. The discrepancies in data between different statistical sources exemplify this difficulty. In the 1981 census the INE recorded 108,518 resident foreigners (1% of the total resident population), of which 45,222 (42%) were from PALOP nations. The SEF's data (exclusively covering regular immigration) recorded a total of 62,692

55 Accessible at: http://www.lawrei.eu/nacionalidade/Legislacao/DL308_a.php.

foreigners, of which 27,287 (43%) immigrants were from PALOP countries. Despite the discrepancies between these sources, the data unequivocally reveals that Africans had become the most representative foreign population resident in Portugal (Oliveira *et al.*, 2006).

The first systematic legislative measures to regulate the entry, stay, departure and expulsion of foreigners from Portuguese national territory were instituted in 1981. [Decree-Law No. 264-B/81](#), dated 3 September⁵⁶, was promulgated, which brought together all the existing legislation pertaining to this area. Until then, since 1974, “The existing legal dispositions were scattered and casuistic and were essentially aimed at regulating the expulsion of foreigners and the right to asylum, within the framework of the democratic regime that had been implemented (...)” (Baganha, Ferrão & Malheiros, 1998).

During the 1980s, when the majority of Central and Northern European States imposed strong barriers against immigration from third countries, Portugal benefited from some factors that together resulted in a favourable international situation and ended up by serving to encourage the entry of these fluxes. This was reflected in the migratory balance recorded during the 1990s. Once democracy had been consolidated, the nation’s political stability stimulated national and international investment and in 1986 Portugal’s entry into the then European Economic Community promoted the development of various economic sectors (Oliveira *et al.*, 2006). Between 1980 and 1990 there was an increase in the foreign population residing legally in the country, from 50,750 to 107,767 individuals, representing a positive variation of 86% and an annual average rate of growth of 7% (SEF, 2007a). In addition to the intensification of entries, there were some changes in the migratory fluxes: a slight reduction in the pace of immigration by Africans from the former Portuguese colonies, a growth in immigrants from India and China, a revival of European immigration and a significant increase in the Brazilian population that, “As early as the late 1990s, had already formed a new migratory wave and was no longer merely a current” (Pena Pires, 2003). During the 1990s, Portuguese immigration did not undergo any major qualitative changes as compared to the previous decade in terms of countries of origin. However, in quantitative terms, the effective number

56 Accessible at: <http://sites.google.com/site/leximigratoria/legisp%C3%A9dia-sef/links>.

of resident foreigners virtually doubled. From 101,011 in 1989 (corresponding to 1% of the total resident population), the number of legal immigrants rose to 191,143 (2% of Portugal's population) in 1999.⁵⁷

Once again, the dynamics of migratory fluxes and national (Portugal's entry into the European Economic Community in 1986) and international (joining the Schengen convention) circumstances resulted in changes to the national legal framework. Law No. 59/93, dated 3 March, was instituted in order to implement EU directives regarding the free circulation of individuals in member nations. This Law envisaged uniform visas, short term, transit and stopover visas, which were valid in all the countries that had signed the Schengen Agreement Convention.

Likewise during the 1990s, the political reality of a growth in illegal immigration resulted in two extraordinary amnesties for legalisation: the first took place in 1992 and was extended up to 1993⁵⁸, and the second took place in 1996.⁵⁹ In general, both amnesties encompassed third country citizens and, amongst them, citizens from countries where Portuguese was used as an official language benefited from special treatment (Ombudsman, 2008).⁶⁰

In the meanwhile, the new immigration law was adopted in 1998, through [Decree-Law No. 244/98](#), dated 8 August⁶¹, which revoked Law No. 59/93, dated 3 March. In conformance with the new law, generic conditions were established to regulate the entry and stay of foreign na-

57 Accessible at: <http://www.sef.pt/estatisticas.htm>.

58 Decree-Law No. 212/92, dated 12 October, which established the conditions to legalise the situation of illegal immigrants, as well as Decree-Law No. 63/93, dated 5 March, which extended the period of effect established in DL No. 212/92.

59 The extraordinary amnesty of 1992 resulted in residence documents being issued in 1993 and 1994, under the terms of the general law, which gave rise to a growth in the foreign population, which rose from an annual average of 5%, to 8% and 10%, respectively. The extraordinary amnesty of 1996 had an effect in 1999 and 2000, with an increase in the foreign population resident in Portugal ranging from 7% to 8%, owing to the issuing of residence documents (SEF, 2007a).

60 During the process of the extraordinary legalisation amnesty of 1992, about 39,000 foreign nationals regularised their situation, of which 2/3 were from Angola and Cape Verde. The 1996 amnesty resulted in the legalisation of about 30,000 immigrants, once again with a high percentage of nationals from PALOP countries.

61 Accessible at: <http://sites.google.com/site/leximigratoria/legisp%C3%A9dia-sef/links>.

tionals in Portuguese territory⁶². This law also consecrated seven types of visas - stopover, transit, short-term visas (uniform short-term Schengen visas), residence, study, work and temporary stay visas (long-term visas) – and, as compared to the 1993 law, the duration of these visas was extended. It is also necessary to note some significant changes in terms of the right to family reunions and the extension of equal rights conferred upon foreign family members of Portuguese citizens.⁶³

Migratory fluxes intensified from the late 1990s and early 2000. The sharpest growth⁶⁴ in the foreign population resident in Portugal (69%) was recorded between 2000 and 2001 (SEF, 2007a). Apart from the quantitative dimension there were also profound changes in qualitative terms. In the aftermath of the collapse of the USSR and the emergence of post-Soviet independent CIS states, there was a new and significant influx of immigrants from Eastern Europe. This represented a fundamental change in the short history of Portuguese immigration since the country now began to receive, on a large scale, immigrants from nations with which Portugal did not have any historical, linguistic or cultural affinities⁶⁵.

New changes were introduced into the prevailing juridical regime at the beginning of the millennium, through Decree-Law No. 4/2001, dated 10 January. This law created the concept of the *stay permit*, which allowed illegal immigrants to remain in Portugal for a period of one year and was renewable up to a maximum of five years, as long as they had a work contract or job offer, held a valid passport and had a clean criminal record. For the first time in the history of Portuguese immi-

62 Immigrants had to have a valid travel document, prove that they had sufficient means of subsistence, did not figure on the list of individuals who were to be denied entry according to the Schengen Information System or the national system and they had to have an appropriate and valid visa to enter Portugal.

63 For example, minor foreign citizens born in Portuguese territory benefit from the statute of resident identical to that granted to any one of the child's parents, as long as it is applied for within six months immediately after the birth.

64 In 2000, 207,607 immigrants resided legally in Portugal. In 2001, the number of immigrants rose to 350,898.

65 Up to the year 2000, citizens from Cape Verde, Brazil, Angola and Guinea-Bissau represented significant components of foreigners resident in Portugal. However, the legislation that came into effect in 2001 resulted in a reconfiguration of the quantitative hierarchy of the diverse communities. Ukrainians now represented the largest group of resident foreigners, followed by Brazilians, Cape Verdeans and Angolans.

gration policies, this legal disposition established a close relationship between immigration and the needs of the Portuguese labour market (CSE, 2006). Emphasising concerns about promoting the social integration of immigrants, this decree introduced changes whereby influxes now depended on an analysis of the annual and sectorial needs of the labour market. With a view to combating illegal immigration it now regulated the responsibility of employers to uphold the laws in terms of payment of salaries, tax contributions and social security payments for immigrant workers, as well as making it a criminal offence to aid and abet illegal immigration⁶⁶. The application of the decree-law resulted in the legalisation of many immigrants⁶⁷. However, Decree-Law No. 34/2003, dated 25 February, which altered the Immigration Law (Decree-Law No. 244/98), acknowledged that, “At the same time, not only did illegal immigration not diminish but, thanks to this flexible legislation, it increased in an accentuated manner, while the precarious conditions of hosting and integrating these immigrants had become increasingly visible”. Recognising the importance of legal immigration and the social integration of immigrants, legislators then proposed to, “Define and implement a transparent policy, adopting definitive and structural solutions, rather than isolated and transitory measures”. This was based on three fundamental axes: “Promoting legal immigration in conformance with Portugal’s capabilities, the effective integration of immigrants and firmly combating illegal immigration”.

This latter decree was complemented by [Enabling Decree No. 6/2004](#), dated 26 April,⁶⁸ which enabled illegal immigrants who had entered the country before March 2003 to legalise their situation, as long as they were employed and their tax and social security contributions were up to date. A maximum annual limit was established restricting the number of foreign citizens who could enter Portuguese territory for the purpose of engaging in professional activities. This limit was part of the pluriannual report prepared by the Government, after considering the opinion of the IEFP and after hearing various (municipal, re-

66 Such as, for example, using illegal labour and hiring illegal immigrants.

67 The use of the Regime for Stay Permits allowed the legalisation of 183,000 foreign citizens in Portuguese national territory. Of these, about 101,000 were from Central and Eastern Europe, where citizens from the Ukraine stood out, with a total of 65,000 residence documents being granted to them.

