

Fourth Opinion on Poland - adopted on 6 November 2019

Summary

Persons belonging to national minorities in Poland continue to enjoy legal protection of their rights guaranteed under the Framework Convention and a fair level of financial support in the areas of culture, media and education. Few legislative changes have occurred since the previous monitoring cycle which would affect national minorities directly. A set of amendments to the Act on National and Ethnic Minorities and on the Regional Language, aimed at improving a number of gaps was approved by the Sejm in 2015 but ultimately not signed into law by the President. Three further attempts were made for the recognition of Silesians and the Silesian language, but to no avail.

The Programme for the Integration of the Roma Community in Poland 2014-2020 has led to tangible improvements. This concerns in particular the area of education, where rates of early dropouts and Roma children in special education were reduced, not least through the work of over 90 Roma assistants employed in schools. Problems continue to persist in attendance of preschools and the transition to secondary education. Discrimination against Roma in the labour market and the housing sector is still widespread and more should be done to combat anti-Gypsyism in society.

Whilst the authorities undertake efforts to promote tolerance and understanding, developments during this monitoring cycle suggest a persistent if not worsening climate of intolerance, racism and xenophobia. This concerns often the Jewish and Roma minorities, but increasingly also persons belonging to the Ukrainian minority and migrants from Ukraine. Muslims are most frequently targeted, particularly in the time after the refugee crisis in 2015. Minority representatives expressed their deep concern that both local and national authorities are insufficiently responsive when dealing with statements, demonstrations and even violent actions by extreme groups. A lack of effective investigation and prosecution of alleged hate crime and discrimination exacerbates even further the underreporting and lack of trust in the effectiveness of remedies. Persons belonging to certain minorities report that they perceive the Polish authorities' treatment of their group as being contingent on relations with the respective neighbouring states.

Cultural activities and media of national minorities continue to receive funding and the authorities support a wide range of institutions and projects preserving in particular the Jewish heritage in Poland. Funding is almost exclusively project based, though, and has hardly increased despite the good economic situation and overall increase in government expenditure. Spending on teaching of minority languages has increased significantly, though it is not clear whether the full amount allocated is actually spent for

that purpose. Despite previous recommendations to this effect, no textbooks for the Ukrainian and Lemko minorities have been developed and the future of Kashubian teacher training is still uncertain.

An enlargement of the city of Opole at the expense of surrounding municipalities with a significant German minority population was conducted regardless of the outcomes of consultations with inhabitants. In the affected localities, persons belonging to the German minority are deprived of access to language and participatory rights they had before this territorial reform.

Recommendations for immediate action¹

- Adopt, implement, monitor and regularly evaluate, with the participation of Roma, a Roma Integration Programme for 2020 onwards, incorporating measures targeting the majority population to combat anti-Gypsyism, developing consultation mechanisms at local level, and granting multi-annual financial support to projects where necessary. In the framework of this programme, expand the Roma school assistants programme and take measures to increase participation of Roma children especially in preschool and in secondary education. Furthermore, ensure that all funds allocated to improving housing conditions of Roma are actually spent for that purpose;
- Strengthen the protection and promotion of cultures and identities of persons belonging to national minorities, effectively addressing the needs of numerically smaller ones, including through the provision of adequate funding for associations of national minorities and making it more sustainable in the long term;
- Take resolute measures to promote intercultural dialogue and mutual understanding between the majority and the different minority groups, as well as religious communities, in Poland. Condemn at the highest political level all manifestations of intolerance and ethnically motivated hostility in political discourse and in the media and promote actively a sense of belonging to a shared country, based on the acceptance of the complexity of Poland's history. Increase efforts to combat hate speech and effectively identify, register and investigate cases of alleged hate crime, and prosecute and sanction those responsible;
- Take measures to enhance the quality of minority language teaching through taking more responsibility for the production of new teaching materials, ensuring that funds transferred to local authorities for minority language teaching are earmarked for that purpose, and securing the availability of qualified teachers, in particular in the Kashubian language.

¹ The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

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I. Key findings

Monitoring process

1. This fourth cycle opinion on the implementation of the Framework Convention by Poland was adopted in accordance with Article 26(1) of the Framework Convention and Rule 23 of the Resolution (97)10 of the Committee of Ministers. The findings are based on information contained in the fourth state report,² submitted by the authorities on 9 April 2019, other written sources and information obtained by the Advisory Committee from governmental and non-governmental sources during its visit to Przemyśl, Rzeszów, Kraków, Gliwice and Warsaw from 15 to 19 July 2019. The Advisory Committee expresses its gratitude to the Polish authorities for their co-operation in the organisation of the visit. The Advisory Committee welcomes the authorities' cooperative approach and is grateful for the assistance provided before, during and after the country visit, as well as for the valuable input provided by other interlocutors during the visit.

2. The state report was due on 1 April 2017 and was unfortunately submitted with a 24-month delay. As the report was finalised at the end of 2016 and did not explicitly address some of the recommendations given in the Advisory Committee's third opinion, the authorities were asked to provide substantial amounts of additional information in writing. The Advisory Committee appreciated that these requests were handled very effectively with written submissions sent by the authorities in June and September 2019. The Advisory Committee notes with satisfaction that extensive consultations were held to prepare the fourth state report, including with representatives of national minorities and members of civil society. Some comments and corrections by representatives of national minorities are appended to the state report in Annex 8.

3. The third opinion of the Advisory Committee as well as the third Resolution of the Committee of Ministers on the implementation of the Framework Convention by Poland have been translated into Polish, were discussed in the Joint Commission of the Government and National and Ethnic Minorities, and made available on the website of the Ministry of Interior and Administration of Poland.³ The Advisory Committee regrets that the opinion has not been translated in minority languages and that no follow-up meeting together with the Advisory Committee was organised after the publication of these documents.

General overview of the current situation

4. The legal framework protecting the rights of national minorities in Poland has remained largely unchanged during the monitoring period. The 2005 Act on National and Ethnic Minorities and on the Regional Language and other relevant legislation continue to ensure access of persons belonging to national minorities to rights enshrined under the Framework Convention, such as support for minority cultures and media, participation in public affairs, minority language teaching and – in areas of compact settlement – the right to use minority languages in contact with the administration and in topographical indications. The key institutions relevant for national minorities continue to be the Department for National Minorities and Religious Denominations (which moved from the Ministry of Administration and Digitalisation to the Ministry of Interior and Administration), the Joint Commission of the Government and National and Ethnic Minorities as a consultative body, the Government Plenipotentiary for Equal Treatment, and the Office of the Commissioner for Human Rights. While resources invested in national minority culture have remained approximately at the same level over the monitoring period, the funds spent on minority language teaching have increased.

² Fourth state report on Poland, received on 9 April 2019.

³ Available in Polish and English on the [website of the Ministry of Interior and Administration](#).

5. A set of legal amendments aiming to reform the Act on National and Ethnic Minorities and on the Regional Language after 10 years of existence was developed in close consultation with minority representatives. Several provisions addressed issues raised in previous recommendations of the Advisory Committee. The bill was approved by the Sejm in 2015, but eventually vetoed by the President of the Republic. Several unsuccessful attempts were also made to obtain recognition of Silesians as a national minority⁴ and of Silesian as a regional language, including through a citizen's initiative signed by 140 000 persons, but to no avail. A request has also been made for the recognition of the Vilamovian language and of the Greek minority in Poland.

6. In 2014, the authorities adopted a new Programme for the Integration of the Roma Community, which runs until 2020. The bulk of the annual funding of approximately €2.5 million is spent on education; further priority areas are housing, the labour market and health care measures. The implementation of the programme through voivodeships appears to function well and reportedly results in tangible improvements for the Roma community. Problems remain in the area of housing allocations, the short-term, project-based nature of most interventions, and the missing action to combat anti-Gypsyism in mainstream society.

7. The 2010 Anti-Discrimination Act provides for the necessary guarantees for persons belonging to national minorities. Rights under the act as well as the possible remedies, however, are not sufficiently known among persons belonging to national minorities. No strategy or action plan has been adopted to follow up to the 2013-2016 National Action Programme on Equal Treatment, which could enhance the effectiveness of this act, has so far not been presented. The Office of the Commissioner for Human Rights appears to enjoy the trust of national minorities and intervened in approximately 80 cases between 2016 and 2018, the largest proportion concerning Roma. Continued political and financial support of the Office of the Commissioner as an impartial and independent institution will be essential. Loopholes in legislation on hate speech and hate crime have not been closed. Despite significant underreporting, statistics show a clear upward trend in hate speech as well as hate-motivated incidents involving violence and other hate crimes. The most affected target groups are the Jewish, Roma and Ukrainian minorities and the Muslim community. The low number of convictions, and the multitude of reports about complaints not being followed up, raises questions about the effectiveness of the investigation and prosecution of hate crime.

8. The authorities support a multitude of institutions and projects for the protection and promotion of national minority cultures. A particularly wide range of activities is dedicated to the Jewish culture and heritage in Poland. However, the current support scheme of the Ministry of Interior and Administration, which is based on one-year project grants, poses immense challenges to national minorities and in particular the numerically smaller ones. None of the numerically smaller minorities (Armenians, Lemkos, Karaims, Tatars) has so far been successful in their efforts to secure continuous funding for the establishment of institutions to preserve their cultures and languages.

9. The number of municipalities providing the possibility to use minority languages in contact with the administration and in topographical indications has slightly increased during the monitoring period. However, a highly contested territorial administrative reform enlarging the city of Opole at the expense of surrounding municipalities with substantial German minorities *de facto* deprived a significant number of persons belonging to the German minority of these rights.

Assessment of measures taken to implement the recommendations for immediate action

10. Whilst the authorities make efforts to tackle hate speech and intolerance, through workshops and training sessions, the Advisory Committee remains concerned about the level of intolerance, racism

⁴ Following the language used in the Act on National and Ethnic Minorities and on the Regional Language, Silesians requested recognition as an "ethnic minority".

and xenophobia present in the country. While certain national and ethnic minority representatives reported that they were not targeted by acts of intolerance, developments during this monitoring cycle suggest a persistent if not worsening situation for other minorities, including from political figures, but also at the level of social interaction, in schools or in bars or restaurants. At the political level, of the recognised national and ethnic minorities, this concerns often the Jewish and the Roma minorities, but the Muslim community is also targeted by intolerance and racism, particularly following the refugee crisis in 2015. Furthermore, owing to the complex history of Poland's borders, some minorities feel that the memory politics of the region influence their treatment by the majority population. This has provoked particular problems for the Belarusian, Russian and Ukrainian national minorities, as well as the German minority, all of whom have been targeted by extremist groups owing to their association with a neighbouring state. Furthermore, some persons belonging to national minorities have further reported that they feel the Polish authorities' treatment of their group is contingent on relations with neighbouring states.

11. As for the integration of Roma into the mainstream education system, the authorities have made good progress on this issue. The proportion of Roma children in so-called 'special schools' has dropped by around seven percentage points, although it still remains significantly higher than the national average. Roma assistants continue to play a crucial role in integrating Roma children into the education system, as well as ensuring attendance and liaising between parents and the schools. The assistants are, however, spread too thinly across the country, and an expansion of the programme may be necessary to ensure equal access to education for Roma children. Certain issues remain with regard to acquiring the funds for attending preschool, and the complicated application system which may constitute an unnecessary barrier for Roma families in sending their children to preschool.

12. As recommended by the Advisory Committee, the changes to the system of allocation of subsidies for teaching in and of national minority languages were enacted swiftly at the beginning of this monitoring period in 2013. Since then, the overall amount spent on this subsidy has increased considerably and so has the number of children enrolled in minority language teaching. However, with the exception of a very few Lithuanian and Ukrainian schools, the vast majority learn minority languages as a subject. The Advisory Committee learned, furthermore, that the strong incentive provided by the 150% top-up on the per-student subsidy may have undesired side effects since the subsidy that is transferred by the national budget to municipalities is not earmarked; it therefore is not guaranteed that the entire amount is actually spent on minority language education. While a number of textbooks were produced for the teaching of Belarusian, Kashubian, and Lithuanian languages, there is still a severe lack of textbooks, in particular for the Ukrainian and Lemko languages.

Assessment of measures taken to implement the further recommendations

13. The final results of the 2011 census as regards ethnicity and language were published only in 2015 and representatives of several national minorities perceive them as not entirely accurate. The authorities are working on refining the methodology for the 2021 census and are consulting the Joint Commission of the Government and National and Ethnic Minorities on the matter.

14. The 2012 law prohibiting ritual slaughter, which was criticised in the Advisory Committee's third opinion, was overruled by the Constitutional Tribunal on 12 December 2014 (Journal of Laws, item 1794). Since then, ritual slaughter has been permitted again, provided it is in conformity with the methods described in the respective Council Regulation (EC No 1099/2009) and the relevant Polish legislation. There are no restrictions concerning the trade in meat obtained from such slaughter.

15. Concerning media, there are currently no representatives of national minorities in the regional programming councils. There is, however, a range of programming in minority languages or aimed at

minorities produced at the regional branches of the state broadcaster. Owing to the geographical dispersal of certain minorities, however, this does not guarantee all minorities access to programmes in or about minorities. There is also very little programming available nationally, either in minority languages or concerning the history, culture and identity of minorities.

16. Representatives of national minorities continue to report a lack of teaching about the contribution of their respective communities to Polish history and society. On the contrary, some reported feeling unease about the new curricula developed in 2017 and 2018, which place increased emphasis on Polish national history. No systematic research on the portrayal of national minorities in textbooks and the respective knowledge of schoolchildren has been conducted.

17. The official rate of Roma unemployment has decreased over the monitoring period, although there remain some disparities in the reported rates. Roma themselves reported that they were discriminated against in access to employment, and that programmes designed to assist them in finding employment were often focused on the short term and did not in fact teach them useful skills to improve their employability.

18. The Joint Commission of the Government and National and Ethnic Minorities continues to meet regularly and fulfil important functions. Some flaws in its functioning such as the nomination procedure were addressed in the attempted 2015 reform of the Act on National and Ethnic Minorities and on the Regional Language, which was vetoed by the President.

II. Article-by-article findings

Article 3 of the Framework Convention

Scope of Application

19. The approach of the Polish authorities towards the personal scope of application of the Framework Convention remains unchanged. The Act on National and Ethnic Minorities and on the Regional Language of 2005 enumerates nine recognised national minorities (Armenians, Belarusians, Czechs, Germans, Jews, Lithuanians, Russians, Slovaks and Ukrainians) and four ethnic minorities (Karaims, Lemkos, Roma and Tatars).⁵ All provisions of the act extend to both national and ethnic minorities in equal measure. The Act further identifies Kashubian as a regional language to which all rights contained in the act apply.⁶

20. During this monitoring cycle, three attempts were made in the Sejm to include Silesians as an ethnic minority and/or Silesian as a regional language in the Act on National and Ethnic Minorities, but to no avail.⁷ According to the 2011 census, 846 700 persons identified as Silesians during the 2011 census, far more than for any of the recognised minorities.⁸ In 2012, a group of members of the Sejm proposed a legislative initiative with the aim of declaring Silesian a regional language. The first reading in the Sejm Commission for National and Regional Minorities in August 2012 concluded with the decision to await the presentation of a written statement on this issue by the government and was then not pursued any further. In 2014, a citizens' proposal⁹ for a law recognising Silesians as an ethnic minority and Silesian as a regional language was signed by 140 000 persons. The proposed amendment was not discussed in parliament until 2016 and rejected in October the same year. Finally, a third bill to recognise Silesian as a regional language was introduced to the parliament in 2018: in 2019, the parliament decided not to deal with this proposal.