68 Accessible at: http://www.sef.pt/portal/V10/EN.aspx/legislacao/legislacao_detalhe.aspx?id_linha=4207#0.

gional and national) bodies⁶⁹ related to the labour market and the field of immigration. This report defined the economic and social criteria to determine the need for labour and each region's capacity to host immigrants⁷⁰, and ensured the participation of the local authorities in the entire process. Other significant changes introduced in 2003 included: 1) revoking the regime of stay permits 2) requiring individuals applying for family reunions to have some real ties to Portugal by staying here legally for a stipulated period of time⁷¹ and 3) the reinforcement of penalties and fines applicable to infractions related to clandestine immigration and the exploitation of foreign labour residing illegally in Portugal, in order to combat illegal immigration. This law also emphasised the simplification of some of the SEF's bureaucratic procedures, with a view to speeding up processes and facilitating the integration of immigrants (Oliveira *et al.*, 2006).

Also worthy of note in the year 2003 was the signing of an [Agreement between Portugal and Brazil regarding the Reciprocal Employment of Citizens](#)⁷² (known as the Lula Agreement) which functioned as a regulatory mechanism exclusively aimed at the Brazilian community resident in Portugal⁷³.

In 2004, the aforesaid Enabling Decree No. 6/2004, dated 26 April, now allowed minor foreign nationals who had been born in Portuguese territory before Decree-Law No. 34/2003, dated 25 February, came into effect, and who had not left Portugal to obtain a residence permit without

69 Autonomous regions, Inspectorate-General for Labour, National Association of Portuguese Municipalities, trade unions and employer associations and the High-Commission for Immigration and Ethnic Minorities.

70 When the Enabling Decree No. 6/2004, dated 26 April, was published, the Government established a quota of 8,500 individuals for the entry of new immigrants (which could be expanded if economic activities justified it), divided amongst the following sectors of economic activities: 2,100 for agriculture, 2,900 for the hotel industry, 2,800 for the construction industry and 700 for other activities.

71 As outlined in EU decisions, however, for the shortest time period stipulated in these dispositions, on the grounds of a humanistic policy.

72 Approved by Decree No. 40/2003, dated 19 September, and valid up to July 2008. Accessible at: http://www.mreis.pt/biblioteca/doc_word_pdf/dec40-2003.pdf.

73 The conditions for legalisation required that the applicant could prove having entered Portugal before 11 July 2003 (the date the Agreement was signed), had registered beforehand with the SEF or an accredited Brazilian representation in Portugal and had an established labour relationship with an employer within Portuguese national territory. About 30,000 Brazilian citizens registered during this process of legalisation.

needing a specific entry visa that would allow them to apply for this document. An identical regime now also became applicable to the parents who effectively wielded parental rights over the minor in question.

However, from August 2007 a new Immigration Law came into effect in Portugal – Law No. 23/2007, dated 4 July –, which governs the entry, stay, departure and removal of foreign nationals from Portuguese national territory, as well as the statute of long-term resident. From amongst the changes that were introduced, the transitory dispositions of this law⁷⁴ are particularly worthy of note, whereby holders of long-term visas and prorogations and stay permits will benefit from residence permits when the validity of their respective documents comes to an end. Seeking to simplify the bureaucratic aspects of the system, procedures for granting residence permits were streamlined. Residence permits now encompass various categories (thus substituting the existence of different types of visas, as per previous legislation), according to the reason that justified the granting of the visa (SEF, 2007a).

A comparison of the numbers of foreign nationals residing legally in Portugal in recent years reveals that there has been a slight slowdown in the pace of entries⁷⁵, especially in terms of the number of individuals from Eastern Europe. This phenomenon could be partially explained by the recent enlargement of the European Union, which now includes some of these States (or neighbouring countries), as well as the tendency for growth in the respective labour markets in some Eastern European nations (Ombudsman, 2008).⁷⁶

74 Law No. 23/2007, dated 4 July, Article 217.

75 According to the SEF, in 2004, 447,155 foreign nationals resided legally in Portugal. In 2005, there was a drop of 7%, with the total number of foreigners being recorded at 414,659. In 2006 there was a slight growth, of 1%, as the numbers increased to 420,189. For 2007 provisional data indicates that there were 435,736 foreigners staying legally in the country, representing a growth of 4% as compared to the previous year (SEF, 2007a).

76 As an example, the fact that Poland and Ukraine will host the next European Football Championship in 2012 has inevitably dynamised the sector of public works in those nations. According to the Ukrainian Association in Portugal, some Ukrainian citizens who used to reside in Portugal have currently already gone to Poland (Ombudsman, 2008).

As for characterising the profile of immigrants⁷⁷, in terms of gender the majority of immigrants were male (55%)⁷⁸. This has been a relatively constant factor and is an intrinsic characteristic of labour-based immigration. However, in recent times this tendency has been attenuated by means of family reunions. The nationalities with the largest representation in Portugal include Brazil (15%), Cape Verde (15%), Ukraine (9%), Angola (8%) and Guinea-Bissau (6%). With regard to the age groups of foreign nationals residing legally in Portugal, in general, immigrants are relatively young, owing to the fact that immigration is a relatively recent phenomenon (here too labour immigration influences this tendency). In terms of age groups, the largest group is that of individuals aged between 20-39 years (about 50% of the total), followed by the age group 40-64 (25%). Younger immigrants, ranging from 0-19 years, are far more numerous (21%) than elderly immigrants (4%). Based on the kind of permit held by foreign nationals, it is possible to discern two distinct kinds of immigration in Portugal: an older wave of immigration, linked to the immigration process that took place during the 20th century, comprising immigrants from all age groups, who hold residence permits and benefited from family reunion provisions for spouses, descendants and ascendants (as in the case of Cape Verde, Angola and Guinea-Bissau); a more recent immigration that has taken place over the last few years, comprising the beneficiaries of the legalisation regimes described above who, in an initial phase, appear as isolated individuals but who later also avail of family reunion provisions, especially for spouses and descendants, as can be seen in the case of groups from Brazil and Ukraine. Finally, in terms of the geographical distribution of the resident foreign population, it must be noted that recent immigration is far more dispersed throughout the country than the older immigration that, until the late 1990s, was concentrated mainly in the Greater Lisbon Area. Nevertheless, despite this dispersion, immigrants are still concentrated along the coast (especially in Lisbon, Faro and Setúbal), to the detriment of interior regions, thus mirroring the existing situation in terms of the geographical distribution of the national population (SEF, 2007a).

77 The information used to chart this profile of the foreign population in Portugal is the most recent data to have been published by the SEF (Relatório de Actividades, 2007. Imigração, Fronteiras e Asilo).

78 The sole exception in terms of gender amongst the immigrant communities in Portugal is that of citizens from Brazil, where the majority of immigrants are women (52%).

4. The Organisation of the System

With regard to asylum, Law No. 27/2008, dated 30 June, establishes the conditions and procedures for granting asylum or subsidiary protection and the statutes for asylum seekers, refugees and subsidiary protection, transposing to the Portuguese juridical regime two Council Directives, viz No. 2004/83/EC, dated 29 April, and No. 2005/85/EC, dated 1 December.

The regime for the entry, stay, departure and removal of foreign citizens from Portuguese national territory is defined in Law No. 23/2007, dated 4 July, commonly known as the Foreigners' Law. This law is applicable to nationals of other countries and, amongst other aspects, consecrates the rules regarding the admission of foreigners, types of visas and the conditions for them to be issued, family reunions, stays and removals from the national territory, specific dispositions for criminal and administrative offences in the area of immigration and the fees applicable for administrative services in this field.

Approved by a large parliamentary majority, Law No. 23/2007, dated 4 July, simplified the previous legal regime, especially by adopting a single typology of documents for foreign citizens who wish to live and work in Portugal: the residence permit. The issuing of a residence visa for the purposes of exercising subordinate professional activities depends on the existence of employment opportunities that have not been filled under the principle of EU preference. In this context, the IEFP maintains an information system that is constantly updated and accessible to the public about available job offers with contracts.

The immigration law was regulated by means of Regulative Decree No. 84/2007, dated 5 November⁷⁹, which, in short, defines the requirements for the processes of the legal figures contemplated in this law.

On the other hand, the immigration law and the respective regulative decree were complemented by orders that instituted diverse aspects of the legal regimes consecrated in the aforesaid law, namely:

79 Accessible at: <http://sites.google.com/site/leximigratoria/legisp%C3%A9dia-sef/links>.

[Ordinance No. 727/2007](#), dated 6 September⁸⁰, which establishes the rates and fees to be charged by the SEF; [Ordinance No. 1563/2007](#), dated 11 December⁸¹, which establishes the uniform criteria and defines the means of subsistence⁸² that foreign nationals must have in order to enter, stay or reside in Portuguese national territory, namely for granting visas and the prorogation of stays and granting or renewing residence permits; and [Ordinance No. 1079/2007](#), dated 16 November⁸³, which established the minimum and maximum age limits, for purposes of granting residence visas to frequent secondary education.