21. The Polish authorities consider that the language, culture and tradition of Silesians are not separate from the Polish language, culture and tradition but rather form "an integral part thereof" and that Silesian is a variant of the Polish language.¹⁰ Further arguments used against the above-mentioned civic motion were that the recognition of Silesians may result in similar requests from representatives of

⁵ Results of the 2011 census for ethnic affiliation with recognised national minorities (either exclusively or as one of two declared affiliations): Kashubian: 232 547, German: 147 814, Ukrainian: 51 001, Belarusian: 46 787, Roma: 17 049, Russian: 13 046, Lemko: 10 531, Lithuanian: 7 863, Jewish: 7 508, Armenian: 3 623, Czech: 3 447, Slovak: 3 240, Tatar: 1 916, Karaim: 346. Statistics Poland (2015), [National-ethnic, linguistic and religious structure of the Polish population. National Population and Housing Census 2011](#) (in Polish) pp. 130-131.

⁶ For the sake of readability and without prejudice to the Polish legal system, this opinion employs the term "national minority" for both national minorities and ethnic minorities, as well as for speakers of the regional language Kashubian. Article 2 para. 1 of the [Act](#) refers to national minorities as groups which "[identify] with a national organized in its own state". This is the sole difference in criteria as applied to "ethnic minorities". A difference is made only in electoral law, where the 5% threshold is lifted for national minorities, but not for ethnic minorities.

⁷ Two earlier attempts took place in 2007 and 2010. See [second opinion](#) of the Advisory Committee on Poland, para. 32 and [third opinion](#) of the Advisory Committee on Poland, para. 28.

⁸ The census giving the possibility to indicate two ethnic affiliations, 375 600 persons claimed solely Silesian identity, 430 800 declared Polish-Silesian identity, and 38 700 declared German-Silesian identity. See Statistics Poland (2015), [National-ethnic, linguistic and religious structure of the Polish population. National Population and Housing Census 2011](#) (in Polish) pp. 31 and 79.

⁹ Sejm of the Republic of Poland (27 August 2014), [Civic motion on amending the act on national and ethnic minorities and on the regional language, as well as some other acts](#) (in Polish).

¹⁰ Council of Ministers (16 February 2016), [Position adopted by the Council of Ministers towards the citizens' bill on amending the act on national and ethnic minorities and on the regional language, as well as some other acts](#) (in Polish).

“other regional groups wishing to cultivate [their] local folklore and traditions” and the anticipated budgetary consequences of a recognition.¹¹

22. Representatives of Silesians, in contrast, argue that their community “significantly distinguishes itself from other citizens in language and culture” and strives to preserve its tradition based on the specific historical and social context of the Silesian region.¹² Interlocutors representing Silesians reported to the Advisory Committee about progress achieved in the standardisation of Silesian, the existence of Silesian computer software, advertising, etc., and the widespread use of Silesian among young people. They expressed frustration about the fact that, despite five attempts over the past 12 years, neither the recognition of Silesians as an ethnic minority nor of Silesian as a regional language has been achieved.

23. Representatives speaking the Vilamovian language (also known as Wilamowicean or Wymysorys) have also expressed interest in their language being included as a regional language in the Act on National and Ethnic Minorities. In March 2018, the Parliamentary Commission on National and Ethnic Minorities lodged an initiative on this issue. The government has not expressed any views on this issue so far. The Advisory Committee notes the interest of Vilamovian speakers to be recognised as a regional language and the fact that, according to the information it received, the issue is maintained on the agenda of the Parliamentary Commission on National and Ethnic Minorities.

24. Finally, representatives of the Greek diaspora who emigrated to Poland after the 1944-1949 civil war, expressed interest in being recognised as a national minority. At a meeting of the Parliamentary Commission on National on Ethnic Minorities in March 2015, where this wish was expressed, the Presidium of the Commission decided to ask for an expert opinion on this issue, in particular regarding the duration of the presence of Greeks in Poland. According to Article 2 of the Act on National and Ethnic Minorities and on the Regional Language, a minimum of 100 years presence is required in order to be recognised as a national minority.

25. The Advisory Committee recalls that the right to free self-identification, as protected in Article 3 of the Framework Convention, is of cardinal importance and constitutes the cornerstone of international protection of minorities.¹³ While recognising that states parties have a margin of appreciation in determining the personal scope of application of the Framework Convention, the Advisory Committee reiterates that it is part of its duty to assess whether the approach taken to the scope of application does not constitute a source of arbitrary or unjustified distinctions among communities with regard to access to rights.¹⁴

26. The Advisory Committee recalls, further, that it has consistently encouraged authorities to take an open and inclusive approach and consider on an article-by-article basis which rights should be made available to whom. It further draws the attention of the authorities to the fact that establishing a closed list of national minorities falling under the protection of the Framework Convention is not in line with the right to individual free self-identification.

27. In this light, the Advisory Committee strongly regrets that no progress has been made regarding the requests for recognition of the Silesians as an ethnic minority and Silesian as a regional language. It

¹¹ Ibid.

¹² Sejm of the Republic of Poland (27 August 2014), [Civic motion on amending the act on national and ethnic minorities and on the regional language, as well as some other acts](#) (in Polish).

¹³ [ACFC Thematic Commentary No. 4](#), The Framework Convention: a key tool to managing diversity through minority rights. The scope of application of the Framework Convention for the Protection of National Minorities, adopted on 27 May 2016, para. 9; see also European Court of Human Rights Grand Chamber judgment in the case of *Molla Sali v. Greece*, no. [20452/14](#), para. 157, 19 December 2018.

¹⁴ [ACFC Thematic Commentary No. 4](#), para. 26.

understands that given the large number of persons concerned and the geographic location of Silesia the discussion about this issue is quite politicised in the domestic discourse. However, noting that during the census the majority of persons identifying as Silesians co-identified as Poles, the Advisory Committee considers that the political dimension may be overstated, and a more pragmatic approach is needed.

28. The Advisory Committee regrets, furthermore, that the Vilamovian language¹⁵ has not been recognised. With regard to the recognition of the Greek community, the Advisory Committee recalls that it has repeatedly underlined that the length of residency in the country should not be considered a determining factor for the applicability of the Framework Convention as a whole.

Recommendations

29. The Advisory Committee calls on the authorities to take a pragmatic and constructive approach in their dialogue with representatives of Silesians about the recognition as an ethnic minority and/or of Silesian as a regional language.

30. The Advisory Committee encourages the authorities to intensify their dialogue with representatives of numerically small communities such as the Greek community and Vilamovian speakers. The authorities should refrain from solely basing their refusal on length of residence. They should consider on an article-by-article basis, which rights should be made available to whom in order to ensure the most effective implementation of the Framework Convention based on facts rather than on status.

Population census

31. As described in the Advisory Committee's third opinion, the questionnaire of the 2011 census included optional, open-ended questions on ethnic affiliation, mother tongue, the language used at home and religious denomination. For the first time, respondents could indicate two ethnic affiliations, which is strongly welcomed. Of the respondents, 3.9% made use of this possibility, most of them choosing to combine Polish/Silesian and Polish/Kashubian affiliations. The methodology used combined the use of existing registers and the direct extraction of data from the population. For the latter, data on a sample of 20% of households were collected through an online questionnaire or – if this was not possible – telephone and face-to-face interviews. In the 86 municipalities inhabited by over 10% of persons who in 2002 indicated ethnic affiliation other than Polish, data was collected through interviews with the entire population, not only a 20% sample.¹⁶

32. It was, however, not until 2015 that the final census results on ethnicity and language were first published by Statistics Poland.¹⁷ Representatives of national minorities interpret the differences between these final results and the preliminary data published earlier as resulting from problems with the methodology, which for the first time was not based on face-to-face interviews only. Inaccuracies were reported in particular regarding the regional distribution of persons belonging to numerically smaller minorities such as Karaims and Tatars. Representatives of the German minority found that the results underestimated the real number of persons belonging to their minority.

33. The next census will be conducted in 2021 and use the same questions regarding ethnic affiliation. While the 2011 census asked for “native language” and “language used at home”, in 2021 only the latter question will be asked. The methodology will again be a mix of data collection through registers on the one hand and through an online questionnaire and interviews on the other hand. To enhance

¹⁵ UNESCO Atlas of the World's Languages in Danger, available at www.unesco.org/languages-atlas/index.php.

¹⁶ [Third opinion](#) of the Advisory Committee on Poland, paras. 33-35.

¹⁷ Statistics Poland (2015), [National-ethnic, linguistic and religious structure of the Polish population. National Population and Housing Census 2011](#) (in Polish).

accuracy, however, this time the direct extraction of data from the population will cover all households and not only a 20% sample as in 2011. Furthermore, two trial censuses will be conducted, covering, *inter alia* municipalities with a numerically significant minority (Kashubian, German, Belarusian, Ukrainian) population.

34. The Advisory Committee recalls that comprehensive data on ethnic affiliation, including of numerically small minorities, as well as information on first and further languages spoken by the population are fundamental for devising evidence-based and effective policies to implement the rights enshrined in the Framework Convention. The Advisory Committee strongly welcomes the approach allowing for multiple identification used in 2011 and again in 2021. It regrets that the data collection based on a 20% sample in the previous census caused problems with the analysis of data regarding the number of persons belonging to national minorities and their geographic distribution. It welcomes, therefore, that the methodology has been refined for 2021, will be tested in municipalities inhabited by national minorities, and that the survey itself will again cover the entire population. The Advisory Committee is pleased to note that, as in the 2011 census, the Joint Commission of the Government and National and Ethnic Minorities (hereafter “Joint Commission”) was consulted in the preparation of the census methodology.

Recommendation

35. The Advisory Committee encourages the authorities to maintain its commendable practice of allowing for multiple self-identification and ensure the continued involvement of representatives of national minorities in the refinement of the methodology and in all further stages of the preparation of the 2021 census as well as in the collection, analysis and display of the data.

Article 4 of the Framework Convention

Legal and institutional framework for the protection of national minorities

36. The Act on National and Ethnic Minorities and on the Regional Language, adopted in 2005, has remained unchanged during the monitoring period. A law amending a number of provisions of the act and developed in consultation with the Joint Commission of the Government and National and Ethnic Minorities was approved by the Sejm in June 2015 and the Senate on 1 October 2015.¹⁸ After the parliamentary elections later that month, however, the law was vetoed by the President of the Republic.¹⁹ Amendments were mainly of a technical and administrative nature and concerned the procedure for allocation of grants to national minorities (see Article 5), the participation of national minority representatives in broadcasting councils (Article 9), the use of national minority languages as supporting languages at *powiat* (county) level (see Article 10), the participation of national minorities in the administration of schools teaching national minority languages (Article 14), and the appointment procedure and day-to-day functioning of the Joint Commission (see Article 15). Furthermore, the law would have required the authorities to prepare a report on the situation of national minorities in Poland every four years and introduced the possibility for local authorities to nominate plenipotentiaries on national minority issues.

¹⁸ Sejm of the Republic of Poland (10 June 2015), [Bill amending the act on national and ethnic minorities and on the regional language and some other acts](#) (in Polish).

¹⁹ President of the Republic of Poland (26 October 2015), [Substantiation of the refusal of the President of the Republic to sign into law the Bill amending the act on national and ethnic minorities and on the regional language and some other acts](#) (in Polish).

37. The President justified his veto by the expected costs for enlarging the use of national minority languages to the *powiat* level.²⁰ Representatives of national minorities argued, however, that the incurred costs would have been minimal given that only four *powiats* would have been concerned.²¹ At the time, minority representatives strongly expressed their disappointment with the President's decision²² and some considered the veto a 'negative signal' towards national minorities.²³ During the visit, interlocutors from several national minorities informed the Advisory Committee that they still consider the amendments necessary, mainly to enhance the functioning of the grant procedure and of the Joint Commission.

38. The Advisory Committee shares the view of minority representatives that the draft law developed in close consultation with the Joint Commission in 2014 would indeed have addressed several shortcomings in the protection of national minorities in Poland pointed out in previous opinions of the Advisory Committee as well as in the present opinion. It would therefore consider it beneficial if any new attempt to reform the 2005 Act on National and Ethnic Minorities and on the Regional Languages would take the compromise reached in parliament in 2015 as a basis.

39. In 2015, the institutional responsibility for national minorities was moved from the Ministry of Administration and Digitalisation back to the Ministry of Interior and Administration, where it had been before 2011. The authorities informed the Advisory Committee that this change was mainly of a formal nature, without affecting its human resources and budget. Representatives of national minorities, however, informed the Advisory Committee that the experienced personnel of the department changed significantly during the past years, which resulted in a loss of specific expertise on minority rights issues and institutional memory. The Advisory Committee agrees with the authorities' point of view that the placement in the Ministry of Interior and Administration has advantages, as this ministry usually has a strong position within the government. Also, the Ministry of Interior and Administration has direct access to the administrations at municipal and voivodeship level, including the plenipotentiaries on national and ethnic minorities. The Advisory Committee regrets to hear, however, that national minorities feel this change brought about a loss of expertise on minority issues within the department.

40. In each of the 18 voivodeships, the Governor (*voivode*) has appointed a Plenipotentiary for National and Ethnic Minorities. Their role is to monitor ethnic relations, conduct mediation in conflict situations, co-operate and conduct activities with national minorities and to create a positive image of national minorities in the media.²⁴ Plenipotentiaries are, furthermore, responsible for the implementation of the Programme for the Integration of the Roma Community in Poland 2014-2020, which is channelled through the voivodeships. The Advisory Committee met with the plenipotentiaries in the Podkarpackie and Małopolskie voivodeships and takes note of the broad range of tasks performed by these persons, who usually also have other tasks within the regional administration. The Advisory Committee was pleased to learn that the Plenipotentiary of the Podkarpackie Voivodeship, together with the *voivode*, promotes intercultural understanding among youth, and that the Plenipotentiary of the Małopolskie Voivodeship meets twice per year with representatives of Roma and all other minorities. The Advisory Committee regretted to learn, though, that some persons belonging to national minorities were unaware of the existence of such a Plenipotentiary. While welcoming the appointment of Plenipotentiaries for National and Ethnic Minorities in all regions, the Advisory Committee considers that their role could be made more visible to the outside.

Recommendations

²⁰ Ibid.

²¹ Two for the Kashubian language and one each for Lithuanian and Belarusian.

²² Wyborcza.pl (4 November 2015), [Kashubs dislike the veto of Andrzej Duda. 'It will make life difficult for us](#) (in Polish).

²³ PolskieRadio.pl (27 October 2015), [President Andrzej Duda vetoed three laws of the outgoing Sejm and signed 22](#) (in Polish).

²⁴ [Code of Good Practice of Plenipotentiaries for National and Ethnic Minorities](#) (in Polish).

41. The Advisory Committee calls on the authorities to re-initiate the work on the reform of the Act on National and Ethnic Minorities and on the Regional Language in close consultation with representatives of national minorities, taking the consensus reached in 2015 as a basis.

42. The Advisory Committee encourages the authorities to raise the profile of regional Plenipotentiaries for National and Ethnic Minorities as well as raise awareness among relevant target groups and encourage them to reach out more to national minority representatives on the ground, including through regular consultations.

Legal and institutional framework on non-discrimination

43. The legal framework on non-discrimination continues to be governed by the 2010 Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment (hereafter “Anti-Discrimination Act”), which prohibits discrimination on a number of grounds including race, ethnic origin, nationality, religion, and belief. Language is not explicitly covered as a ground of discrimination.

44. The Anti-Discrimination Act lays out the functions of the Government Plenipotentiary for Equal Treatment and the Commissioner for Human Rights (hereafter: Commissioner). The Government Plenipotentiary for Equal Treatment is responsible for the initiation, implementation and co-ordination of the government’s equality and non-discrimination policy as well as research and awareness raising in this area. The Commissioner is independent and performs the functions of the national human rights institution,²⁵ as well as an independent equality body as set forth in the EU anti-discrimination directives.

45. The Government Plenipotentiary for Equal Treatment works mainly at policy level and has undertaken several activities on gender equality. The National Action Programme on Equal Treatment for 2013-2016, has not been replaced by a new programme so far and, after a protracted evaluation phase, a new action programme is not scheduled for adoption until mid-2020. The Plenipotentiary further co-ordinates and provides training for the Plenipotentiaries for Equal Treatment at voivodeship level and the Equal Treatment Co-ordinators in ministries and other state agencies. Reacting to complaints and other interventions, the Plenipotentiary dealt with 10 cases concerning national or ethnic origin in 2016, 7 such cases in 2017, and 12 in 2018. Those figures include both cases concerning persons belonging to national minorities and foreigners. Most of them were presented by organisations, not individuals, and concerned “historical policy, commemorations or approach to minorities and foreigners, and hate speech or crimes of a racist or xenophobic nature”.²⁶ No information was provided on concrete action undertaken as a consequence of those complaints.

46. In their exchanges with the Advisory Committee, representatives of national minorities referred to the Government Plenipotentiary for Equal Treatment as playing a rather passive role in ensuring that legislation and policies are non discriminatory. The Advisory Committee regrets this, as well as the fact that the Plenipotentiary does not keep separate statistics about cases concerning persons belonging to national minorities. The Advisory Committee is further worried about the fact that since the end of 2016, no coherent governmental action plan on non-discrimination and equal treatment is in place. Taken together with the limited information the Advisory Committee could gather on concrete action undertaken by the Plenipotentiary to address situations of discrimination, the Advisory Committee gained the impression that this topic did not seem to be a priority of the authorities during the monitoring period.

²⁵ The Office of the Polish Commissioner is accredited with “A” status according to the Global Alliance of National Human Rights Institutions (GANHRI). The office is also recognised as a national preventive mechanism and visiting body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

²⁶ Written submission by the authorities to the Advisory Committee, September 2019.

47. The Commissioner for Human Rights intervened between 2016 and 2018 in about 80 cases concerning the violation of rights of persons belonging to national minorities. An additional 300 cases during this period concerned acts of violence or hate speech motivated by national, ethnic, racial or religious grounds, affecting both persons belonging to national minorities and others. Most cases were filed by organisations and a relatively low number was received from individuals. The Commissioner also frequently intervened *ex officio*, both in individual cases and general matters concerning national minorities.²⁷

48. The Office of the Commissioner does not register the ethnicity of complainants. Its analyses show, however, that the largest number of cases the Commissioner dealt with concerned persons belonging to the Roma minority. Cases include the living conditions in the Roma settlement of Maszkowice and the relocation of Roma from the town of Limanowa to Czchów (see Article 15), and the overrepresentation of Roma children in 'special schools' (see Article 12).

49. Since 2016, however, the Office also noted an increase in the number of complaints filed by persons belonging to the Ukrainian national minority. Most of these complaints concerned cases of damage to certain historic monuments or tombstones of Ukrainian persons, as well as acts of violence or hate speech against both Polish citizens belonging to the Ukrainian minority and the increasing number of Ukrainian migrants living in Poland.²⁸

50. During the monitoring period, the Commissioner also dealt with education-related issues concerning the Lemko, Ukrainian and German minorities, acted as a mediator in the dispute about the enlargement of the city of Opole in 2016, and organised several expert meetings with representatives of national minorities.²⁹

51. In its exchanges with representatives of national minorities, the Advisory Committee observed that representatives place trust in the Office of the Commissioner and are well aware of his existence and actions. The Advisory Committee notes this with satisfaction and the fact that the Commissioner is involved in a broad range of issues affecting rights of national minorities. Some representatives expressed their regret that the authorities were not often very responsive to the Commissioner's demands to improve situations he raised with them. The Advisory Committee notes with regret that the annual budget of the Office of the Commissioner was reduced in 2015 and 2016 and has only in 2018 reached again the level of 2014.³⁰

52. Overall, the Advisory Committee learned that cases of discrimination are underreported. According to survey data provided by the Commissioner, a majority of respondents were not aware of the fact that discrimination in employment or in access to services is prohibited by law and as many as 40% could not point out any institution they could turn to in case of discrimination.³¹ Underreporting concerning Roma appears to be particularly problematic. The European network of legal experts noted

²⁷ Written submission by the Commissioner for Human Rights to the Advisory Committee, July 2019.

²⁸ According to [Eurostat](#), Poland granted 635 000 first residence permits to Ukrainian citizens in 2018; see also Politico (10 April 2019), [For Ukrainians in Poland, jobs but no security. Poland's booming economy attracted thousands of Ukrainian workers, who struggle to integrate amid xenophobia and fear.](#)

²⁹ Topics of the meetings were: risks related to xenophobia and aggression motivated by hatred on the grounds of nationality, ethnicity and religion (April 2018), education for minorities (June 2018), cultural rights of national minorities (December 2018). Finally, one of the sessions at the Second National Congress on Human Rights, organised in December 2018 by the Office of the Commissioner, focused on the possibilities for participation of national minorities in public policy making.

³⁰ The annual budget in 2018 was 39 million Polish zloty (PLN) (€9.1 million). On the budget of the Office of the Commissioner as well as domestic criticism against the office holder, Adam Bodnar, see also UN Human Rights Council (9 September 2019), [Cooperation with the United Nations, its representatives and mechanisms in the field of human rights - Report of the Secretary-General](#), paras. 89-90.

³¹ Written submission by the Commissioner for Human Rights of Poland to the Advisory Committee, July 2019.

this in 2017 and 2018³² and attributes it not to the absence of free legal advice or assistance, but rather to a lack of legal awareness, a lack of trust in the police, the prosecutor's office and the courts, fear, and the absence of any tradition of action in this area.³³ Interlocutors of the Advisory Committee stressed that the perceived passivity in the investigation and prosecution stages leads victims to abstain from reporting discrimination in the first place. In the absence of any figures, the Advisory Committee cannot but express its regret at this situation and considers that there is a serious need to raise awareness about discrimination among persons belonging to minorities, but also among officials in the police, public administration, the judiciary, and the prosecution service.

Recommendations

53. The Advisory Committee encourages the authorities to swiftly adopt and implement, through the Plenipotentiary for Equal Treatment, a comprehensive strategy and action plan as a follow-up to and based on the evaluation of the National Action Programme on Equal Treatment for 2013-2016. Appropriate attention should be given to combatting discrimination of persons belonging to national minorities.

54. The Advisory Committee calls on the authorities to provide adequate political and financial support to the Office of the Commissioner for Human Rights, to effectively pursue its independence and fulfil its mandate in protecting persons belonging to national minorities.

55. The Advisory Committee calls on the authorities to step up efforts to raise awareness of the legislative standards and remedies available for victims of discrimination, in particular among groups most frequently exposed to discrimination such as Roma.

Promoting full and effective equality of Roma

56. During this fourth monitoring cycle, the Polish authorities adopted a new Programme for the Integration of the Roma Community in Poland 2014-2020.³⁴ They continue to implement this programme, funding for which is administered through the Ministry of Interior and Administration, and in 2015, through the 'core funding' and additional sources from other ministries, amounted to PLN 11.9 million (€2.8 million),³⁵ distributed through the voivodeships.³⁶ In 2019, the funds allocated are lower, at PLN 10.5 million (€2.4 million).³⁷ The majority of the funding in 2015 (66.6%) was spent on actions in the area of education (for details see Article 12), whilst 26.2% was spent on housing measures, 7.7% on work measures (see Article 15), and 3.4% on health care measures.³⁸ The state report points out that assistance provided for housing benefit was rare. As for health care, 1 604 Roma benefited from vaccinations or preventative care in 2015, which includes providing community nurses to offer medical advice and distribute medicines or hygiene products. In exchanges with the Advisory Committee, the office of the Ombudsperson also indicated their general impression that the programme had brought about improvements for the situation of Roma, and a civil society monitoring report of the programme showed

³² European network of legal experts in gender equality and non-discrimination (2018), [Country report Non-discrimination: Poland](#), p. 169.

³³ European network of legal experts in gender equality and non-discrimination (2017), [Country report Non-discrimination: Poland](#), p. 156.

³⁴ [Council of Ministers decision of 7 October 2014](#), Resolution No. 202 (in Polish). Adopted in line with EU Framework on National Roma Integration Strategies (NRIS), see https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-and-eu/roma-integration-eu-country/roma-integration-poland_en.

³⁵ Currency conversions as of 16 October 2019 and rounded to the nearest whole number.

³⁶ See [state report](#), pp. 34-35.

³⁷ According to information supplied by the authorities, in 2017 PLN 10.5 million and in 2018, PLN 10.4 million were allocated (approx. €2.4 million).

³⁸ See [state report](#), p. 37.

that broadly speaking the various Roma communities³⁹ were in favour of the strategy and Roma NGOs want to see the programme continue.⁴⁰

57. The Advisory Committee did hear concerns, however, about the implementation of the Programme, including the fact that not all the funds made available were spent. The Parliamentary Commission for National and Ethnic Minorities raised this concern in a letter to the Ministry of Interior in 2017, stating that only 56.4% of funds designated for housing were used (see Article 15).⁴¹ The civil society monitoring report also raises the issue of the project-focused and annual nature of many of the actions foreseen in the programme, which means that some projects designed to run through a given year are not signed off until the middle of that year, hindering their effective implementation.⁴² ECRI noted in its 2015 report that a system by which projects are implemented on a yearly basis may not be sufficient to resolve the structural issues Roma face, particularly regarding long-term unemployment.⁴³ Other Roma representatives indicated that health care, particularly of elderly Roma, should be more of a priority.

58. Furthermore, interlocutors of the Advisory Committee reported problems accessing social housing and housing allowances due to discrimination on the part of local authorities or because of the debt spiral in which many Roma find themselves, meaning they struggle to pay rent on time. This problem was also echoed by the report of the European network of legal experts in 2018, where it is also stated that Roma do not challenge possible discriminatory housing allocation decisions, making it difficult to estimate the scale of this problem.⁴⁴ The Advisory Committee was informed that Roma face difficulties purchasing or renting property on the free market, because of the perception that the presence of Roma in a given area could cause house prices there to fall. The Advisory Committee therefore regrets that no measures are foreseen to assist Roma with regard to housing, particularly given that, according to the European Union Agency for Fundamental Rights (FRA) survey, only 9% of Roma say they are easily managing to keep up with their bills, credits and payments,⁴⁵ and considers that further local consultations with Roma could help to identify the needs of a given community. A more formalised structure of consultation with local Roma communities via voivodeships and local authorities could form part of the new programme and allow it to respond and adapt more effectively and comprehensively to identified needs (see also Article 15).

59. It is also noteworthy that despite an ECRI recommendation⁴⁶ as well as requests from civil society,⁴⁷ specific measures on anti-discrimination or combating anti-Gypsyism do not fall within the Programme for Roma integration, since the programme only targets the Roma communities themselves. Whilst the Advisory Committee takes note that such measures were included in the 2004-2013

³⁹ The Roma minority in Poland comprises five distinct groups: Polish Roma, Carpathian Roma (also called Bergitka Roma or Mountain Roma), Kalderari, Lovari, as well as smaller group of Sinti, see pp. 19-20 of the state report. Unless stated otherwise, and without prejudice to the status of Roma in Poland, the Advisory Committee's use of the term 'Roma minority' incorporates all these groups.

⁴⁰ [Civil Society Monitoring Report on implementation of the national Roma integration strategies in Poland](#), June 2018, Brussels: European Commission, p. 13 (prepared by: *Art Foundation Jaw Dikh*).

⁴¹ Danuta Pietraszewska, Chair of the Parliamentary Committee on National and Ethnic Minorities, to Minister of Interior and Administration concerning the living conditions of the Roma in the Małopolskie Voivodeship [20 April 2017](#) (in Polish).

⁴² [Civil Society Monitoring Report on implementation of the national Roma integration strategies in Poland](#), June 2018, Brussels: European Commission, p. 15 (prepared by: *Art Foundation Jaw Dikh*).

⁴³ European Commission against Racism and Intolerance (ECRI) (2015) [Fifth Report on Poland](#), pp. 25-26.

⁴⁴ European network of legal experts in gender equality and non-discrimination (2017), [Country report non-discrimination: Poland](#), p. 85.

⁴⁵ European Union Agency for Fundamental Rights (FRA) (2011), [Survey on discrimination and social exclusion of Roma in EU \(2011\)](#). According to the survey, 25% say they have fallen behind with some payments, 22% with many payments, 20% are keeping up but in a constant struggle, and 20% manage but struggle from time to time.

⁴⁶ See [ECRI, fifth report on Poland](#), recommendation 11, p. 36.

⁴⁷ See [recommendations of Civil Society Monitoring Report on implementation of the national Roma integration strategies in Poland](#); June 2018, p. 21.

Programme for the Roma Community but was not popular with the beneficiaries,⁴⁸ and that it is possible under the programme to launch projects which target the majority population, the Advisory Committee considers that it should not solely be the task of the Roma themselves to fight racism and, more specifically, anti-Gypsyism; the authorities should rather take a leading role in promoting mutual respect and combating discrimination. The Advisory Committee considers, particularly in the context of the planning for the possible adoption of a new programme after 2020, that “[i]t is essential that all segments of society, majorities and minorities alike, are addressed in order for integration strategies to effectively facilitate the formation of societal structures where diversity and respect for difference are acknowledged and encouraged”,⁴⁹ and that the programme must not appear to leave the task of integration to minorities alone. The authorities should in this regard consider, besides the project-based approach to integration, which engages Roma civil society, taking action in the framework of the integration programme targeting the majority population to combat discrimination.