With regard to the integration⁸⁴ of foreign citizens, it must be noted that the Constitution of the Portuguese Republic stipulates in Point 1 of Article 15 that, “Foreigners and stateless individuals who are or reside in Portugal enjoy the rights and are subject to the duties of Portuguese citizens”. This disposition is effectively reflected throughout national legislation, which has resulted in Portugal occupying the second place on the list of states included in the *Migrant Integration Policy Index (MIPEX)* (Niessen *et al.*, 2007). It must be kept in mind that the comparison that structures this index includes the EU25, Canada, Switzerland and Norway. Also worthy of note is [Law](#)

80 Accessible at: <http://sites.google.com/site/leximigratoria/legisp%C3%A9dia-sef/links>.

81 Accessible at: <http://sites.google.com/site/leximigratoria/legisp%C3%A9dia-sef/links>.

82 “Means of subsistence” are considered to be stable and regular resources that are sufficient for the essential needs of the foreign national and, whenever applicable, their family, namely for food, housing and healthcare and hygiene. The criterion used to determine the means of subsistence is indexed to the minimum monthly wage guaranteed under the terms of Article 266, No. 1 of the Labour Code (Law No. 99/2003, dated 27 August), keeping in mind the respective nature and regularity, net of social security contributions, with the following per capita values for each family unit: first adult, 100%; second or more adults, 50%; children and youths under the age of 18 and adult dependant children, 30%. See: http://www.mtss.gov.pt/docs/Cod_Trabalho.pdf.

83 Accessible at: <http://sites.google.com/site/leximigratoria/legisp%C3%A9dia-sef/links>.

84 Under the terms of the EC Communiqué COM 2003/336, this is, “A bipolar process, based on mutual rights and corresponding obligations on the part of nationals of third countries who are legally resident and the host society that must strive to ensure the full participation of the immigrant. This implies, on the one hand, that it is the responsibility of the host society to ensure that the formal rights assisting immigrants allow each individual the chance to participate in the economic, social, cultural and civic life of the nation and, on the other hand, that immigrants respect the fundamental norms and values of the host society and participate actively in the process of integration, without having to abandon their own identity”. Accessible at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0336:FIN:PT:PDF>.

[No. 18/2004, dated 11 May](#)⁸⁵, which transposed the “Race” Directive, about equal treatment for all individuals ([Directive 2000/43/EC](#))⁸⁶ and numerous other similar orders, which can be consulted on the CICDR website.

In terms of integration, [Cabinet Resolution No. 63A/2007](#), dated 3 May⁸⁷, approved the National Plan for Integrating Immigrants (PII). The PII seeks to stimulate the participation of immigrants in the conception, development and evaluation of immigration policies, systematising the Portuguese State’s sectorial objectives and commitments in the context of hosting and integrating immigrants. To this end, the plan includes a total of 123 measures, to be implemented until the end of this legislature (2005-2009), involving 13 Ministries. It thus aims to achieve higher levels of integration, from a sectorial perspective, namely in the areas of Labour, Housing, Health and Education, as well as from a transversal perspective, especially with regard to questions of racism and discrimination, gender equality and citizenship.

4.1 Asylum and Migration

4.1.1 Entry Procedures

4.1.1.1 Asylum⁸⁸

The legal regime for asylum and the respective procedures have been specified in Law No. 27/2008, dated 30 June.

In addition to the MAI, which is the entity responsible for decisions about applications, the main organisations involved in the procedure

85 Accessible at: http://www.cicdr.pt/images/stories/leit8_2004.pdf.

86 Accessible at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:PT:HTML>.

87 Accessible at: http://www.acime.gov.pt/docs/ACIDI/PII_DR.pdf.

88 In the first place, it must be mentioned that despite the fact that the specifications for this report envisage the designation of “entry procedures”, we believe that, at least in the Portuguese language and legal framework, it would be inconsistent to speak generically of entry procedures, keeping in mind that the request for asylum is superimposed over such an analysis.

of applying for asylum in Portugal are the SEF and the CPR⁸⁹, under the terms outlined below.

Foreign nationals or stateless individuals who enter the Portuguese national territory with a view to obtaining asylum must submit their application to the SEF or any other police authority. In such cases, it is the duty of the police authority that receives the application to send the asylum request to the SEF within a period of forty-eight hours. As soon as the application for asylum is received, the SEF will inform the CPR's representative. Until a decision is reached regarding the application for asylum, the petitioner can request that this application be extended to the family members accompanying the applicant. This request must be preceded by the express prior consent of the dependants in question. Under the terms of the law, minors can submit an application for asylum in their own name.

To validate the applicant's stay in Portuguese territory while the case is being processed, applicants are given a declaration proving that they have submitted a request for asylum and they are informed of their rights and duties.

In terms of content, applications for asylum must contain all the necessary elements to adequately justify the petition⁹⁰ and any other elements that are relevant for assessing the case⁹¹. Apart from this, the applicant is guaranteed the right to provide statements, formalised by notifying the SEF, within a period of five days after the application for asylum has been submitted. In the case of minors or incapacitated individuals, the SEF must also communicate this fact to the CPR for the purposes of the legal representation of such individuals.

After carrying out the appropriate procedures and enquires, the SEF prepares a written report containing the essential information pertaining to the application for asylum. The applicant is informed about this

89 Ever since the UNHCR closed its office in Portugal in December 1998, the CPR has represented this organisation in Portugal. Nevertheless, we will maintain the references to the UNHCR in the following discussion since it is mentioned in the relevant legislation.

90 Identification of the applicant and accompanying family members, nationality, country or countries of previous residence, identification of prior applications for asylum and a description of the circumstances or facts that would justify asylum being granted.

91 Available travel documents, elements of proof, eventual witnesses.

report, so that the asylum seeker can comment on it within a period of five days. It is also simultaneously communicated to the CPR representative. It is the task of the SEF to assess the application for asylum. The SEF must consider elements referring to the personal situation and circumstances of the petitioner and relevant facts concerning the country of origin.

In the case of applications for asylum submitted to border posts by foreign nationals who do not fulfil the necessary legal requirements to enter Portuguese national territory, the regime of procedures for admission has some specific features that will be described shortly. Thus, applications submitted at border posts are received by officials who have been suitably trained and have an adequate knowledge of the norms that are applicable in the area of the right to asylum and refugee status.

The SEF immediately informs the CPR that an application has been submitted. The CPR can comment upon it within a period of forty-eight hours and can interview the petitioner. During this period, the applicant is informed of his or her rights and obligations and provides statements that will serve as a preliminary hearing of the interested party.

Until he or she is notified of the decision by the national director of the SEF, the asylum seeker remains in the international area of the respective port or airport. Unaccompanied or separated minors are sent to a temporary shelter with special conditions, as per international recommendations, namely those by the UNHCR, [UNICEF](#)⁹² and the [International Committee of the Red Cross](#).⁹³

Whenever the application for asylum is accepted, the applicant is allowed to enter Portuguese national territory, followed by the processing of the request.

Irrespective of whether the application for asylum is formulated within Portuguese national territory or at a border post, the law envisages a rapid process for rulings, in which the application must be considered

92 <http://www.unicef.pt/>.

93 <http://www.icrc.org/por>.

to be inadmissible in cases that have been legally typified as such⁹⁴. The national director of the SEF has the authority to proffer a justified decision about inadmissible applications. The applicant and the CPR are notified of such a decision, which is liable to judicial objections within a period of eight days, in case the applicant is within national territory, and seventy-two hours, in case the application was made at a border post. In both cases, the objection has the effect of suspending proceedings. In case the applicant is within the national territory, a judicial decision is issued within a period of eight days; in case the applicant submitted the application at a border post, the decision is issued within a period of seventy-two hours. In the meanwhile, the applicant benefits from juridical protection, with due adaptations, under the terms outlined in [Law No. 34/2004, dated 29 July](#)⁹⁵ for appointing a defence for the accused for urgent cases. The applicant can also request a speedy appointment of a court trustee, in conditions that the law foresees will be established by a protocol between the Ministry for Internal Administration and the Portuguese Bar Association.

In case the application for asylum is not accepted, it is the petitioner's duty to leave the country, under penalty of being removed coercively.

With regard to entry procedures, an application for asylum has the effect of suspending any eventual administrative proceedings or criminal cases for having illegally entered the national territory that might have been filed against the applicant and accompanying family members. In case the application for asylum is accepted and it can be established that the illegal entry was determined by the same facts that condi-

94 According to Article 19, the application can avail of a speedy process for rulings in the following circumstances: the applicant has already been granted the status of refugee by another Member State; a country, which is not a Member State, is considered to be the first country of asylum for the applicant; the individual who asks for asylum is authorised to remain in the country for other reasons and, as a result of this, benefits from a statute that confers benefits that are equivalent to those of the statute of refugee; the applicant is authorised to stay in Portuguese territory for reasons that protect him or her from being returned in abeyance of the results of a process to determine a status; the applicant has presented an identical application after a final decision has been pronounced; a dependant of the applicant has presented a separate application after having consented that their case be covered by an application made in their name and whenever it is clearly evident that the application does not satisfy any of the criteria defined by the Geneva Convention and the New York Protocol.

95 Accessible at: <http://www.dgpj.mj.pt/sections/leis-da-justica/livro-iii-leis-civis-e/leis-de-processo-civil/regime-de-acesso-ao>

tioned the need for asylum, the proceedings or cases will be archived. Otherwise they will resume their due course⁹⁶.