Recommendation

60. The Advisory Committee urges the authorities to adopt, implement, monitor and regularly evaluate, with the effective participation of members of the various Roma communities and the majority, a programme for Roma inclusion for 2020 onwards. The programme should incorporate successful elements from the Programme for the Integration of the Roma Community in Poland 2014-2020, measures targeting the majority population to combat anti-Gypsyism, and consultation mechanisms at local level. Sustainable, multi-annual financial support to projects should be granted where necessary, and measures and indicators should be reviewed, adapted and strengthened periodically.

Article 5 of the Framework Convention

Support for the preservation of national minority cultures

61. The legal framework for the allocation of funding to support national minority cultures continues to be framed by Article 18 of the Act on National and Ethnic Minorities and on the Regional Language, imposing on the authorities the obligation to support activities “aimed at protecting, preserving and developing the cultural identity of national and ethnic minorities”.⁵⁰ Since 2013, however, half of the experts sitting in the commission that assesses grant applications are selected by the Joint Commission of the Government and National and Ethnic Minorities (hereafter “Joint Commission”).⁵¹ This increased involvement of national minorities in the decision making about the allocation of funds is welcomed.

62. The overall budget envelope transferred by the Ministry of Interior and Administration to associations of national minorities for cultural purposes has increased slightly over the monitoring period and equates to the following in PLN: 14,4 million in 2013, 15 million in 2014, 16,3 million in 2015, 15,6 million each in 2016 and 2017, and 15,8 million in 2018.⁵² However, considering the strong increase in GDP over the past years, representatives of national minorities feel that there is room for additional financing.⁵³

⁴⁸ See [Viewpoints of the Polish authorities regarding the fifth report on Poland by the European Commission against Racism and Intolerance \(ECRI\)](#), 2015.

⁴⁹ [ACFC Thematic Commentary No. 4](#), para. 54.

⁵⁰ See [state report](#), p. 39.

⁵¹ *Ibid.*, p. 40.

⁵² State report, p. 41 (data for 2013-2016) and Written submission by the authorities to the Advisory Committee of September 2019 (data for 2017-2018).

⁵³ This point was made by almost all representatives of national minorities during their meetings with the Advisory Committee. For a written statement in this vein, see the comment of the organisation representing the Slovak minority in [Annex 8 to the state report](#).

63. The key problem voiced by representatives of national minorities, though, is the 12-month rhythm of project applications under the above-mentioned scheme of the Ministry of Interior and Administration. This practice poses challenges for all national minority associations, and in particular numerically smaller ones and those running permanent cultural institutions requiring staff such as museums or cultural houses. As stated previously, the Advisory Committee sincerely regrets this situation and agrees with many of its interlocutors that moving towards multi-annual budgetary plans would facilitate achieving the goals.⁵⁴

64. On a positive note, the Advisory Committee welcomes the multitude of institutions, museums, libraries and cultural centres supported by the Ministry of Culture and National Heritage as well as additional project-based funding granted to national minorities under the Programme of Folk and Traditional Culture.⁵⁵ Furthermore, national minorities benefit from funding disbursed through the National Centre for Culture, and the Open Culture, Culture interventions, and Cultural Education Programmes of the Ministry of Culture and National Heritage. Representatives informed the Advisory Committee that some of these programmes allow multi-annual planning, which is to be welcomed.

65. Numerically small minorities such as the Armenians, Lemkos, Karaims or Tatars have so far not been successful in their efforts to mobilise secure and continuous funding for the establishment or maintenance of cultural centres, museums or similar institutions. The Advisory Committee recalls that the specific financial problems of numerically smaller minority institutions and organisations deserve that special attention is given to their needs for particular assistance to be made visible and present in society.

Recommendations

66. The Advisory Committee reiterates its call on the authorities to revise the support scheme for minority cultures of the Ministry of Interior and Administration in a way that minority organisations can apply for multi-annual projects and have access to sustainable baseline funding.

67. The Advisory Committee calls on the authorities to effectively address the needs in the field of culture and cultural institutions of numerically smaller minorities.

Support for Jewish culture and restitution of property

68. The Advisory Committee acknowledges that the authorities co-fund a wide range of institutions, projects, festivals and other activities dedicated to the protection and promotion of Jewish culture and heritage. These range from landmark institutions such as the POLIN Museum of the History of Polish Jews in Warsaw, the Jewish Historical Institute, and the Estera Rachel and Ida Kamińska Jewish Theatre, over festivals such as the Jewish Culture Festival in Kraków, the Jewish Culture Festival 'Singer's', and the Jewish Film Festival, to regular national school competitions on the history and culture of Polish Jews.⁵⁶ Support to Jewish culture and heritage, as for other national minorities, is also provided by local authorities. The Advisory Committee was particularly impressed by the newly established branch of the Gliwice municipal museum, the Upper Silesian Jews' House of Remembrance. The museum runs a multitude of outreach activities for the local population with the aim of disseminating knowledge about Jewish religion, culture and history, but also enhance intercultural and interconfessional understanding. The Advisory Committee strongly welcomes these efforts.

69. The Advisory Committee notes, furthermore, that considerable efforts have been made in regulating the restitution, conservation, and renovation of Jewish communal property, in particular cemeteries, including many closed ones, and religious buildings. In 2018, the National Heritage Board of

⁵⁴ See [third opinion](#) of the Advisory Committee on Poland, para. 61.

⁵⁵ See [state report](#), pp. 41-46.

⁵⁶ See [state report](#), pp. 45-83.

Poland started a Programme for marking Jewish cemeteries in the Republic of Poland, which included the marking of 1 206 objects. The project is carried out in co-operation with the Jewish national minority and aims to create a comprehensive report on the condition of Jewish cemeteries in Poland. During its visit to Upper Silesia, the Advisory Committee also learned about a number of cases where constructive co-operation with local authorities allowed the small Jewish communities to maintain and renovate historic cemeteries and monuments. In many places, however, the respective local Jewish communities no longer exist or are too small to take proper care of such property. Municipalities, in turn, explained that they are prohibited from investing in any other property than their own. In some cases, the Jewish community ended up donating the respective property to the municipality in question, so local authorities could officially invest in their maintenance. This was the case in the municipalities of Sosnowiec, Chęciny, Chmielnik, and Czeladź. In other cases, the legal situation as to who is the official owner of closed cemeteries is unclear, and so the hands of local Jewish associations are tied in terms of taking care of them. As a result, some Jewish cemeteries and historic monuments continue to be in a poor state of maintenance, which is dissatisfying both for the persons belonging to the Jewish community and other inhabitants of the municipalities concerned. The Advisory Committee welcomes many instances of goodwill and pragmatic solutions found at local level. It understands, however, that the members of the Jewish community in Upper Silesia would welcome if this question could also be addressed at national level.

Recommendation

70. The Advisory Committee encourages the authorities to continue their efforts in the restitution, restoration and maintenance of Jewish communal property and to support local authorities in taking a pragmatic approach when it comes to local solutions for the preservation or renovation of Jewish heritage sites.

Article 6 of the Framework Convention

Tolerance and intercultural dialogue

71. Representatives of national minorities reported a general attitude of tolerance toward them in everyday life. There nevertheless exists a small but vocal extreme-right movement, mainly characterised by xenophobic, anti-Semitic and Islamophobic rhetoric and behaviour. Some groups also target national minorities associated with neighbouring countries, in particular Ukrainians, but also Russians and Belarusians, based on the complex history of the eastern border region of Poland, in particular regarding the Second World War and events from 1943 to 1944 in Volhynia. The Advisory Committee was made aware of instances where this complex history manifests itself in intercultural relations. In Przemyśl, the Ukrainian House has been vandalised several times in recent years, whilst a Ukrainian Greek-Catholic religious ceremony was attacked in June 2016, allegedly due to participants wearing the colours and honouring the Ukrainian Insurgent Army (UPA), which the organisers dispute.⁵⁷ Processions since 2016 have taken place with a police escort.⁵⁸

72. The Advisory Committee also takes note of the particularly alarming manifestations of anti-Gypsyism experienced by Roma in Andrychów in 2014, where a group of around 200 assembled to call for the local Roma population of the town to be expelled.⁵⁹ The rally was also attended by a small political

⁵⁷ Nowiny24.pl (27 June 2016), [Procession in Przemyśl, 23 detained, 9 charged](#) (in Polish).

⁵⁸ Nowiny24.pl (23 June 2016), [Panachyda 2019 in Przemyśl. Police Cordon again at the Greek Catholic procession](#) (in Polish).

⁵⁹ Council of Europe Congress of Local and Regional Authorities (20 October 2016), [The situation of Roma and Travellers in the context of rising extremism, xenophobia and the refugee crisis in Europe](#), para. 92.

party, and the demonstrators subsequently formed ‘civil protection patrols’ which provoked fear among the Roma population, with apparent impunity.⁶⁰

73. Minority representatives expressed their deep concern that both local and national authorities are insufficiently responsive when dealing with statements, demonstrations and other actions by extreme groups. An example of this is the march in Warsaw on the occasion of the anniversary of Polish independence on 11 November 2017, where some cases of offensive, racist, white supremacist chants and banners were heard and seen;⁶¹ press reported that the then Minister of the Interior described the whole event as a “beautiful sight”.⁶² The authorities have not unequivocally condemned the banners and chanting.⁶³

74. Interlocutors from a broad range of national minority communities reported to the Advisory Committee that openly hostile statements and actions against minorities are all too often at least tolerated, if not passively supported by political figures. They feel that the leniency shown by some authorities for inflammatory xenophobic statements stimulates an attitude of impunity in which far right extremists feel emboldened to stage xenophobic demonstrations and physical attacks and/or intimidation. The Advisory Committee is deeply concerned by this situation and recalls that it is an obligation of states parties under Article 6 of the Framework Convention to undertake appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

75. Some representatives of the Jewish minority also expressed their view that anti-Semitism has increased over this monitoring cycle, whereas others had a more positive perception. The Advisory Committee takes note of the statement⁶⁴ issued on behalf of 15 minority representatives in 2018, condemning the increasing xenophobia they witnessed after the adoption by the Sejm of the amendment to the Act on the Institute of National Remembrance, the so-called ‘Holocaust law’. This statement called on the authorities to counteract all forms of xenophobia, intolerance and anti-Semitism. The amendment initially made it a criminal offence to refer to “Polish death camps” (later decriminalised to be a civil offence). Following the adoption of the ‘Holocaust law’, research was undertaken by NGOs into the use of anti-Semitic language in public discourse.⁶⁵ It found that, in 2018, there were hundreds of examples of anti-Semitic statements in the media, including from politicians and advisors to different political parties, as well as television news presenters. The research found that the passage of the law through parliament provoked a spike in the number of these statements, thereby introducing them into mainstream public discourse. The Advisory Committee deplores these statements, and the fact that they have not been effectively challenged by others in positions of power.

76. Furthermore, a political party contesting the 2019 European elections ran on a platform of ‘five problems’, one of which was ‘Jews’.⁶⁶ The Advisory Committee understands that such statements were not countered by the national authorities; the party concerned gained 621 000 votes in the election, putting it in fourth place nationally. Under a broadly similar programme at the parliamentary elections in

⁶⁰ Reuters (9 July 2014), [Outside forces help stoke anti-Roma tension in Polish town](#).

⁶¹ Slogans included “Pure Poland, white Poland” and “Refugees get out”. The events were also mentioned in a [European Parliament resolution of 25 October 2018 on the rise of neo-fascist violence in Europe](#) (2018/2869(RSP)).

⁶² BBC News (11 November 2017), [Warsaw nationalist march draws tens of thousands](#); New York Times (16 November 2017), [Poles Cry for ‘Pure Blood’ Again](#).

⁶³ Rmf24.pl (11 November 2017), [The Ministry of Interior and Police ensure: Independence Day celebrations were calm and safe](#) (in Polish). Dzieje.pl (13 November 2017), [\[Deputy Prime Minister\] on foreign opinions about the Independence March: consideration of these matters requires common sense](#) (in Polish).

⁶⁴ Statement [reported](#) here (in Polish); original statement [here](#) (in Polish).

⁶⁵ Rafał Pankowski, [Examples of antisemitic discourse in Poland in 2018](#), in: Antisemitism Worldwide - 2018, Tel Aviv University, pp. 96-98; Rafał Pankowski, (2018) [The Resurgence of Antisemitic Discourse in Poland](#), in: Israel Journal of Foreign Affairs.

⁶⁶ Others were LGBT+, abortion, taxes and the European Union. [Programme of the political party](#) concerned (in Polish).

October 2019,⁶⁷ the party gained nearly 7% of the popular vote, and 11 seats in the Sejm.⁶⁸ Other incidents include the staging of a protest march inside the grounds of Auschwitz on Holocaust Memorial Day by extremist groups,⁶⁹ which was not countered by the national authorities, as well as burning an effigy of Judas, made to resemble the anti-Semitic stereotype of a Jew.⁷⁰ Whilst acknowledging the isolated nature of these incidents, the Advisory Committee nevertheless wishes to point out that it heard personal accounts from representatives of the Jewish minority that they had experienced anti-Semitism.

77. The Advisory Committee acknowledges the importance of open political debate on questions of public interest, but recalls the responsibility incumbent on the authorities, at all levels, to react promptly to any manifestation of intolerance and to condemn it publicly without delay. Furthermore, it considers that any xenophobic, racist or anti-Semitic discourse by politicians and public figures must be immediately and strongly condemned by senior government officials to ensure that a clear message is sent to the public that such discourse is not acceptable.

78. In exchanges with the Advisory Committee, some minority representatives reported feeling uneasy with the strong emphasis on Catholicism in public life. This concerns, for example, public primary education where, despite the formal constitutional separation of state and church, *de facto* sometimes only Catholic religious education is taught, the other option being ethics, which is not widely available; classes for other religions may be organised upon request, but obstacles are often encountered when making such request.⁷¹ The Advisory Committee notes the valuable work of the Centre for Islamic Culture and its regional branches, which offers education programmes in schools, but would need more support and opportunities to do so. The Centre for Islamic Culture also works with other confessions on projects such as an annual inter-confessional calendar combining Christian, Islamic, Jewish as well as Polish national holidays. The UN Special Rapporteur on Cultural Rights, in her end of mission statement, raised the dominance of the Catholic Church in public life a concern, particularly with regard to education.⁷² At the same time, the Advisory Committee wishes to underline the success of localised initiatives it has witnessed, including at the Museum of Upper Silesian Jews in Gliwice, where pedagogical activities ran for the entire community played a role in boosting intercultural understanding and respect.

79. The Advisory Committee wishes to recall that Article 6 calls for deliberate efforts to foster a climate of mutual respect, understanding and co-operation where persons belonging to national minorities are recognised as integral elements of society, who effectively enjoy equal access to rights and resources, while being provided with opportunities for social interaction and inclusion across difference.⁷³ It recognises the important historical role the Catholic Church has played in Poland as well as the continuing significance of religion in the lives of many Poles. However, insistence on a Polish identity with specific parameters, excluding other religions which have also played a significant role in the country's history, entails the risk that persons belonging to national minorities or practising religions other than Catholicism feel not recognised as an integral part of society. This may create a situation in which minority groups or those who do not conform to a given notion of patriotism are excluded from Polish identity, or from their own minority identity. As an example of this hindering the integration of society, but rather pushing minorities into assimilation, some representatives of the Jewish minority and Muslim community

⁶⁷ *Radio Zet*, (11 October 2019), [Confederation: election programme 2019](#) (in Polish).

⁶⁸ Polish Electoral Commission, (October 2019), [Results of 2019 election to the Sejm](#) (in Polish).

⁶⁹ *The Independent* (28 January 2019), [Holocaust Memorial Day: Far-right Polish group leads anti-Semitic protest at Auschwitz during commemoration ceremony](#).

⁷⁰ [World Jewish Congress condemns antisemitic effigy burning in Poland](#), 21 April 2019.

⁷¹ See Commissioner for Human Rights 2015 [summary of activities](#), p. 73.

⁷² Karima Bennoune, UN Special Rapporteur in the field of cultural rights, [Poland: UN expert concerned that erosion of cultural freedom threatens the country's rich cultural life](#), End of mission statement following mission in 2018.

⁷³ [ACFC Thematic Commentary No. 4](#), para.43.

reported that they were left with little choice but to conceal visible symbols of their religion or identity, so as to not be targeted on that basis.

80. The UN Special Rapporteur also refers to the “political and cultural polarization” of Polish society, as does a large amount of international press coverage of Poland,⁷⁴ and as did a number of the Advisory Committee’s interlocutors. Polarisation also figures in a poll on anti-Semitism in Europe,⁷⁵ the findings of which have been noted by the Advisory Committee. The questions asked in the survey not only concerned peoples’ views of minority groups often exposed to discrimination, but also what they view as problems for these groups. The results show a stark divide as to how the majority population perceives anti-Semitism, with 35% of respondents both agreeing and disagreeing that “Jewish people are at risk of racist violence in this country”.⁷⁶

81. The Advisory Committee is concerned about other findings of the poll. Despite the small numerical size of the groups, 29% and 35% of respondents expressed unfavourable views of the Roma minority and Muslims, respectively, whilst 29% also expressed an unfavourable view of immigrants. The results of the survey should encourage the authorities to remain vigilant to the signs of intolerance, and to continue to monitor the situation closely. A study into trends in hate speech in 2016 also indicated worrying tendencies, with Jews, Muslims and Ukrainians encountering hate speech more often in 2016 than in 2014,⁷⁷ and also encountering hate speech more often on television and particularly on the internet.⁷⁸ The Advisory Committee considers that these figures indicate a need for much increased intercultural dialogue, and greater mutual respect between groups exposed to discrimination and the majority population, including through greater inclusion of minorities in the general curriculum and in public media targeted at the population as a whole (see Articles 12 and 9, respectively).

82. Several minorities reported that the authorities’ attitude towards them is influenced by bilateral relations with other states. They quoted statements from officials referring to reciprocity, making the domestic protection of minority rights contingent on policies in this area in Germany, Lithuania or Ukraine.⁷⁹ The Advisory Committee finds such practices unacceptable and recalls in this context that it is every state party’s obligation to apply the Framework Convention in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between states, and that in no circumstances should policies in respect of national minorities be contingent on interstate relations (see also Article 17 and 18).

Recommendations

83. The Advisory Committee urges the authorities at all levels to take resolute measures to promote intercultural dialogue and mutual understanding between the majority and the different minority groups as well as religious communities in Poland. It urges them in particular to condemn at the highest political

⁷⁴ Anne Applebaum (October 2018), [A warning from Europe: The Worst is Yet to Come](#), in: The Atlantic; see also Politico.eu (14 January 2019), [Murder of Gdańsk mayor highlights Poland’s polarization](#).

⁷⁵ ComRes, (27 November 2018), [CNN – Anti-Semitism in Europe Poll 2018 – Poland](#); CNN, 27 November 2018, [A Shadow over Europe](#).

⁷⁶ Even more clearly, 47% of respondents agreed that ‘Jewish people do not face discrimination in this country today’, whilst 46.5% agreed that ‘the government should do more to combat anti-Semitism in this country’. As for whether anti-Semitism was growing, 35% agreed, whilst 28% disagreed. See [ComRes CNN Poll](#), (27 November 2018), p. 189.

⁷⁷ See Mikołaj Winiewski, Karolina Hansen, Michał Bilewicz, Wiktor Soral, Aleksandra Świdorska, Dominika Bulska (2017), [Contempt speech, hate speech. Report from research on verbal violence against minority groups](#), p. 42.

⁷⁸ *Ibid.*, p. 48.

⁷⁹ A recent example is the statement of a high-ranking official of the Ministry of Foreign Affairs regarding the German national minority in Poland and the situation of Poles in Germany. *TVP3 Opole* (30 September 2019), [Interview with the Deputy Minister of Foreign Affairs on Polish-German relations](#) (in Polish). For the reaction by representatives of the German minority, see <http://skgd.pl/2019/10/01/odpowiedz-tskn-na-konferencje-wiceministra-msz/> (in Polish). On 10 October 2019, the minority side of the Joint Commission of the Government and National and Ethnic Minorities issued a position paper “regarding the statements of the government representative declaring a reciprocity policy towards national minorities in Poland”.

level all manifestations of intolerance and ethnically motivated hostility in political discourse and in the media, and to promote actively a sense of belonging to a shared country, based on the acceptance of the complexity of Poland's history.

84. The Advisory Committee calls on the authorities to refrain from invoking reciprocity in statements about the protection of national minorities and take care to not make policies towards national minorities contingent on interstate relations.

Hate crime and hate speech

85. The Polish Criminal Code of 6 June 1997 prohibits, *inter alia* public incitement to hatred on the grounds of nationality, ethnicity or religion (Article 256 (1)), public insult of persons or groups on the said grounds (Article 257), and the use of violent or unlawful threats against a person or group of persons on the said grounds (Article 119).⁸⁰ However, the Penal Code still does not contain a provision expressly establishing racist motives of a crime as an aggravating circumstance.⁸¹

86. The Polish National Police has co-ordinators to fight hate crime both at national and regional (voivodeship) levels. In addition, in 2016 an "Office for Combating Cybercrime" was created within the National Police Headquarters and in 2017 co-ordinators for combating hate crimes appointed both at national and regional level. Finally, in February 2018, an "Inter-ministerial Team for preventing the promotion of fascism and other totalitarian systems and crimes of incitement to hatred based on national, ethnic, racial or religious differences or for reason of lack of any religious denomination" was created. In its final report, the team made a number of recommendations for amendments to Articles 256 and 257 of the Criminal Code, mainly concerning the promotion of "fascist, Nazi, communist or other totalitarian ideology".⁸²

87. The method of collecting data on hate crime was changed in 2015. A common database of the police and the Ministry of Interior and Administration is updated monthly based on reports by local police units and the ministry's Analysis and Migration Policy Department. According to information provided by the authorities, regular meetings and trainings are taking place to improve the data collection methods and train the persons involved, often with the support of the OSCE Office for Democratic Institutions and Human Rights (OSCE-ODIHR).⁸³

88. The authorities report the following numbers of proceedings involving hate crimes motivated by ethnic origin and religious grounds (in brackets):⁸⁴ 589 (192) cases in 2015, 457 (213) cases in 2016, 484 (158) cases in 2017, and 646 (82) cases in 2018. Out of the hate crimes motivated by ethnic origin, the largest number concerned persons belonging to the Jewish minority, with a marked increase between 2017 (78 cases) to 2018 (179 cases). While persons belonging to the Roma minority were still the second largest affected group in 2015, since then it has been persons belonging to the Ukrainian minority. The number of reported offences increased sharply from 36 cases in 2015 to 169 cases in 2018.

⁸⁰ Journal of Laws of 2016, item 1137. For an English version of the relevant provision, see [Annex 1](#) to the state report.

⁸¹ See also UN Committee on the Elimination of Racial Discrimination (29 August 2019), [Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Poland](#), CERD/C/POL/CO/22-24, paras. 15-16 and Helsinki Foundation for Human Rights (15 July 2019), Submission to the 99th session of the Committee on the Elimination of Racial Discrimination, p. 3.

⁸² Written submission by the authorities to the Advisory Committee of June 2019.

⁸³ See [state report](#), pp. 92-93 and written submission by the authorities to the Advisory Committee of June 2019.

⁸⁴ See [state report](#), pp. 93-94 and written submission by the authorities to the Advisory Committee of June 2019. Similar trends can be identified from the data communicated to OSCE-ODHIR. For the purpose of this report, the data provided by the authorities is used because of its higher level of disaggregation.

89. Other national minorities affected by hate crime are Roma (303 recorded cases in total for 2015-18), the Russian minority (51 in total), German minority (36 in total), Belarusian minority (15 in total), as well as, to a lesser extent, persons identifying as Armenians and Lithuanians. While being concerned about the persistence of hate crime against persons belonging to national minorities, the Advisory Committee appreciates the disaggregation of data, which allows the identification of important trends.

90. Statistical information published by the National Prosecutor's Office also shows a marked increase of hate-motivated incidents involving the use of violence, up to 20% of all cases in 2017. About 40% of reported cases concern hate crimes on the internet.⁸⁵

91. Hate speech is particularly frequent on the internet. Young people, according to one survey, are exposed to it more and accept it to a higher degree than the adult population.⁸⁶ Another report showed that hate speech, in this case against Ukrainians, appears both in spontaneous entries (comments, articles) and in well-planned and carefully prepared disinformation campaigns.⁸⁷ The report notes a growing wave of anti-Ukrainian hatred on the internet, while no progress has been made in the majority of the investigations in the hate speech cases reported to the police.⁸⁸

92. It is important to note that the numbers of convictions for hate crime are considerably lower than the figures of recorded proceedings mentioned above. Taking the categories "national, ethnical, and racial" grounds together, the authorities reported 66 convictions in 2015; 79 convictions in 2016; 108 convictions in 2017; and 69 convictions in 2018. Between 1 and 9 convictions per year were recorded in the category "religious grounds".⁸⁹ Representatives of national minorities and other interlocutors complained that following the reporting of a hate crime, there is all too often either no criminal case instituted, or the case is dropped at the prosecution stage. The Advisory Committee notes in this context both domestic and international criticism of the Justice reform conducted in 2015-17. The Venice Commission, for example, considered that the merger of the office of the Minister of Justice and that of the Prosecutor General has "direct negative consequences for the independence of the prosecutorial system from political sphere, but also for the independence of the judiciary and hence the separation of powers and the rule of law in Poland".⁹⁰

93. Furthermore, in their exchanges with the Advisory Committee, interlocutors referred to their own experiences as well as research confirming the immense underreporting of hate crime. A research project carried out by the Commissioner for Human Rights and OSCE-ODIHR found that over 18% of Ukrainians, 8% of Muslims and as many as 43% of persons from sub-Saharan Africa have experienced at least one incident that had features of hate crime, while only very few of those were actually reported to the police.⁹¹

94. The Advisory Committee recalls that ethnically based violence must be recognised as an especially nefarious form of violence that concerns and threatens society as a whole, and must thus be resolutely opposed and prevented.⁹² It recalls, furthermore, that racial motivation must be considered an

⁸⁵ Written submission by the Polish Commissioner for Human Rights, 10 July 2019.

⁸⁶ Stefan Batory Foundation (2014), [Hate speech in Poland](#) – summary of the national opinion poll, p. 7.

⁸⁷ Ukrainians' Union in Poland (2018), Ukrainian minority and migrants from Ukraine in Poland. Discourse analysis, p. 10.

⁸⁸ *Ibid.*, p. 31.

⁸⁹ Written submission by the authorities to the Advisory Committee of June 2019.

⁹⁰ [Poland - Opinion on the Act on the Public Prosecutor's office, as amended, adopted by the Venice Commission at its 113th Plenary Session \(Venice, 8-9 December 2017\), para. 115](#); see also [Poland - Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, adopted by the Commission at its 113th Plenary Session \(Venice, 8-9 December 2017\)](#).

⁹¹ OSCE/ODIHR (2019), [New study reveals scale of underreporting of hate incidents in Poland](#).

⁹² [ACFC Thematic Commentary No. 4](#), para. 56.

aggravating circumstance of any offence and law enforcement agents should be appropriately trained to ensure that racially or ethnically motivated attacks and discrimination are identified and recorded, as well as duly investigated and punished through targeted, specialised and prompt action.⁹³

95. The Advisory Committee therefore deeply regrets the above-mentioned loopholes in criminal law regarding aggravating circumstances for hate crimes as well as the low proportion of convictions, which it considers as one of the reasons for the substantial underreporting of hate crime.

Recommendation

96. The Advisory Committee urges the authorities to effectively identify, register and investigate cases of alleged hate crime, and prosecute and sanction those responsible. Further, it calls on the authorities to take awareness-raising measures on the remedies available to reduce underreporting of hate crime.

97. The Advisory Committee calls on the authorities to amend the Criminal Code with a view to explicitly mentioning the racist, ethnic and religious motivation of a crime as aggravating circumstance.

Article 9 of the Framework Convention

Regulatory media framework and multicultural programming

98. The legal and institutional framework for public media is governed by the Constitution of Poland. Its Article 213 specifies the existence of the National Council of Radio Broadcasting and Television (*Krajowa Rada Radiofonii I Telewizji, KRRiT*) (hereinafter: “the Broadcasting Council”),⁹⁴ responsible for safeguarding the freedom of speech and the public interest. Its duties, specified in Chapter 2 of the Broadcasting Act (1992), include, *inter alia* allocating frequencies, granting licenses, fining broadcasters, and organising research into the content and audience of programming. The five members of the Broadcasting Council, appointed by the Sejm, the Senate and the President, are also forbidden from being members of political parties or trade unions (Article 214(2) of the Constitution). On 7 July 2016, the Act on the National Media Council entered into force,⁹⁵ thereby establishing the National Media Council (*Rada Mediów Narodowych*) as a separate but parallel organ to the Broadcasting Council.⁹⁶ The five members of the National Media Council are appointed by the Sejm (3) and President (2), who chooses the members from proposals of opposition parties represented in the Sejm. These may be active politicians or MPs.⁹⁷ The National Media Council appoints the national management and supervisory boards for *Telewizja Polska*, *Polskie Radio*, and the 17 regional *Polskie Radio* broadcasters. The management board of *Telewizja Polska* and *Polskie Radio* appoint the directors of regional branches of public radio and television (as per Article 30 of the Broadcasting Act), with the consent of the National Media Council. These directors then appoint regional programme councils, and “candidates put forward by social organisations of national and ethnic minorities and communities speaking regional languages” should be considered as prospective members of these councils.⁹⁸ However, it is to the regret of the Advisory Committee that there are no such representatives in any branch of public service broadcasting

⁹³ Ibid.

⁹⁴ See Article 213 of the [Constitution of the Republic of Poland](#).

⁹⁵ See [press release](#) of 7 July 2016 on the KRRiT website.