4.1.1.2 Immigration

The procedures for entering Portuguese national territory are specified in Law No. 23/2007, dated 4 July (Foreigners' Law).

Apart from the role played by consular posts - overseen by the MNE, namely in the process of granting visas – the SEF is the entity directly responsible for the procedures of entry by foreign nationals into Portugal, in the following manner:

According to Article 9 of Law No. 23/2007 (general conditions for entry into Portugal), foreign citizens must hold a recognised travel document which is valid for longer than the intended duration of their stay, except in the case of the re-entry of a foreign national who is resident in the country. Similarly, foreign citizens can also enter or leave the country who meet certain legally specified conditions, namely in terms of holding certain documents, or those who are nationals of countries with which Portugal has signed international agreements in this regard⁹⁷.

It is likewise a condition for entry into Portugal that the foreign citizen possess sufficient means of subsistence for the period of the stay

96 Law No. 27/2008, dated 30 June, Article 12.

97 Nationals of States with which Portugal has signed international conventions that allow them to enter the country with an identity card or an equivalent document; those who are covered by relevant conventions between States that are members of the North Atlantic Treaty Organisation; those who hold a laissez-passer issued by the authorities of the State of which they are nationals or the State that represents them (this is only valid for transit and, when issued in Portugal, only allows the individual to leave the country); those who hold a flying licence or crew certificate that are mentioned in annexure 1 and 9 of the International Civil Aviation Convention, or other documents that substitute these, when on duty; those who hold an identification document for seamen as described in Convention 108 of the International Labour Organisation, when on duty; those who are nationals of States with which Portugal has signed international conventions that allow them to enter with a valid seaman's book, when on duty; nationals from States with which Portugal has signed international conventions to the effect can enter or leave the country with an expired passport; likewise, foreign citizens who hold a safe-conduct or a travel document for the expulsion of an individual from a third country can also exit Portuguese territory (Article 9).

and for the return journey to a country where the foreign national in question is guaranteed admission. More specifically, for the purposes of entry and stay, foreign nationals must have, in financial instruments, the per capita amounts defined by the orders issued by the MAI and the MTSS. Alternatively, foreign nationals can present a sponsorship letter from a Portuguese or a foreign citizen who is authorised to stay legally in the country, who undertakes to guarantee the conditions of their stay in Portuguese territory and repay the costs of their removal, in case of illegal stays.

In addition to these entry requirements and without prejudice to the exceptions envisaged by the law, foreigners must also hold a valid visa⁹⁸ that is suitable for the purpose of the visit, granted by the Portuguese consular authorities under the terms of Law No. 23/2007, dated 4 July, or by the competent authorities of the States that are Party to the Schengen Agreement⁹⁹ (consular visas).

Consular visas comprise the following typologies: stopover visa, transit visa, short-term visa, temporary stay visa and residence visa¹⁰⁰. The entities responsible for issuing visas are the consular posts and consular sections¹⁰¹, which are responsible for requesting opinions, information and other elements that are necessary for processing applications. However, there are situations in which granting a visa implies obtaining an obligatory opinion from the SEF beforehand, namely: a) when residence and temporary stay visas are requested; b) when such clearance is deemed to be necessary for reasons of national interests, owing to internal security or the prevention of illegal immigration and associated criminality.¹⁰²

98 The following individuals can enter the country without a visa: a) individuals holding a residence permit, prorogation of stay document or identity card, when valid; b) foreign citizens who can avail of this facility under the terms of international conventions signed by Portugal.

99 Convention to Apply the Schengen Agreement, dated 14 June 1985, signed in Schengen on 19 June 1990. <http://europa.eu/scadplus/leg/pt/lvb/l33020.htm>.

100 Stopover, transit and short-term visas are valid for one or more States that are party to the Schengen Agreement. Temporary stay and residence visas are only valid for Portuguese territory.

101 Except in the case of stopover, transit or short term visas requested by holders of diplomatic, service, official and special passports or travel documents issued by international organisations, in which case the granting of visas is the responsibility of Portuguese embassies and consular posts.

102 Law No. 23/2007, dated 4 July, Article 53, No. 1.

In exceptional circumstances, transit visas, short-term visas and special visas can be issued at border posts. The latter can be granted for humanitarian reasons or for the national interest, recognised by an order by the MAI, to allow foreign nationals to enter and temporarily stay in the country who do not have the legal requisites stipulated for the purpose. The national director of the SEF is the competent authority for granting visas issued at border posts, and he or she may delegate this authority.

4.1.2 Conditions for Admission

4.1.2.1 Asylum

According to Law No. 27/2008, dated 30 June, the right to asylum is guaranteed to foreign nationals and stateless individuals who are being persecuted or face a serious threat of persecution, as a result of their activities in the State of their nationality, or the State where they habitually reside, in favour of democracy, social and national liberation, peace between peoples, freedom and human rights. This right is likewise granted to foreign nationals and stateless individuals who, justifiably fearing being persecuted due to their race, religion, nationality, political opinions or integration into specific social groups, cannot or do not wish to return to the State of their nationality or habitual residence, irrespective of whether they effectively possess the characteristic associated with the race, nationality, and social or political conditions that have given rise to the persecution or not, as long as this characteristic has been imputed to them by the agents of the persecution¹⁰³. When the foreign national has more than one nationality, asylum will only be granted when the reasons that justify the granting of asylum hold true for all the States of which the foreigner in question is a citizen.

The same law defines the situations in which asylum or subsidiary protection can be excluded or refused. Thus, foreign nationals and stateless persons who benefit from protection or assistance from bodies of UN agencies, other than the UNHCR, cannot benefit from asylum or

¹⁰³ Law No. 27/2008, dated 30 June, Article 3, Nos. 1, 2 and 4.

subsidiary protection, as long as this protection has not ceased without the situation of the individual in question having been resolved in conformance with the applicable resolutions passed by the UN General Assembly. Likewise, the possibility of benefiting from asylum or subsidiary protection is also unavailable to foreign nationals or stateless persons who, in the eyes of the authorities of the country in which they have established residence, benefit from the rights and duties of citizens of that country or equivalents. Also excluded are foreign nationals and stateless individuals who have presumably practised crimes against peace, war crimes or crimes against humanity, common law premeditated crimes, punishable with prison sentences of over three years outside the national territory, before having been admitted as refugees, or acts that are contrary to the objectives and principles of the United Nations as enunciated in the preamble and in Article 1 and 2 of the United Nations Charter¹⁰⁴.

Asylum or subsidiary protection can also be refused whenever the granting of these statutes represents a danger or public threat for internal or external security or for public order. This is also the case when the foreign national or stateless person commits crimes that are punishable by prison terms, in case these crimes took place within the territory of his/her country of citizenship or previous residence and they left their country of origin solely for the purpose of avoiding penalties resulting from these crimes.

The SEF is the competent authority for processing applications for asylum and the presentation of proposals to grant or refuse protection, which will be decided by the MAI. The CPR can issue opinions in the context of admission processes, in conformance with the procedures that are described below.

The SEF issues a provisional residence authorisation to asylum seekers whose application has been accepted. This document is valid for a period of four months from the date the application was accepted, renewable for similar periods until a final decision is issued regarding the application. The same process occurs in the case of the family members of the applicant to whom the effects of asylum have been extended. While the cases are pending, the dispositions of the asylum

104 Law No. 27/2008, dated 30 June, Article 9, No. 1.

law (Law No. 27/2008, dated 30 June) and the foreigners' law (Law No. 23/2007, dated 4 July) are applicable to the petitioner and his or her family members.

The application for asylum must be processed within a period of sixty days, extendable for similar periods up to a limit of one hundred and eighty days, whenever justified (Article 28). While the application is being processed, if necessary, experts can be consulted about specific questions, namely concerning medical or cultural matters, and the CPR can add reports or information about the respective country of origin to the case file and obtain information about the state of the case.

Once the asylum application has been processed, the SEF prepares a proposal with justifications for granting or refusing the request for asylum, notifying the petitioner of the contents of this proposal so that he or she may comment on it within a period of five days. Similarly, the CPR representative is also informed of the proposal and has a similar period of time to comment on its contents. Once this period is over the duly justified proposal is sent to the national director of the SEF, who presents it to the member of the government responsible for the area of the internal administration, within a period of ten days. The latter, in his or her turn, takes a decision about the application within a period of eight days from the day on which the said proposal was received. Subsequently, it is the task of the SEF to notify the applicant about the decision, mentioning the right to judicial appeals to be submitted to the administrative courts within a period of fifteen days, with the effect of suspension.

A judicial decision is issued with regard to the appeal within a period of fifteen days. In cases of decisions to refuse international protection, the applicant can remain in Portuguese national territory for a transitory period, which shall not exceed thirty days. After this period, they are subject to the prevailing regime for the entry, stay, departure and removal of foreign nationals from Portuguese national territory.

The right to asylum ceases when the foreign national or stateless person voluntarily decides to once again avail of the protection of the country of their nationality; when the individual voluntarily recovers their lost nationality; when the individual acquires a nationality and enjoys the

protection of that nation; when the individual returns voluntarily to the country they abandoned or stayed away from for fear of being persecuted; when the individual cannot refuse to avail of the protection of the country of their nationality because the circumstances for which they were recognised as refugees no longer exist; in cases of stateless individuals, when they have the necessary conditions to return to the country in which they had their habitual residence; when the circumstances for which the individual was granted refugee status no longer exist; when the individual expressly renounces the right to asylum.