⁹⁶ In the temporary ‘small media law’, adopted in December 2015, the National Media Council was foreseen to take many of the functions which, according to the constitution, are the field of activity of the KRRiT, thus sidelining the latter institution. For this reason, on 13 December 2016, the Constitutional Tribunal ruled the law unconstitutional and insisted on a return to the constitutional provisions which guarantee the position of the KRRiT. The law was repealed and replaced with a ‘bridge law’, anticipating the adoption of a ‘big media law’ in the future.

⁹⁷ European Audiovisual Observatory (2019), [The Independence of media regulatory authorities in Europe](#), P. 97.

⁹⁸ Article 30(4a) of the [Broadcasting Act \(1992\)](#).

in Poland, while until 2016 the Broadcasting Council had appointed eight members representing national minorities to these branches.

99. Representatives of some national minorities reported that this lack of participation of their representatives in broadcasting councils, but also the general politicisation of public broadcasting over the past years, is showing effects and evoked the notion of “self-censorship”. Some national minorities, in particular those related to neighbouring states, reported being increasingly portrayed in a negative way, failing to distinguish between political relations with neighbouring states and the Polish citizens from the respective minority background living in the country.

100. The Advisory Committee recalls that “[t]he participation of persons belonging to national minorities in supervisory boards of ... media-related bodies ... is essential to ensure adequate dissemination of information on national minorities”.⁹⁹ Further, sustained and concrete efforts should be made, including through legal incentives, to ensure that minorities are represented in broadcasting councils,¹⁰⁰ so as to ensure the mainstreaming of minority interests and concerns into regular programming, and reduce the negative effects of ‘misrecognition and stereotyping’.¹⁰¹ The Council of Europe Recommendation on media pluralism and diversity of media content also recommends the promotion of minorities in the internal organisation of broadcasters.¹⁰²

101. Following the 2015-16 legislative amendments and proposals,¹⁰³ Council of Europe experts, in an opinion published in June 2016, expressed their concern at the ‘politicisation’ of public media regulation in Poland with the National Media Council and other reforms which would have extended its mandate,¹⁰⁴ as did a number of international organisations and NGOs.¹⁰⁵ The Advisory Committee takes note of these concerns and expects that the authorities will ensure that any changes do not negatively affect the independence of public broadcasting and the protection offered by the Framework Convention.

102. Long-standing provisions in broadcasting legislation emphasise promoting “respect [for] the Christian system of values”¹⁰⁶ and that broadcasts “must respect the religious beliefs of viewers/listeners, particularly the Christian system of values”.¹⁰⁷ Whilst noting the importance of Christianity in Polish society, the Advisory Committee is concerned that this may have an exclusionary effect on other religious communities in Poland.¹⁰⁸ The Advisory Committee is aware of a dispute arising from the screening of the

⁹⁹ [ACFC Thematic Commentary No. 2](#), The Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, adopted on 27 February 2008, para. 141.

¹⁰⁰ See [ACFC Thematic Commentary No. 3](#), The Language Rights of Persons belonging to National Minorities under the Framework Convention, adopted on 24 May 2012, para. 41.

¹⁰¹ See [ACFC Thematic Commentary No. 4](#), para. 70.

¹⁰² Recommendation [CM/Rec\(2007\)2](#) of the Committee of Ministers to member states on media pluralism and diversity of media content, para. II.2.2.

¹⁰³ See [BBC News Poland Profile – Media](#) for a summary of some of the key criticisms, as well as a general overview of the public and private media in Poland.

¹⁰⁴ See [Council of Europe \(6 June 2016\), Opinion on the three draft Acts regarding Polish public service media](#), DGI(2016)13. The opinion concerned mostly the so-called ‘Big Media Law’, which was subsequently shelved by the government, but its section 4 concerns the National Media Council’s set-up and appointment process.

¹⁰⁵ Freedom House published in June 2017 a report on press freedom in Poland, and also expressed its concerns about the political nature of the National Media Council: Freedom House, [The Assault on Press Freedom in Poland](#); the Polish Helsinki Foundation and the NGO “Article 19” also raised serious concerns about the new system in their report [Poland: Independence of Public Service Media](#) of January 2017; see also the [statement](#) released by Helsinki Foundation in December 2015. The OSCE Representative on Freedom of the Media expressed her concerns in 2015 about proposed amendments, fearing that they would endanger ‘independence, objectivity and impartiality of public service broadcasters. See also a [Press statement by the Council of Europe Commissioner for Human Rights](#) of 30 December 2015 and the [Human Rights Commissioner’s post-visit Statement](#) of 12 February 2016.

¹⁰⁶ [Broadcasting Act](#), Article 21(1a(2)).

¹⁰⁷ [Broadcasting Act](#), Article 18(2).

¹⁰⁸ See [Council of Europe \(6 June 2016\), Opinion ... on the three draft Acts regarding Polish public service media](#), p. 7.

Oscar-winning film 'Ida' on TVP2, before which commentators – one of which was involved in the campaign for the amendment to the Institute of National Remembrance with links to the authorities (see Article 6)¹⁰⁹ – lamented the anti-Polish bias of the film, and one of whom attributed its success to being 'pro-Jewish'. Additional intertitles were added to provide facts about good examples of Poles from the Second World War.¹¹⁰ This prompted a group of Polish directors to decry the 'ideological' interpretation of the film.¹¹¹ The Advisory Committee is concerned that such an example does not facilitate the fostering of intercultural dialogue and mutual respect.

103. Broadcasters continue to be obliged to produce "pluralistic"¹¹² programming about national or ethnic minorities, aiming to promote tolerance and intercultural dialogue. The state report provides information on three broadcasts "popularising multiculturalism"¹¹³ broadcast by *Radio Koszalin* and *Radio Opole*. During exchanges with the Advisory Committee, representatives of the authorities were not able to provide information on the number of programming hours devoted to promoting mutual respect and interculturalism, but that KRRiT could commission research into this. The Advisory Committee underlines the role of the media as a tool for the promotion of intercultural understanding and a sense of solidarity in society¹¹⁴ and recalls that "it is important for the formation of an open and pluralist media environment that issues of concern to minority communities generally are given weight in the broader public media debate and that persons belonging to such minorities are portrayed as integral members of society".¹¹⁵ It further recalls the above-mentioned Committee of Ministers Recommendation: "Member states should, while respecting the principle of editorial independence, encourage the media to supply the public with a diversity of media content capable of promoting a critical debate and a wider democratic participation of persons belonging to all communities."¹¹⁶ The Advisory Committee is therefore of the view that the current offer of programming concerning national minorities' history and culture, promoting intercultural dialogue at the national level, is unsatisfactory, and that the authorities should take concrete action to ensure the inclusion of information about minorities in mainstream programming, with a view to engaging all sectors of society and thereby promoting societal cohesion.

¹⁰⁹ See [statement by the Polish League against Defamation](#) of 15 February 2016 (in Polish).

¹¹⁰ The Guardian (4 March 2016), [Polish TV broadcaster criticised for its treatment of Ida screening](#).

¹¹¹ [Open letter](#) to TVP President Jacek Kurski and TVP2 Director Maciej Chmiel of 1 March 2016.

¹¹² [Broadcasting Act](#), Article 21(1).

¹¹³ See [state report](#), p. 115.

¹¹⁴ [ACFC Thematic Commentary No. 4, para. 63](#).

¹¹⁵ [ACFC Thematic Commentary No. 4, para. 63](#).

¹¹⁶ Recommendation [CM/Rec\(2007\)2](#) of the Committee of Ministers to member states on media pluralism and diversity of media content, para. II.2.1.

Recommendations

104. The Advisory Committee reiterates its call on the authorities to ensure, if necessary by taking legislative measures, the effective participation of national minorities in regional public radio and television programme councils, especially in regions where they live in substantial numbers.

105. The Advisory Committee calls on the authorities to continuously monitor the impact of media legislation on the rights afforded to national minorities and ensure that changes do not adversely affect the protection offered by the Framework Convention.

Media in minority languages

106. Public broadcasters' obligations relating to programming in minority languages and for minorities are unchanged since the previous opinion,¹¹⁷ and it continues to be produced at branches of *Telewizja Polska* and *Polskie Radio*, six to seven TV stations and twelve radio stations of which provide programmes in regional or minority languages. *Radio Białystok* broadcast a consistent number of hours in regional or minority languages¹¹⁸ over the reporting period, with 287-289 hours broadcast annually. At *Radio Gdańsk*, in the region where the Kashubian language community is concentrated, the number of hours has more than doubled to 528 between 2013 and 2018, which is a welcome trend. The overall trend for public radio in the regions concerned is also positive, with an increase from 1 153 hours broadcast for minorities in 2013, to 1 854 in 2017. The Advisory Committee is, however, concerned by the significant reduction in hours broadcast in 2018 (to 1 489). The reduction of over 50% of the number of hours broadcast by *Radio Opole*, operating in a region where persons belonging to the German minority live compactly, is also a concern, as is the fact that, in 2013, 28 hours were broadcast by the television branch in Opole, but only 8 hours in 2018. Concerning regional television broadcasting, *TVP3 Białystok* broadcast the most hours to the most different minorities,¹¹⁹ with 81 in 2018 (up from 68 in 2013). Overall, the figures show TV broadcasts totalling 149 hours in 2018, broadly similar to 2013.¹²⁰ Data provided by the authorities do not clarify in which languages the radio and television broadcasting hours were produced each year, making it difficult to assess precisely developments over the monitoring period.

107. Minority representatives reported that television programmes designed for them were often very short, or appeared at inconvenient times, either late at night or early in the morning. For instance, the weekly German-language show *Schlesien Journal*, airs for 12 minutes on a weekly basis. The Advisory Committee recalls that “[c]are should be taken to produce quality minority language programmes that are attractive to a wide audience, and to ensure that they are broadcast at convenient times”.¹²¹

108. As for minorities who live dispersed across Poland, the state report informs that there are a number of radio and television programmes in the Ukrainian language, or targeted at persons belonging to the Ukrainian minority, produced and broadcast at the regional branch level.¹²² There is also a Ukrainian language programme with Polish subtitles, *Telenowyny*, produced by the regional network (TVP 3) and available across the country.¹²³ The Advisory Committee strongly regrets that this programme is

¹¹⁷ See Article 21(1a) [Broadcasting Act](#); Article 18(2) of the [Act](#) on National and Ethnic Minorities and on the Regional Language.

¹¹⁸ In the Podlaskie voivodeship, programming is made for the Belarusian, Lithuanian, Roma, Tartar, Russian, and Ukrainian minorities.

¹¹⁹ According to information provided by the authorities, in 2016 TVP Białystok broadcast programmes for the Ukrainian minority (23 hours 40 minutes), the Belarusian minority (36 hours 51 minutes), the Russian minority (2 hours 45 minutes), the Roma minority (2 hours 45 minutes), the Lithuanian minority (12 hours 58 minutes), and the Tartar minority (4 hours 8 minutes).

¹²⁰ It has, however, to be noted that there was a spike to 183 hours in 2015.

¹²¹ [ACFC Thematic Commentary No. 3](#), para. 41.

¹²² See [state report](#), pages 112-114.

¹²³ See <https://regiony.tvp.pl/12132504/telenowyny?fbclid=IwAR2n7XJW4gHv1ZpU1M9CCAf1-skjE2oKqETMIhN6QQSFpFh-u6L7tGfuxAI> (in Polish).

now shown at most once per month, whereas previously it was weekly.¹²⁴ The Advisory Committee also welcomes that there are television programmes aimed at the Roma minority produced by *TVP Białystok* and *TVP Katowice*, and several radio programmes produced in different regional branches which aim to break down stereotypes and encourage the integration of society.¹²⁵

109. Irrespective of the numerically small number of persons belonging to minorities in Poland, and the fact that many live compactly in different voivodeships, the Advisory Committee cannot but regret that there is no programming in regional or minority languages at the national level, with the exception of the monthly Ukrainian programme. It considers that such programming “further strengthens social cohesion, as it reflects an overall inclusive policy towards minorities”,¹²⁶ and that “[l]anguage and cultural policies must ... ensure that all languages and cultures that exist in society are visibly and audibly present in the public domain, so that everybody is aware of the diverse character of society and recognises himself or herself as an integral part of it”.¹²⁷ This also applies to persons belonging to minorities living outside of their traditional areas of settlement (see also Article 6).

110. Concerning printed media, the Advisory Committee has observed many examples of printed media, either bilingual or in a regional or minority language, funded by the state through grants (for instance: a bilingual Armenian/Polish quarterly *Awedis* published by the Armenian Association; a monthly Slovak-language periodical *Život*). The state report also informs that the authorities aim to ensure that there is at least one publication in every recognised regional or minority language in Poland,¹²⁸ which has created a rich and vibrant press landscape. Some minority representatives raised concerns about the annual grant-based process for acquiring funding for these publications. The authorities state that it is highly unlikely that such ‘flagship’ projects would ever be denied funding. The Advisory Committee takes note of data provided by the authorities which shows that funding for minority press has remained stable,¹²⁹ and that funding for electronic media has increased from 2013 to 2019,¹³⁰ although the Advisory Committee is also concerned that this funding is currently given to just five minorities and the Kashubian linguistic community.¹³¹ Nevertheless, the Advisory Committee is concerned that such a model could reflect the unpredictability of project-based funding. In view of the public service functions of the printed minority-language media, the Advisory Committee considers it essential to safeguard sustainable minority-language media, both digital and print.

Recommendations

111. The Advisory Committee calls on the authorities, whilst respecting editorial independence, to take positive steps to include information about the culture, language and history of national minorities, as well as their concerns and interests, in mainstream national public radio and television programming, with a view to promoting mutual respect, cultural pluralism and societal cohesion.

112. The authorities should maintain their positive approach to the state funding of printed minority language media, and consider granting baseline funding to minority organisations to ensure the sustainability of these media.

¹²⁴ The [state report](#) informs that the programme is broadcast four times per month, where interlocutors of the Advisory Committee reported it was only broadcast once per month, as shown on the website of the programme: <https://regiony.tvp.pl/12132504/telenowyny> (in Polish). Information provided by the authorities also shows that Ukrainian-language programming available countrywide amounted to 13 hours 11 minutes in 2016.

¹²⁵ *Radio Opole, Koszalin and Zachód*.

¹²⁶ [ACFC Thematic Commentary No. 3](#), para. 40.

¹²⁷ [ACFC Thematic Commentary No. 4](#), para. 61.

¹²⁸ See [state report](#), p. 106. See also pages 11-25 for a comprehensive list of all major press periodicals.

¹²⁹ In 2019, PLN 3.6 million (€842 000) was dispersed; in 2018, PLN 2.7 million (€856 000) was dispersed; in 2017, PLN 3.4 million (€858 000) was dispersed.

¹³⁰ In 2019, PLN 1.28 million (€290 000) was dispersed, compared to PLN 1.06 million (€247 000) in 2013.

¹³¹ The Belarusian, Lemko, German, Armenian and Ukrainian minorities, and the Kashubian community.