With regard to subsidiary protection, the foreign national or stateless individual is no longer eligible for such protection when the circumstances that resulted in this benefit being granted no longer exist or have changed, thus making the protection unnecessary.¹⁰⁵

The SEF is responsible for assessing the aforesaid circumstances and the cessation of this status is declared only when there is a significant and lasting change in the circumstances of the State of the individual's nationality or habitual residence so as to eliminate the justified fear of persecution or the risk of suffering grave harm.¹⁰⁶

The renewal of the right to asylum or subsidiary protection can be revoked, suppressed or refused when the beneficiary should have been or can be excluded from such a right; when the beneficiary has distorted or omitted decisive facts in order to avail of the protection; when the beneficiary represents a threat to internal security; when the beneficiary has been judged and sentenced for a premeditated common law crime that is punishable with sentences over three years, or represents a threat to internal security or public order.¹⁰⁷

Based on a proposal by the national director of the SEF, the Minister for Internal Administration is responsible for declaring that the individual in question has lost the right to international protection.

105 Law No. 27/2008, dated 30 June, Article 41, Nos. 1 and 2.

106 Law No. 27/2008, dated 30 June, Article 41, No. 3.

107 Law No. 27/2008, dated 30 June, Article 41, No. 4.

4.1.2.2 Immigration

As mentioned in point 4.1.1.2., the granting of visas to enter the national territory is the responsibility of consular posts and consular sections, which must verify that the respective conditions for issuing the visa have been fulfilled. The granting of visas varies according to the reason for the visit and stay of a citizen of a third country, as per the terms presented below.

A stopover visa allows the holder, when catching an international transport connection, to pass through an airport or port of a State that is a party to the Schengen Agreement. Nationals from States identified in a joint order issued by the ministers for Internal Administration and Foreign Affairs are subject to this visa, as are the holders of travel documents issued by the said States.

A transit visa allows individuals from a third state to enter Portuguese territory on their way to a third country into which they have been guaranteed admission.

A short term visa allows the holder to enter the country for purposes that, having been accepted by the competent authorities, do not justify the concession of another type of visa, namely for purposes of tourism and visits and to accompany family members who hold temporary stay visas.

A temporary stay visa allows the holder to enter the national territory of Portugal for various purposes, namely: a) medical treatment in an official healthcare establishment; b) the transfer of citizens of States that are a party to the World Trade Organisation, in the context of providing services or frequenting professional training in Portuguese territory; c) to engage in a temporary professional activity in Portugal, whether independent or contracted, for a period not exceeding, as a rule, six months; d) to engage in scientific activities in Portugal at research centres, to teach at an establishment for higher education or engage in a highly skilled activity for a period of time that is less than one year; e) to engage in an amateur sporting activity, certified by the respective federation, as long as the club or association assumes responsibility for housing and healthcare; f) to remain in Portuguese national terri-

tory for periods exceeding three months, in exceptional cases, duly justified, namely, to fulfil international commitments made within the scope of the World Trade Organisation, in terms of the freedom to provide services; g) accompanying family members undergoing medical treatment.

For the purposes of a temporary stay visa to engage in a subordinate professional activity, nationals of third countries must have a work contract or job offer. Temporary subordinate job opportunities are publicised by the IEFP, which maintains an information system that is available to the public and includes all the job opportunities that have not been filled by nationals of EU Member States or the European Economic Space or nationals of third countries who are legally resident in the Portuguese national territory. The IEFP circulates information about such job opportunities to Portuguese embassies and consular posts¹⁰⁸.

A residence visa allows the holder to enter Portuguese territory in order to apply for a residence permit¹⁰⁹. This visa is valid for two entries and allows the holder to remain in Portuguese territory for a period of four months¹¹⁰. There are six different kinds of residence visas, according to the intended purpose: a) a residence visa for engaging in a subordinate professional activity; b) a residence visa for engaging in freelance professional activities or for entrepreneur immigrants; c) a residence visa for research or highly qualified activities; d) a residence visa for the purposes of studies, student exchanges, professional internships or voluntary activities; e) a residence visa issued in the context of the mobility of students enrolled in higher education; f) a residence visa for the purposes of family reunions. The issuing of a residence visa allows the holder to enter Portuguese territory in order to apply for a residence permit but it does not, in itself, confer the statute of resident for foreign nationals in Portugal.

With regard to issuing this type of visa for the purposes of accessing the labour market, the law enumerates three situations. Firstly, a residence visa to engage in subordinate professional activities, subject to

108 Law No. 23/2007, dated 4 July, Article 56.

109 Law No. 23/2007, dated 4 July, Article 48, No. 1, line b).

110 Law No. 23/2007, dated 4 July, Article 58, No. 1 and 2.

the rules of the principle of preference for EU nationals, depending on the existence of employment opportunities that have not been filled by Portuguese citizens, workers who are nationals of EU Member States, countries of the European Economic Space, third countries with which the EU has signed an agreement for the free circulation of people, as well as by workers who are nationals of third countries residing legally in Portugal. The overall contingent of employment opportunities is approved annually by the Cabinet, after a prior opinion by the Permanent Council for Social Co-ordination, and is made available via an information system that is constantly updated and accessible to the public, managed by the IEFP. The issuing of residence visas to engage in this type of activity depends on the existence of a work contract or job offer.

A residence visa for purposes of engaging in independent professional activities or for immigrant entrepreneurs presupposes a contract or a written proposal for a contract to provide services in the capacity of a freelance professional and, if applicable, suitable qualifications for engaging in independent professional activities. A residence visa for entrepreneurs who intend to invest in Portugal presupposes investment operations or proof of financial resources available in Portugal.

A residence visa for research or highly skilled activities is granted to nationals of third countries who have been admitted to collaborate as researchers in a research centre that is recognised by the Ministry for Science, Technology and Higher Education, or admitted to teach at an establishment for higher education or for highly skilled activities. Just like in the previous situations, applicants for this kind of visa must have a contract or another kind of contractual relationship that supports their entry and residence in Portugal.

Without prejudice to the specific conditions for granting each kind of visa and the special regimes deriving from international agreements, the granting of residence visas, temporary stay visas and short term visas depends on the following conditions: the absence of an order of removal from the country and the subsequent period of a ban on entering the national territory; the absence of an adverse indication on the Schengen Information System prohibiting entry; the absence of an adverse indication on the SEF's Integrated Information System

prohibiting entry; possessing sufficient means of subsistence; a valid travel document and travel insurance. In order to issue residence visas to engage in subordinate or independent professional activities, studies, student exchanges, professional internships or volunteer activities, temporary stay visas and short term visas a transport document is also required that ensures that the applicant will return to their home country. Temporary stay visas or residence visas are refused when the foreign national has been convicted for a crime that in Portugal is punishable with sentences that deprive individuals of their freedom for a period exceeding one year, or who has been convicted more than once with an identical sentence, even though it might have been a suspended sentence. Visas can also be refused on the basis of the applicant posing a threat to public health, order and security.

The process of granting some kinds of visas involves other entities, namely in the case of residence visas for subordinate professional activities and family reunions. In the former case, the decision must be communicated to the IEFP to update the data referring to the overall indicative contingent of employment opportunities for nationals from third countries¹¹¹. In the case of visas for family reunions (for family members that are outside Portuguese national territory) the SEF has to confirm beforehand that the applicant is entitled to avail of the provisions for family reunions, which is communicated to the DGACCP for the purpose of issuing the visa for the family member or members in question.

¹¹¹ As mentioned above, the granting of residence visas for the purpose of subordinate professional activities depends on the existence of employment opportunities. To this end, the Cabinet, with the prior opinion of the Permanent Council for Social Co-ordination, annually approves a resolution that defines an overall contingent of employment opportunities, in which it can exclude sectors or activities where there is no need for labour. The IEFP and its counterparts in the Autonomous Regions of the Azores and Madeira maintain an information system that is constantly updated and is accessible to the public via the Internet, listing available employment opportunities. This information is also circulated to Portuguese embassies and consular posts. Residence visas to engage in a subordinate professional activity can be issued, up to the limit of the contingent that has been fixed, to nationals of third countries who fulfil the general conditions for the granting of residence visas and who have a work contract or the promise of a work contract. The IEFP is responsible for preparing a half-yearly report about the implementation of the overall contingent, and therefore it is informed whenever a residence visa for subordinate work has been granted.

4.1.3 Legal Residence

4.1.3.1 Asylum

The procedures pertaining to applications for asylum and the granting of the statute of refugee have been specified in points 4.1.1.1 and 4.1.2.1.

The granting of the right to asylum confers the statute of refugee upon the beneficiary¹¹², who is granted a residence permit that is valid for five years and is renewable.

With regard to subsidiary protection, the law allows residence permits to be granted for humanitarian reasons to foreign nationals and stateless individuals who do not come under the purview of the legal regime for granting asylum and who cannot or who feel it is impossible to return to the country of their nationality or their habitual residence, owing to the systematic violation of human rights or the risk of serious harm¹¹³. Residence permits for humanitarian reasons granted within the scope of subsidiary protection are valid for a period of two years and can be renewed.

According to Law No. 27/2008, dated 30 June, asylum seekers who lack adequate economic and social conditions can benefit from support for food and housing, and can also access the National Health Service¹¹⁴.

4.1.3.2 Immigration

According to Law No. 23/2007, dated 4 July, citizens of third countries who hold a valid residence document can reside in Portugal. The term “legal resident” means a “foreign citizen who holds a residence document in Portugal, whose validity is equal to or exceeds one year”¹¹⁵,

112 Law No. 27/2008, dated 30 June, Article 4.

113 Law No. 27/2008, dated 30 June, Article 7, No. 1.

114 Law No. 27/2008, dated 30 June, Articles 51, 52, 56 onwards.

115 Law No. 27/2008, dated 30 June, Article 3, line p).

which can be a temporary or permanent residence permit¹¹⁶. A temporary residence permit is valid for a period of one year, renewable for successive periods of two years and must be renewed whenever there is a change in the elements of identification recorded on them¹¹⁷. A permanent residence permit has an unlimited validity.

The SEF is the entity responsible for issuing these residence documents. The general conditions for granting residence permits are enumerated in Article 77 of Law No. 23/2007, dated 4 July: possession of a valid residence visa; means of subsistence, as defined by the law; housing; enrolment in Social Security (whenever applicable); no prior convictions for crimes that are liable for prison sentences that exceed one year; not being within the period of being banned to enter into the national territory after a removal from the country; the absence of adverse indications in the Schengen Information System and the absence of adverse indications in the SEF's Integrated Information System prohibiting the admission of the individual.

A renewal of a temporary permit must be requested by the interested party up to thirty days before the validity of the document expires¹¹⁸. The requirements for renewals are as follows¹¹⁹: the existence, as per the terms of the law, of suitable conditions for housing; the fulfilment of tax and social security obligations; an absence of convictions for any crime or crimes, whose sentence, either separately or together, exceed one year of prison.

In its turn, a permanent residence permit is granted to foreign nationals who fulfil all the following requirements: individuals who have held a temporary residence permit for at least five years; the absence of any convictions for a crime or crimes during the last five years of residence in Portuguese territory whose sentence(s), either separately or together, exceed a year in prison; means of subsistence as defined by the law; suitable housing; and a basic knowledge of Portuguese.

116 Law No. 23/2007, dated 4 July, Article 74, No. 1.

117 Law No. 23/2007, dated 4 July, Article 75.

118 Law No. 23/2007, dated 4 July, Article 78, No. 1.

119 Law No. 23/2007, dated 4 July, Article 78, No. 2.

The type of residence permit varies according to the purpose of the stay¹²⁰: engaging in a subordinate professional activity; independent professional activities; research or highly skilled professional activities; studies in institutions of secondary education; studies in institutions of higher education; unpaid professional internships; attending a programme of volunteer activities; family reunions; victims of human trafficking or actions involving illegal immigration; individuals who hold the statute of long term resident in another EU Member State.

A temporary stay visa is issued for stays in Portugal for limited periods, namely to engage in a professional activity, for a period that is generally less than six months, or for scientific research, teaching in an establishment of higher education or highly skilled activities, generally for a period of less than one year¹²¹.

4.1.4 Access to the Labour Market

Access to the labour market in Portugal by foreign nationals is permitted by a single document that simultaneously legitimises their stay in Portuguese national territory. This document can comprise a residence permit or a temporary stay visa, the latter meant for stays with a limited duration.

As mentioned above, it is the responsibility of the ACT to verify that labour norms in Portugal are being fulfilled and to carry out inspections, including verifying the specific conditions that pertain to foreign nationals in this area.

4.1.4.1 Asylum

Individuals seeking asylum or subsidiary protection who have been issued a provisional residence permit can access the labour market under the terms of general legislation. However, this access is prohibited during the period between the submission of the application and a de-

120 Law No. 23/2007, dated 4 July, Article 88 onwards.

121 Law No. 23/2007, dated 4 July, Article 54 onwards.

cision as to whether the application is admissible, unless the applicant holds a residence permit or other document authorising their stay in the national territory, which allows them to engage in professional activities¹²².

The general dispositions regarding the social security system are also applicable to them.¹²³

4.1.4.2 Immigration

4.1.4.2.1 *Temporary Stay Visa*

From a perspective of access to the labour market, holders of a temporary stay visa can engage in subordinate or independent professional activities, of a temporary nature.

From amongst the purposes for which a temporary stay visa is issued, in terms of the labour market, holders can engage in subordinate or independent professional activities that, as a general rule, do not exceed a period of six months; or engage in scientific activities in research centres, teach in establishments of higher education or engage in highly skilled activities for a period of less than one year.

Foreign nationals of States that are party to the World Trade Organisation (WTO) are also allowed to engage in professional activities in the context of transfers, in order to provide services or undergo professional training in Portuguese territory. Engaging in duly certified amateur sports activities and also, in exceptional cases, stays that exceed a period of three months for the purposes of international commitments within the scope of the WTO regarding the freedom to provide services are also allowed.

122 Law No. 27/2008, dated 30 June, Articles 54 and 71 .

123 Law No. 27/2008, dated 30 June, Articles 71 and 72.

4.1.4.2.2 Residence Permit

According to Article 83, No. 1 of Law No. 23/2007, dated 4 July, a residence permit allows the holder the right to engage in subordinate or independent professional activities. Apart from this, a residence permit is a necessary and sufficient condition to access professional guidance, training, improvement and rehabilitation, without the need for any additional authorisation related to the condition of being a foreign national. The law also ensures equal treatment for foreign nationals, namely in areas related to labour aspects, such as social security, tax benefits and membership of trade unions.

The granting of a residence permit depends on some general conditions (Article 77 of Law No. 23/2007), such as: an absence of relevant penal convictions, the possession of a residence visa, sufficient means of subsistence and housing, the absence of adverse indications or a ban on entry as per the Schengen Information System for the purposes of admission, as well as enrolment in the social security system, whenever applicable.

In addition to the general conditions for granting residence permits, some specific requirements are also necessary, applicable according to the nature of the activity to be developed in Portugal.

Thus, in the context of labour, foreign citizens must have a work contract, signed as per the terms of the law, and must also be enrolled in the social security system in order to obtain a residence permit to engage in a subordinate professional activity¹²⁴. The SEF then informs the IEFP that the residence permit to engage in a subordinate professional activity has been granted so it can be included in the data to update the contingent mentioned above¹²⁵.

To meet the expectations of foreign citizens who are effectively inserted in the labour market, the law also allows, on an exceptional basis, a residence permit to be granted without the necessary valid residence visa. Thus, without prejudice to the other applicable general requisites, the foreign national can obtain a residence permit even

¹²⁴ Law No. 23/2007, dated 4 July, Article 88, No. 1.

¹²⁵ Law n.º 23/2007, dated 4 July, Article 88.º, n.º 3 e n.º 4.

without the respective residence visa, as long as they fulfil the following conditions: the individual has a work contract or a work relationship that is proved by a trade union, by an association that integrates the COCAI or by the ACT; the individual has entered the national territory legally and has remained there legally; the individual is enrolled in the social security system and the respective contributions are up to date¹²⁶.

The following special conditions are applicable in order for a residence permit to be granted for the purposes of independent professional activities, viz the individual must: have constituted a company under the terms of the law and declared the commencement of activities to the tax and social security authorities as a freelance professional or signed a contract to provide services to engage in freelance professional activities; be qualified to engage in independent professional activities; have sufficient means of subsistence; be enrolled in the social security system; and, whenever required, must present a declaration from the respective professional certifying association that they fulfil the respective requirements to be registered with the association¹²⁷. The exceptional regime for granting residence permits without the respective residence visa is also admissible in this case (Article 89, No. 2, of Law No. 23/2007).

As for a residence permit for engaging in research or highly skilled activities, in addition to the general requirements, the following conditions must also be fulfilled: the individual in question must have been admitted to collaborate at an officially recognised research centre, through a work contract, a contract to provide services or a scholarship for scientific research; or the individual must have a work contract or a contract to provide services that is compatible with engaging in teaching activities at an establishment for higher education, or for a highly skilled activity; and is enrolled in the social security system¹²⁸. Such individuals can also apply for a residence permit without holding a valid residence visa, as long as they have entered and remained legally in Portugal. Holders of residence per-

126 Law No. 23/2007, dated 4 July, Article 88, No. 2, and specified in the Regulatory Decree no 84/2007, article 54, no 3 - "Exceptional Status".

127 Law No. 23/2007, dated 4 July, Article 89, No. 1.

128 Law No. 23/2007, dated 4 July, Article 90, No. 1.

mits who have been admitted to collaborate in an officially recognised research centre can also engage in teaching activities, under the terms of the law¹²⁹.

4.1.5 Repatriation

In the context of repatriation, this study has adopted a broad approach, encompassing both cases of coercive removal and voluntary repatriation, as well as situations of non-admission (where entry has been refused) into the Portuguese national territory.