Article 10 of the Framework Convention

Use of minority languages in relations with the administrative authorities

113. The legislative framework on the use of national minority languages in relations with administrative authorities remains unchanged: municipalities where persons belonging to a certain national minority constitute at least 20% of the local population can apply to be entered in the “Official register of municipalities where a supporting language is used” (hereinafter: “the Official Register”). Once such status is granted by the minister competent for religious denominations and national and ethnic minorities, local citizens have the right to apply to the municipal authorities and to obtain an answer in the supporting language, orally or in writing.¹³² Based on the 2011 census, 51 municipalities meet that threshold.

114. Since the last monitoring cycle, the number of municipalities on the Official Register has slightly increased from 30 to 33. The last additions were the municipalities of Linia (2012), Żukowo (2013), and Luzino (2014), all for Kashubian as a supporting language.¹³³ According to information available to the Advisory Committee, no application by a municipality council for entry in the Official Register has been turned down. The Advisory Committee welcomes that three municipalities were added to the Official Register. It regrets, however, that one third of the 51 municipalities meeting the threshold are still not using national minority languages in relations with administrative authorities. In 2014 and 2015, the Ministry of Administration implemented a campaign promoting the use of national and ethnic minority languages and the regional language Kashubian, following up a recommendation by the Committee of Experts on the European Charter for Regional or Minority Languages. The campaign was aimed at informing local authorities about obligations under the Charter and persons belonging to minorities about possibilities of using the above-mentioned languages as auxiliary languages before authorities and in topographical indications. The Advisory Committee welcomes the implementation of this campaign.¹³⁴

115. With effect from 1 January 2017, nine localities in three municipalities (Dobrzeń Wielki, Komprachcice, and Prószków) which are on the Official Register for German as a supporting language, were incorporated into the city of Opole.¹³⁵ Opole has only a small German minority population and thus does not offer German as a supporting language. This administrative-territorial reform has also led to a lower percentage of persons identifying with the German minority in the remainder of these three municipalities. Two additional localities with a significant German minority population were incorporated into the city of Opole. Before, they belonged to the municipality of Dąbrowa, which was not on the Official Register as it did not meet the 20% threshold (14% of German population according to 2011 census).

116. The Advisory Committee deeply regrets the effects of this administrative reform on the rights to use a minority language in relation with administrative authorities. According to estimates provided by

¹³² See Articles 9-11 of the [Act](#) on National and Ethnic Minorities and on the Regional Language; Regulation of the Minister of Interior and Administration of 30 May 2005 on the Official Register of Communes where supporting language is used (Journal of Laws No 102, item 856); [state report](#), p. 118, [Annex 1](#) and [Annex 6](#). For a detailed assessment, see [second opinion](#) of the Advisory Committee on Poland.

¹³³ According to [Annex 6](#) to the state report (in Polish), 22 municipalities have German as a supporting language, 5 Belarusian, 5 Kashubian, and 1 Lithuanian.

¹³⁴ [Third periodical report on the implementation of the European Charter for Regional or Minority Languages by Poland](#), 4 October 2019, p. 9.

¹³⁵ The following localities were incorporated into the city of Opole: Borki/Borrek, Brzezie/Finkenstein, Czarnowąsy/Czarnowanz, a part of Dobrzeń Mały/Klein Döbern, Krzanowice/Krzanowitz, Świerkle/Horst in the municipality of Dobrzeń Wielki, Chmielowice/Chmiellowitz and Żerkowice/Zirkowitz in the municipality of Komprachcice, and Winów in the municipality of Prószków. It has to be noted that the percentage of inhabitants affiliating themselves with the German minority dropped below the threshold between the 2002 and 2011 census both in Dobrzeń Wielki (from 20.9% to 17.8%) and in Komprachcice (from 31.3% to 17.4%). They were nevertheless kept on the Official Register (see also [third opinion](#) of the Advisory Committee on Poland, para. 112).

representatives of the German minority, it deprives a significant number of persons who affiliated with the German national minority during the 2011 census of the possibility to use German in contact with administrative authorities (see also Articles 11, 15 and 16). Furthermore, the percentage of persons belonging to the German minority in the remaining four municipalities has decreased, which may negatively affect these persons' access to rights under Article 10 of the Framework Convention.

117. Representatives of the Lithuanian minority expressed regret that the threshold of 20% excludes a number of municipalities with a significant minority population. This applies for example to the Municipality of Sejny, where 15.5% of inhabitants belong to the Lithuanian minority. The Advisory Committee recalls that as the rights of Article 10(2) are triggered by one of the two main criteria (substantial number or area traditionally inhabited), they apply also to areas where only a relatively small percentage of persons belonging to national minorities reside, provided that persons belonging to national minorities traditionally inhabit the areas concerned, that there is a request by these persons, and that "such a request corresponds to a real need".¹³⁶ The Advisory Committee therefore encourages states to give careful consideration to the setting up of thresholds for determining the areas inhabited by persons belonging to national minorities "in substantial numbers and welcomes measures taken by the authorities to lower any such thresholds as appropriate".¹³⁷

118. The Advisory Committee recalls that as "the rights of Article 10.2 are triggered by one of the two main criteria (substantial number *or* area traditionally inhabited), they apply also to areas where only a relatively small percentage of persons belonging to national minorities reside, provided that persons belonging to national minorities *traditionally* inhabit the areas concerned, that there is a request by these persons, and that such a request corresponds to a real need".¹³⁸

Recommendation

119. The Advisory Committee encourages the authorities to take a flexible approach to signage in national minority languages also in situations where the percentage is below the 20% threshold and in particular in those municipalities that were above the threshold before they were affected by the territorial reform. It calls on the authorities to encourage the participation of national minorities in devising the approach to minority language use in contact with Opole city authorities.

Article 11 of the Framework Convention

Topographical indications in national minority languages

120. The legislative framework on topographical indications in national minority languages remains unchanged: signs in national minority languages displayed alongside those in the Polish language may be used in municipalities where persons belonging to national minorities constitute at least 20% of the population. Such signs may also be displayed in municipalities not meeting the 20% threshold, provided this is supported by more than half the inhabitants participating in a local consultation.¹³⁹

¹³⁶ See [ACFC Thematic Commentary No. 3](#), para. 56.

¹³⁷ See [ACFC Thematic Commentary No. 3](#), para. 57.

¹³⁸ See [ACFC Thematic Commentary No. 3](#), para. 56.

¹³⁹ See Articles 12 and 13 of the [Act](#) on National and Ethnic Minorities and on the Regional Language; Regulation of the Minister of Interior and Administration of 30 May 2005 on the Register of Communes where place names in the minority language are used, sample applications for entering a commune in the Register and for establishing an additional name of a locality or physiographic object in a national or ethnic minority language or in a regional language (Journal of Laws of 2014, item 1486); [state report](#) pp. 120-122, [Annex 1](#) and [Annex 7](#).

121. Since the last monitoring cycle, 11 municipalities were added to the “Register of municipalities with place names in minority languages”, bringing the overall number to 62. Nine of the newly added municipalities introduced place names in the Kashubian language, and two introduced place names in the German language. The costs of new bilingual signage are borne by the national budget and amounted to the equivalent of €55 000 in 2016.¹⁴⁰ However, no entries to the register were made for bilingual street signs. The costs of these are to be covered by the municipalities themselves.

122. The enlargement of the city of Opole (see Article 10 above) affected also nine localities in the municipalities of Dobrzeń Wielki, Komprachcice, and Prószków, which are on the “Register of municipalities with place names in minority languages”. Following their incorporation into the city of Opole with effect of 1 January 2017, the bilingual Polish/German signs in those localities were taken down and replaced by Polish signs.

123. The Advisory Committee recalls that bilingual topographical indications and private signs constitute an affirmation that the presence of national minorities is appreciated and thus carry an important symbolic value for integration of society. The Advisory Committee underlines in this context the importance of promoting bilingual signs, as this “conveys the message that a given territory is shared in harmony by various population groups”.¹⁴¹

124. The Advisory Committee therefore deeply regrets the effects of the administrative reform in Opole as regards the topographical indications in the German language. Notwithstanding the assessment of this reform as such, the Advisory Committee considers that the active removal of existing bilingual signage is a strong negative gesture towards persons belonging to a national minority.

Recommendation

125. The Advisory Committee calls on the authorities to find solutions relating to the reinstallation of bilingual plaques for places in Opole in those parts of the city which used to belong to municipalities with a significant German minority population before the territorial-administrative reform as an important symbolic gesture both to the minority and the majority in Opole.

Article 12 of the Framework Convention

Knowledge about minorities and intercultural education

126. The new core curricula introduced in 2017 and 2018¹⁴² continue to place emphasis on the education of children from national minorities about their respective culture, history and language.¹⁴³ The Advisory Committee could not obtain information, however, in which grades and subjects children from the majority learn about the presence of national minorities in Poland and their contribution to Polish history. Furthermore, the Advisory Committee is not aware of any involvement of national minority

¹⁴⁰ See [state report](#) p. 122 and information on 2017-2019 provided by the authorities in written submissions in June and September 2019.

¹⁴¹ See [ACFC Thematic Commentary No. 3](#), para. 67.

¹⁴² Regulation of the Minister of National Education of 14 February 2017 on the core curriculum for preschool education and the core curriculum for general education in primary schools, including for pupils with moderate and severe intellectual disability, and for general education in first-grade sectoral vocational schools, general education in special schools preparing for employment, and general education in post-secondary schools (Journal of Laws, item 356) and Regulation of the Minister of National Education of 30 January 2018 on general education for secondary schools of general education, technical secondary schools and upper secondary special schools preparing for employment (Journal of Laws, item 467) – the new core curriculum for secondary schools enters into force as of the 2019/2020 school year.

¹⁴³ Ministry of Education (2018), [Commentary on the core curriculum of the subject language of national or ethnic minority](#) (in Polish) p. 18.

representatives in the development of the new curricula or textbooks. Also, the authorities do not seem to have an overview of how national minorities are portrayed in textbooks and other teaching materials as well as in teacher training. Representatives of several minorities criticised that Polish children do not learn enough about national minorities in Poland, in particular the numerically smaller ones such as the Lemkos. Some interlocutors also pointed out that the new curriculum places increased emphasis on Polish national history while they would prefer a multi-perspective approach to history that acknowledges Poland's traditional cultural diversity.

127. The Advisory Committee recalls that states parties need to review regularly the curricula and textbooks of subjects such as history, religion and literature in order to ensure that the diversity of cultures and identities is reflected, and that tolerance and intercultural communication are promoted.¹⁴⁴ It regrets to learn, therefore, that representatives of national minorities tend to feel uneasy with the way cultural diversity is reflected in the current curricula and teaching materials and that there is little objective knowledge on the *de facto* situation in schools.

Recommendation

128. The Advisory Committee invites the authorities to promote the provision of adequate information to Polish children on the history, culture and languages of national minorities as well as their contribution to Polish history and, if applicable, take measures to this effect, for example through a review of teaching and learning materials.

Access of Roma children to education

129. The overall situation of Roma in education is showing gradual signs of improvement, thanks in large part to measures taken in the framework of the Programme for Roma integration. As the state report shows, in 2015, 93% of Roma children eligible for compulsory education were attending (an increase of 9% since 2013).¹⁴⁵ Examples of measures taken include preschool financing, giving children school accessories, didactic aids and personal hygiene products, as well as, although to a lesser extent, covering travel and school meal costs. As many as 2 455 students were also supplied with textbooks. The Advisory Committee was also informed that the recent educational reform, extending primary education from six to eight years, may have a positive impact on Roma students, delaying the point at which many may leave education, that is, the move from primary to secondary education.

130. In terms of higher education, the state report notes that in 2015, PLN 450 000 (€105 000) was allotted to 111 scholarships for Roma students to attend higher education institutions or teacher training. The authorities inform that there are around 40 students each year in receipt of a scholarship to attend tertiary education, which broadly maps on to the overall numbers of Roma in tertiary education. The authorities are aware that greater efforts are needed to increase attendance further, but the Advisory Committee praises these positive measures.

131. The Advisory Committee asked in its previous opinion that the authorities, as a matter of priority, increase efforts to ensure access to preschool education for the Roma minority. It notes that funding for Roma parents to send their children to preschool is made available through the Roma Integration Programme 2014-2020. The numbers of Roma pupils in preschool has dropped over the period 2013-18, from 337 in 2013/14 to 210 in 2018/19, broadly in line with a decreasing total number of Roma students

¹⁴⁴ [ACFC Thematic Commentary No. 3](#), page 11; see also OSCE High Commissioner for National Minorities (2012), [The Ljubljana Guidelines on Integration of Diverse Societies](#), p. 56.

¹⁴⁵ See [state report](#), p. 35. There were 3 230 Roma children eligible to attend, of which 3 002 attended.

in education.¹⁴⁶ The authorities have informed the Advisory Committee that, in 2013/14, the attendance rate for preschool was 75.3% from the Roma minority, and that attendance of at least one year of preschool has been mandatory since 2017. A local audit by the Supreme Audit Office in the Małopolskie voivodeship states that preschool education should still be a matter of priority for the authorities, since little has changed in this regard over the period of the integration programme's implementation.¹⁴⁷ The analysis also shows that no Roma students benefited from the preschool funding available in the seven municipalities they surveyed; 61 would have been eligible in these municipalities as of the end of 2015.¹⁴⁸

132. During its visit, the Advisory Committee heard concerns from Roma representatives about the way in which funding for preschool education fees was being distributed under the integration programme. They described a system in some local authorities whereby NGOs apply to the municipality for financing as a project within the Roma integration programme. The municipality must agree in order to petition for funds. Even if the NGOs are successful up to this point, the funds are ultimately paid to the municipal social assistance centre, without being earmarked for use for Roma preschool education. Potential beneficiaries, for instance Roma parents who wish to send their children to preschool, must then apply for the funding, in a process open to everyone in the municipality, using general economic means-testing. This means the intended recipients of funding may not receive it, since they may not have a sufficiently low income to benefit from social welfare assistance, or may be put off by the bureaucracy involved, for instance the need to supply proof of income. Representatives also reported that if they were in receipt of this assistance, then it may mean that other welfare payments would be reduced. The national authorities confirmed that such a situation is possible, but that it may vary from one municipality to another, depending on the policy in place locally.

133. The Advisory Committee considers that such a situation may discourage Roma parents from applying for funding, and, given the particularly economically and educationally disadvantaged situation faced by many Roma (see Article 15), and which calls for affirmative action, the authorities should seek rather to facilitate access of Roma parents to funds to pay preschool fees. Where such funding is made available, the application process should be transparent, and, where local authorities are responsible for the disbursement of funding, it should be earmarked for use to ensure that it reaches the persons concerned, without disadvantaging further their financial situation.

134. Roma representatives during exchanges with the Advisory Committee stressed the success of these assistants, of whom there are now 92 in Poland, mostly coming from the Roma minority themselves. For the Roma, the assistants act as a crucial link between the families and the school, often following their students through the entirety of their compulsory education.¹⁴⁹ Assistants informed the Advisory Committee of the wide portfolio of roles which they have, including giving extra classes to Roma students, engaging parents to send their children to school in the morning, or to attend parents' evenings. They also underlined that they were dealing with the impact of returnees from western Europe, many of whom do not speak Polish, meaning assistants must undertake extra work to teach them Polish. Roma assistants were initially financed under successive national Roma integration strategies, but are now, the Advisory Committee has been informed, paid for by local authorities or schools, with costs coming out of the regular budgets. This is a praiseworthy, positive measure as it ensures sustainability of the assistants' employment.