4.1.5.1 Asylum

In this context, the regimes for coercive removal and for the refusal of entry are limited according to the underlying values of the protection conferred by the statute of asylum.

An application for asylum has the effect of suspending administrative and / or crime proceedings with regard to any cases that might have been filed or might be filed against the applicant and his or her family members for having entered and/or stayed illegally in the country or for not fulfilling the requirements for admission. Thus, in case the application for asylum is accepted and if it can be established that the illegal entry was caused by the facts that justify the granting of asylum then the case will be archived.¹³⁰

In cases where it has been decided to refuse international protection, the applicant can remain in the national territory during a transitory period, which must not exceed thirty days. After this period applicants are subject to the general regime for removal that is enshrined in the Foreigners' Law (Law No. 23/2007, dated 4 July).

On the other hand, any foreign citizen who is the subject of a process of removal from Portuguese national territory cannot be sent to any country where he or she might be persecuted for the reasons that justify the

129 Law No. 23/2007, dated 4 July, Article 90, Nos. 2 and 3.

130 Law No. 27/2008, dated 30 June, Article 12, and Law No. 23/2007, Article 146, No. 5.

granting of asylum or where he or she might be tortured or be subjected to degrading treatment (Article 143, No. 1 of the Foreigners' Law), and are instead sent to another country that is willing to host them.

In the area of voluntary return, Law No. 27/2008, dated 30 June, allows assistance to applicants and beneficiaries of asylum or subsidiary protection who express the desire to return to their countries of origin, namely through repatriation programmes¹³¹.

4.1.5.2 Immigration

4.1.5.2.1 Removal

A coercive removal from Portuguese national territory can occur in two forms: administrative expulsion, in the case of foreign citizens who have entered and/or stayed illegally in the country, and judicial expulsion, in the case of foreign nationals who reside in Portugal legally¹³² (an autonomous judicial expulsion measure)¹³³ or applied as an additional sentence for the practice of a premeditated crime¹³⁴ when convicted with an effective prison sentence that exceed six months (for non-residents) or one year (for residents).

In terms of limitations for removals, the law establishes that it is not possible to expel foreign nationals who were born and reside in Portuguese territory; those who are responsible for minor children who are Portuguese nationals residing in Portugal; those who are responsible for minor children, resident in Portugal, to whom they provide sustenance and education; as well as individuals who have been residing in the country from before the age of 10 years.

As for foreigners who are long-term residents, they can only be expelled judicially on the basis of posing a threat to public order or public safety.

131 Law No. 27/2008, dated 30 June, Article 139.

132 With the fundamental requirements as outlined in Article 134, No. 1, lines b) to f) of Law No. 23/2007, dated 4 July.

133 Law No. 23/2007, dated 4 July, Article 153.

134 Law No. 23/2007, dated 4 July, Article 151.

An administrative expulsion envisages the removal of foreign nationals who have entered and/or stayed illegally in Portuguese territory¹³⁵. A foreign national detected in such circumstances is detained by the police authorities and is presented to the judicial authorities within a maximum period of forty-eight hours after the arrest in order to validate the arrest and for the application of coercive measures, if warranted¹³⁶.

However, in justified cases and as an alternative to detention, the SEF can notify the foreign national to voluntarily abandon Portuguese national territory within a stipulated period of time for the purpose, ranging from between ten and twenty days¹³⁷, on pain of having an administrative case for expulsion being filed against the individual in question in case of non-compliance.

In cases of detention, during the judicial interrogation, the foreign national who has been detained can also, in case he or she expresses such a desire, be handed over to the SEF to be taken to the border and removed from the country, as soon as possible.¹³⁸ This form of removal results in the application of a measure whereby the foreign national will not be allowed entry for a period of one year, which is recorded in the SEF's Integrated Information System and the Schengen Information System.¹³⁹

Once the detention has been validated by a judge, the latter may determine the application of the following coercive measures: expellees can be placed in a temporary housing centre, or be obliged to remain at home with an electronic monitoring device and periodically present themselves to the SEF or the police authorities¹⁴⁰. If it is decided to place the foreign national in a temporary housing centre or similar space, this stay cannot exceed sixty days¹⁴¹. In case another restraining measure is applied then the foreign national is notified to appear at the offices of the SEF.

135 Law No. 23/2007, dated 4 July, Article 145.

136 Law No. 23/2007, dated 4 July, Article 146, No. 1.

137 Law No. 23/2007, dated 4 July, Article 138, No. 1.

138 Law No. 23/2007, dated 4 July, Article 147, No. 1.

139 Law No. 23/2007, dated 4 July, Article 33, No. 1, line e) and Article 147, Nos. 2 and 3.

140 Law No. 23/2007, dated 4 July, Article 160, No. 3.

141 Law No. 23/2007, dated 4 July, Article 146, No. 3.

This is followed by the administrative phase, during which the SEF will promote the process of removing the foreign citizen from Portuguese national territory. During the procedures of this process, the expellee is entitled to a compulsory hearing and the director of the SEF is responsible for making a final decision. The expellee is notified of this decision, in a language that the foreign national can understand, mentioning the basis for the fact and the right to and the possibility of a judicial appeal, which is filed at the next level of the judiciary.¹⁴²

As mentioned above, the foreign national cannot be expelled to any country where he or she might be persecuted for the reasons that, under the terms of the law, justify the granting of the right to asylum or where the foreign national might be tortured or suffer inhuman or degrading treatment. In such cases, the foreign national is sent to another country that is willing to host him or her.¹⁴³

In the context of voluntary repatriation, the Portuguese State supports the voluntary return of foreign nationals to their country of origin, namely within the scope of co-operation programmes that have been established with international organisations such as the IOM, the entity responsible for promoting the programme for voluntary repatriation that is presently in effect in Portugal. Under this programme the State supports the costs inherent to the return journey and other related necessary expenses and grants the beneficiaries a monetary sum (SEF, 2008a).

On the other hand, a decentralised network for support, information and the channelling of applications to the IOM has been created within the scope of the SuRRIA – “Supporting Repatriation – Network for Information and Counselling” Project, promoted by the SEF in partnership with the IOM, for immigrants who seek to return voluntarily to their country of origin. This project involves diverse entities such as the SEF, the ACIDI Immigration Support Centres, the Red Cross, the Jesuit Refugee Service, Caritas and other local associations.

Individuals who have benefited from the voluntary repatriation programme are subsequently forbidden to enter Portugal for a period of

142 Law n.º 23/2007, dated 4 July, Article 141.º and article 148.º.

143 Law No. 23/2007, dated 4 July, Article 143.

three years. Should they enter the national territory during this period they must return to the State the sums received, along with interest at prevailing rates.¹⁴⁴

4.1.5.2.2 *Refusal of Entry*

With regard to cases where admission is denied, foreign citizens can be refused entry into Portugal in case they do not have the necessary legal requirements to be admitted to the country¹⁴⁵, as mentioned in the chapter about conditions for admission. In this process, the foreign national in question is always given a hearing and the decision to deny entry is the responsibility of the national director of the SEF, who can delegate this authority¹⁴⁶. The foreign citizen is always notified of this decision in a language that he or she understands, mentioning the fundamental reasons for this fact and the right to and the possibility of a judicial appeal, which is filed at the next level of the judiciary¹⁴⁷.

Whenever it proves impossible to ensure that a foreign citizen who has been refused entry to the national territory re-embarks within forty-eight hours after the decision to refuse entry, the competent judicial authority is informed of this fact, so as to determine whether the foreign national in question will be maintained in a temporary accommodation centre or equivalent space¹⁴⁸.

While in the international area of the port or airport or when lodged at a temporary housing centre or equivalent space, the foreign national who has been refused entry can communicate with a diplomatic or consular representative from the country of origin or any person of their choice, and will be provided with the assistance of an interpreter, healthcare and the necessary support to satisfy their basic needs, along with access to legal assistance, at their own expense, by a solicitor.¹⁴⁹

144 Law No. 23/2007, dated 4 July, Article 139°.

145 Law No. 23/2007, dated 4 July, Article 32.

146 Law No. 23/2007, dated 4 July, Articles 37 and 38.

147 Law No. 23/2007, dated 4 July, Article 38, No. 2.

148 Law No. 23/2007, dated 4 July, Article 38, No. 4.

149 Law No. 23/2007, dated 4 July, Article 40°.

4.2 Links with Other Areas of Political Intervention

The strategy adopted for the national policy in the area of immigration and asylum is based on a broad overall view of this phenomenon and is structured around four main axes: regulating migratory fluxes, promoting legal immigration, combating illegal immigration and integrating immigrants into the host society. A recent example of the importance attributed to immigration matters was the adoption of the themes of legal immigration and combating illegal immigration as one of the priorities of the Portuguese Presidency of the European Union in 2007.

At the level of implementing policies, it is important to note that a diverse set of entities intervene in the process. As has been mentioned above, the SEF plays a prominent role in the implementation of policies, under the tutelage of the MAI. The SEF is the entity responsible for controlling the entry, stay, departure and removal of foreign nationals, and also intervenes in specialised criminal matters involving crimes regarding the abetting of illegal immigration and human trafficking. It is also responsible for processing applications for asylum.

In this context it is also important to highlight the intervention of the MTSS with regard to the labour aspects of immigration, namely through the IEFP (responsible for publicising and monitoring the process of contracts and for preparing reports about the annual contingent of foreign workers to be admitted) and the ACT (responsible for verifying work conditions).

The MNE plays a significant role in terms of the international dimension and external relations in the area of immigration and visa policies, with a special emphasis on the DGACCP, which it co-ordinates.

Keeping in mind the transversal nature of the integration of immigrants, the co-ordination of the respective policies has been entrusted to the President of the Cabinet. They are to be implemented by the ACIDI, especially in terms of assisting with the conception, implementation and assessment of public policies that are relevant for the integration of immigrants and ethnic minorities.

Especially in this aspect, the role of sectorial ministries cannot be overlooked, as is the case, for example, of the Ministry of Health, the Ministry of Education and the Finance Ministry, whose actions are governed by the constitutional principle of equal rights and duties for national and foreign citizens.

One must also note the role of the [Central Registry](#)¹⁵⁰ (which is part of the MJ), the entity responsible for the processes of attributing and acquiring Portuguese nationality and for maintaining a central registry about the attribution, acquisition and loss of Portuguese nationality.

A coherent articulation and interaction between all the entities involved, especially those from the public sector, has been a priority while implementing Portuguese policies concerning migration, whose effective results are well known. To this end, it is important to highlight the functions of the COCAL, which, along with representatives from diverse public entities, also includes representatives from immigrant associations, social partners and institutions for social solidarity, in order to define policies for social integration and to combat exclusion, especially in the aspects pertaining to migration. Other channels and points of contact have also been developed alongside this Advisory Council linking different entities and partners dedicated to the field of migration. In this context, it is important to highlight the network of contact points about migration that, within the scope of the European Migration Network, further reinforced the ties between the various elements that play a role in this process.

Likewise, immigrant associations, anti-racist associations and human rights associations, trade unions, and employers' associations, amongst others, comprise the CICDR, which is dedicated to collecting and analysing information and preventing discriminatory acts.

In this area, extra-governmental entities have increasingly played an important role in realising policies pertaining to migration and asylum in Portugal. An example of this is the promotion of meetings between the SEF and associations that represent immigrants to reflect upon and accompany migratory issues. The signing of protocols between the SEF and diverse immigrant associations to make socio-cultural me-

150 Accessible at: <http://www.rnpc.mj.pt/rcentr/infocent.asp>.

diators available to attend to immigrants in person and by telephone, thus facilitating access by immigrants to the services that are provided, represents an example of best practices in this area.

Specifically in the area of asylum, the functions that the asylum law has attributed to the CPR (which represents the UNHCR in Portugal) are also worthy of note, in terms of the juridical and social protection of asylum seekers and refugees. The CPR is especially concerned with the area of processing applications for asylum and hosting, thus representing an innovative solution in European and international terms.

The IOM has also played a significant role, based on a permanent and open dialogue with governmental institutions that goes well beyond merely managing the voluntary repatriation programme, which it administers in Portugal.

As has been mentioned, during the past two years Portugal has adopted a new legal framework for immigration and asylum, based on a broad parliamentary and social consensus encompassing a sweeping vision of migratory realities. This new legal framework seeks to stimulate legal migration and to combat exploitation and criminality associated with immigration while ensuring the tutelage of the rights of immigrants. It has also proved to be an essential tool for promoting articulated and coherent actions on the part of all the agents and entities involved in the migratory process in Portugal, whose potential cannot yet be ascertained at the present time.

5. An Analysis of the Systems for Asylum and Immigration

On 12 July 2000, the then European Commissioner for Justice and Home Affairs, António Vitorino, mentioned in a speech that the policy of zero immigration implemented by European nations during the past 25 years was not a suitable solution for the new economic and demographic challenges that Europe was facing at the time¹⁵¹. Since then, European immigration policies have been restructured and, amongst other aspects, now promote the so called management of migratory fluxes (*managed migration*), which has been strategically consolidated, especially through the Tampere and the Hague programmes.

At a national level, the evolution of immigration policies has been characterised by a similar course of action, including aspects that have not been envisaged in common EU policies concerning immigration and asylum. A recent report by the Ombudsman states that, “Once a policy of ‘zero immigration’ was excluded, it proved necessary to manage fluxes of economic immigration, implemented via a policy of establishing contingents for the entry of new immigrants” (Ombudsman, 2008). The evolution that has taken place in the immigration law since 2001 has been consistent in this respect and has sought to improve the procedures through which this objective can be implemented. The most recent legislative production - namely Regulative Decree No. 84/2007, dated 5 November - reveals a particular emphasis on attracting skilled labour and entrepreneurs to Portugal, reflected, above all, in the streamlining of bureaucratic aspects and facilitating conditions for admission.

In line with the common EU policy of attracting qualified individuals, the emphasis on this kind of immigration has been reflected not just in the most recent legislation but also in the creation and development of programmes to recognise foreign higher educational qualifications, in order to meet the specific needs of the national labour market. A good example of this is the Programme for Recognising the Qualifications of Immigrant Doctors, which

151 Accessible at http://migration.ucdavis.edu/mn/more.php?id=2326_o_4_o_

has been promoted by institutions from civil society and by the State¹⁵².

Another aspect that has been increasingly stimulated and consolidated in successive Portuguese immigration laws is that of family reunions, namely by streamlining and facilitating processes for such reunions. This evolution corresponds to a new stage of immigration in Portugal, characterised by a greater consolidation of immigrant communities in Portugal, expressing a more humanistic solution while managing migratory fluxes. Thus, in addition to transposing Council Directive No. 2003/86/EC, dated 22 September, the unification of the juridical statutes of residence in Portugal, implemented by the new Portuguese legal framework, homogenised and clarified the regime for family reunions, which had previously been governed by different regimes, according to the type of document held by the beneficiary entitled to this right.

Although Portugal is a country where immigration is a relatively recent phenomenon it has been cited as an example of good practices in terms of the integration of immigrants, namely in the *Migrant Integration Policy Index* (Niessen *et al.*, 2007), which analyses national legislation. In this index, Portugal occupies the second place on the list of States, which includes the EU25 nations, Canada, Switzerland and Norway.

At the level of fundamental rights, it is necessary to highlight the fact that the Constitution of the Portuguese Republic consecrates the principle of equal rights for both national and foreign citizens and that the national legal framework attributes a broad range of rights to foreign nationals, namely at the level of social services, healthcare and education.

Likewise, in this area, it is important to note the creation of the National Plan for Integrating Immigrants, which seeks to promote and optimise channels for the integration of immigrant communities (Ombudsman,

152 The first programme to Recognise the Qualifications of Immigrant Doctors was financed by the Calouste Gulbenkian Foundation and was implemented in partnership with the Jesuit Refugee Service. It was held between 2002 and 2005 and integrated 106 immigrant doctors into the National Health Service. Recognising the importance of the initiative, the Ministry of Health, in partnership with the CGF and the JRS, launched a new programme in 2008 for the Professional Integration of 150 Immigrant Doctors. Accessible at: <http://www.gulbenkian.pt/index.php?section=63&artId=1119>.

2008), as well as the National Action Plan for Inclusion and, in another aspect, the National Plan Against Human Trafficking.

In short, recent Portuguese experiences have been shaped by multiple adaptations, not just in terms of changes in the migratory fluxes themselves but also in terms of the social and demographic evolution of the national population, common EU policies and international events that influence this reality. These stimuli have resulted in a multidimensional effort to manage migratory fluxes. In this context, it is possible to highlight aspects such as the creation of contingents, the promotion of skilled immigration, the availability of access to mechanisms for legalisation that do not imply being an incentive to further immigration, measures to combat illegal immigration that focus more on monitoring and enhancing the penalties for those who exploit illegal immigrant labour or human trafficking and integrated measures between different entities and sectors with a view to ensuring the transversal integration of immigrants into Portuguese society.

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List of Acronyms

ACIDI, I.P. – Alto Comissariado para a Imigração e Diálogo Intercultural, Instituto Público

ACNUR – Alto Comissariado das Nações Unidas para os Refugiados

ACT – Autoridade para as Condições do Trabalho

CICDR – Comissão para a Igualdade e Contra a Discriminação Racial

CNR – Comissário Nacional para os Refugiados

COCAI – Conselho Consultivo para os Assuntos da Imigração

CPR – Conselho Português para os Refugiados

DGACCP – Direcção-Geral dos Assuntos Consulares e Comunidades Portuguesas

GNR – Guarda Nacional republicana

IEFP – Instituto de Emprego e Formação Profissional

INE – Instituto Nacional de Estatística

MAI – Ministério da Administração Interna

MJ – Ministério da Justiça

MNE – Ministério dos Negócios Estrangeiros

MTSS – Ministério do Trabalho e da Solidariedade Social

OIM – Organização Internacional para as Migrações

OMC – Organização Mundial do Comércio

PALOP – Países Africanos de Língua Oficial Portuguesa

PII – Plano Nacional para a Integração de Imigrantes

PSP – Polícia de Segurança Pública

SEF – Serviço de Estrangeiros e Fronteiras

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