135. However, assistants also raised concerns with the Advisory Committee, such as the fact that in certain areas one assistant is dealing with 90-100 students, meaning that they cannot provide the high

¹⁴⁶ Government figures show a decrease in the total number of Roma pupils from 2 547 in 2013/14 to 2 239 in 2018/19.

¹⁴⁷ [Supreme Audit Office](#), see pages 21-25 (in Polish).

¹⁴⁸ *Ibid*, page 25.

¹⁴⁹ See also [Civil society monitoring report on implementation of the national Roma integration strategies in Poland](#), June 2018, p.13.

level of support they need to. It was also reported to the Advisory Committee that assistants, even those with university education, are often employed at a low step on the teacher salary scale, and that not all of their colleagues in schools appreciate the vital role of the assistants. The authorities state that their low salaries are a result of their generally lower level of education. Whilst being aware that Roma assistants may not always have a university education, their importance in the school cannot be underestimated and decisions on their salary cannot be based solely on this criterion but should also take into account the wide range of activities expected of them. The Advisory Committee expects that in any negotiation with teachers on possible salary increases, the needs of Roma assistants are duly taken into account. Additionally, the education authorities could take action to raise awareness among teachers about what Roma assistants do and their importance in promoting equal access to education for Roma students.

136. According to government figures, the number of Roma students who continue from primary to secondary education is particularly low. Data shows that, over the reporting period, there has been an average of 72 Roma students in secondary education (i.e. in receipt of the Roma scholarship), making up between 3% and 4% of the number of students in primary education.¹⁵⁰ The authorities point out that such a figure is an approximation since they cannot collect data based on ethnic origin. This notwithstanding, it would mean that over 90% of Roma pupils in primary education do not continue to secondary education. The authorities also point out that, although compulsory education is until the age of 18 in Poland, their reforms mean that Roma students who may leave education after the primary level are now receiving two years more education than they may have previously – until the age of 14 rather than 12. Nevertheless, the Advisory Committee finds this situation particularly alarming.

137. What is more, the numbers of students in secondary education are also in decline, down from 3.9% to 2.9% over five years. The authorities cannot provide gender disaggregated data. FRA data published in 2014, and taken from a 2011 survey,¹⁵¹ which the authorities also refer to, shows that girls have a greater rate of dropping out of education before the age of 16 (56% for girls v. 47% for boys).¹⁵² The same rate for non-Roma is 10%. As to reasons for the dropout rate, 15% of Roma in Poland indicated that ‘marriage, pregnancy or childbirth’ were the reason for them dropping out or not attending school, which was the highest of the 11 countries surveyed.

138. According to the same survey, 23% of Roma complete secondary education, compared to 89% in the general population.¹⁵³ This was before the education reform which extended the length of primary education. Roma organisations also reported that there had been no great increases in the attainment of Roma students in examinations, and that they were still behind their non-Roma peers.¹⁵⁴

139. The placing of Roma students in so-called ‘special schools’ due to a disability or learning difficulties was previously a concern for the Advisory Committee. However, since the third opinion, the Polish authorities have successfully reduced the proportion of Roma students in ‘special schools’ from 16.8%¹⁵⁵ to 7%,¹⁵⁶ according to the state report, although this is still higher than the average for the rest of the population, which stands at around 3%. Detailed figures provided by the authorities of the number of the total number of students in primary and secondary education, however, show that this figure, over the past six years, is around 9% on average. Nonetheless, despite this disparity, the Advisory Committee praises the work done to reduce this figure, including introducing non-verbal tests for assessing possible learning difficulties, and notes the key role which Roma assistants may play in teacher committees in

¹⁵⁰ Between 1 974 and 2 110 students.

¹⁵¹ European Union Agency for Fundamental Rights (FRA) (2014), [Education: the situation of Roma in 11 EU Member States](#).

¹⁵² Ibid., Figure 16.

¹⁵³ Ibid., Figure 18.

¹⁵⁴ [Civil society monitoring report on implementation of the national Roma integration strategies in Poland](#), June 2018, p. 7.

¹⁵⁵ See [third opinion](#) of the Advisory Committee on Poland, p. 28.

¹⁵⁶ See [state report](#), p. 133.

advising against putting a student in a ‘special school’ simply because they cannot read Polish adequately. The final decision still rests with the parents, and in this regard the Advisory Committee notes the broad range of factors which lead Roma parents to consider that placing their child in a ‘special school’. The Advisory Committee considers that increased numbers of Roma assistants would be one of the effective measures to prevent Roma children being unnecessarily placed in ‘special schools’, informing of the education options for Roma children, and explaining the consequences of attendance at such a school.

Recommendations

140. The Advisory Committee calls on the authorities to provide effective access to preschool education for Roma students, including by simplifying the procedure for granting funding for preschool education, considering allowing parents to apply for funding themselves, and, recognising the particularly disadvantaged position of Roma, ensuring that the award of such funding to parents does not reduce other social welfare payments.

141. The Advisory Committee urges the authorities to expand the Roma assistants programme in the framework of the Roma Integration Programme from 2021, in close co-operation with local Roma communities concerned; to ensure secure and appropriate levels of remuneration of assistants, and that, through campaigns targeted at other teachers, educational staff are aware of the valuable contribution of Roma assistants.

142. The Advisory Committee urges the authorities to take significant steps to increase the number of Roma students in secondary education, with the active participation of local Roma communities and Roma assistants, including through community outreach emphasising the importance of education and through tackling, among other problems, early marriage.

Article 14 of the Framework Convention

Teaching in and of national minority languages

143. Whereas the specific legislative framework relevant for education in national minority languages has changed only slightly, the overall education system has undergone a major reform since 2016. The three-tier system established in 1999 was changed back to a two-tier system. Starting with the school year 2017/18, lower secondary schools (*gimnazja*) are gradually disbanded and primary schools extended from six to eight years. Upper secondary education is provided either in a four-year general secondary or a five-year technical secondary school. The last year of preschool has become mandatory for children aged 6. Compulsory education has been reduced from ten to nine years (last year of preschool and eight years of primary school).¹⁵⁷

144. The effects of this new school system on minority language education are yet to be seen. As such teaching is more common in primary schools than at secondary level (see below), the extension of primary school to eight years could result in children having access to minority language teaching for a longer time than was previously the case.

145. The system of financing national minority language teaching was slightly modified in 2013.¹⁵⁸ The generous 150% increase of the subsidy per student learning a minority language continues to be paid,

¹⁵⁷ Act on the Law on School Education of 14 December 2016 (Journal of Laws 2017, item 59) and Legislation introducing the Act – Law on School Education. See the website of [EURYDICE](#), National Education Systems, Poland.

¹⁵⁸ Regulation of the Minister of National Education of 18 December 2013 on the allocation part of the general subsidy for local government units in 2014 (Journal of Laws 2013, item 1687); see [Comments of the Polish government on the third opinion](#) of the Advisory Committee on Poland, 21 May 2014, pp. 10-11.

but only for small schools with up to 60 (primary), or 30 (secondary) students. Previously, the thresholds were 84 and 42 students, respectively. Since 2014, a middle category has been introduced for medium-sized schools, which receive a top-up of 110% per student.¹⁵⁹ The overall amount spent on this subsidy has increased by 30% between 2013 and 2018.¹⁶⁰ The Advisory Committee welcomes these developments and in particular the new differentiation between the teaching of and in a minority language.

146. The numbers of students learning minority languages – in the great majority of cases as a subject – have developed dynamically over the past years. While 58 354 students were registered as learning a minority language in 2011, this figure has increased by 50% until 2018 (88 055 students). In the same period, the number of schools where minority languages are taught increased to a much lesser extent, from 1 212 to 1 361.¹⁶¹ This is due to the above-mentioned abolishment of lower secondary schools, but also an ongoing process of closing smaller schools.

147. The numbers of students registered as learning minority languages approximately doubled for Armenian and Belarusian and increased by 50% for the Kashubian regional language and by 65% for German. While no minority teaching in Russian existed in 2011, there are now two schools with a total of 45 students. The numbers of children studying the Lemko, Slovak and Ukrainian languages remained stable. The number of children learning Lithuanian decreased slightly, from 675 to 609.

148. It has to be noted, though, that only very few of these schools provide instruction in a minority language, the vast majority of schools teach minority languages as a subject. For Lithuanian, for example, the state report mentions 12 schools, but according to representatives of the Lithuanian minority only four of these provide instruction in subject matters in the Lithuanian language. Even though theoretically possible, and the publication of Romani-language primers in 2008,¹⁶² no teaching is provided in the Romani language as there appears to be no demand.¹⁶³

149. During the monitoring visit, the Advisory Committee learned from interlocutors that the strong incentive provided by the 150% top-up on the per-student subsidy may have undesirable side effects. The Advisory Committee was informed of cases where schools entered more children into the Ministry of Education's database than those actually attending minority language classes, thus artificially increasing the recorded number of minority language students. The authorities confirmed that they had heard of such allegations. Furthermore, the Advisory Committee was informed that the subsidy is transferred by the national budget to municipalities as a non-earmarked 'donation', the exact spending of which is not monitored. This means that it cannot be excluded that some of the budget foreseen for national minority education is actually spent for other purposes. As a response to those allegations, the Ministry of Education conducted an audit in 2017 about Correctness in performing the tasks of schools and preschools in terms of teaching the language of a national or ethnic minority and the regional language.¹⁶⁴

150. The Advisory Committee welcomes the considerable increase of children learning minority languages, with the German and Kashubian languages having increased most in absolute numbers. It

¹⁵⁹ As before, bigger schools with more than 84 (primary) or 42 (secondary) students receive a top-up of 20% per student learning a minority language. An additional coefficient (+40%) increases the subsidy when all teaching takes place in a minority language, for bilingual schooling. According to the [Comments of the Polish government on the third opinion](#) of the Advisory Committee on Poland, the increased subsidy is also paid for Roma children to which the schools provides special assistance.

¹⁶⁰ From PLN 280 million (€65 million) in 2013 to PLN 365 million (€85 million) in 2018.

¹⁶¹ All data in this paragraph is based on the [third](#) and [fourth](#) state reports as well as the database of the Ministry of Education, available at <https://cie.men.gov.pl/sio-strona-glowna/dane-statystyczne/jezyki-obce-dane-statystyczne> (in Polish).

¹⁶² OSCE/ODIHR, 8 October 2009, [Early school education among Romani children](#), published in cooperation with the Polish Roma Union.

¹⁶³ See CAHROM(2017), [Thematic report on the protection, preservation and teaching of languages spoken by Roma, Boyash, Sinti, Kaale and Yenish](#).

¹⁶⁴ Written submission by the authorities to the Advisory Committee in September 2019.

welcomes, furthermore, the new differentiated approach to the increased subsidy for minority language students and the rise in public funds invested over the past years. The Advisory Committee was perturbed to learn, however, that less than the entire amount may be spent on minority language education and that the above-mentioned figures may be exaggerated. It welcomes the Ministry of Education's decision to investigate the matter and expects that the situation is rectified promptly if the allegations are confirmed.

151. In the context of the above-mentioned general educational reform, the Ministry of Education issued a new interpretation of the existing regulations regarding the compatibility of receiving tuition in minority languages and of foreign languages, which affects the German language. According to this new interpretation issued in 2016, students learning a minority language are not allowed to choose the same language as their second foreign language in grade 7. The instructions came into effect with the beginning of the school year 2019/2020, despite protests by the German minority and an opinion of the Bureau of Analyses of the Sejm stating that the law does not prohibit the simultaneous teaching of German as a minority language and as a foreign language. The authorities informed the Advisory Committee that they consider the previous practice a discrimination of Polish students who have to pass the same exams without having the "extra" hours of German as minority language. In addition, the practice meant that children belonging to the German minority could choose to learn only one foreign language, whereas those belonging to the majority have to learn two foreign languages.

152. Representatives of the German minority disagree with this new interpretation and rather perceive it as discrimination of children belonging to minorities. They argue that the respective objectives of learning a minority language and a foreign language are different. Minority languages are taught to maintain the "sense of national, ethnic and linguistic identity of pupils belonging to national minorities".¹⁶⁵ A second argument is that many children belonging to the German minority need both the minority language and the foreign language hours to achieve a sufficient level of German because their parents did not have the opportunity to learn their minority language during communist times. Thirdly, from a legal perspective, it is argued that a group benefiting from a *lex specialis* (i.e. minority language teaching) should not be excluded from a *lex generalis*, which would in this case be the choice of a foreign language.¹⁶⁶

153. The Advisory Committee understands that non-minority students may feel disadvantaged having to learn two foreign languages from scratch and compete with German minority students in the same exams, who had a certain starting advantage in the previous system. It regrets, however, that due to the new incompatibility of minority and foreign language teaching, children from the German minority will have fewer chances to reach a high oral and written level in their minority language. It also considers that the presence of children with a good level of German can be beneficial for the entire learning group. Generally, the Advisory Committee considers it paramount that children belonging to minorities can achieve a high standard of knowledge of their minority language. In the case of German in Poland, this should ideally happen through an increased teaching *in* German, as recommended also by the Committee of Experts on the European Charter on Regional or Minority Languages,¹⁶⁷ and in close consultation with representatives of the German minority.

Recommendations

¹⁶⁵ Paragraphs 1, 11 and 12 of the Regulation of the Minister of Education of 28 March 2017 on framework curricula for public schools (Journal of Laws 2017, item 703).

¹⁶⁶ See Grzegorz Janusz (2018), Opinion on teaching a minority language in the context of the existing teaching of a given language as a foreign language in connection with the letter of the Director of the General Education Department of the Ministry of Education of 15 March 2018 (in Polish).

¹⁶⁷ See [CM/RecChL\(2015\)6](#) of 1 December 2015, para. 2.

154. The Advisory Committee calls on the authorities to maintain the level of investment in minority language education while ensuring full transparency in the management of these funds and that subsidies transferred to municipalities for minority language teaching actually reach their target beneficiaries.

155. The Advisory Committee calls on the authorities to find, together with representatives of the German minority, a viable solution for ensuring that students belonging to the German minority can reach a sufficiently high standard of knowledge of their minority language, including through enlarged teaching of subject matters in the German language.

Teaching and learning materials

156. The authorities informed the Advisory Committee that between 2014 and 2018 the Ministry of Education published, printed or reprinted a total of 53 teaching and learning materials.¹⁶⁸ Most of these materials were textbooks that were printed and published electronically on the *Scholaris* portal.¹⁶⁹ Two thirds of the materials were targeted for teaching in and of the Lithuanian language: 27 textbooks and other materials for teaching Lithuanian language and literature, four textbooks on history and geography of Lithuania, and three on mathematics at primary school. Of the textbooks, 10 were on the Kashubian language and the history and geography of Pomerania, the region inhabited by persons speaking the regional language. For teaching German as a minority language, the Ministry approved the use and purchased copies of a textbook for German as a minority language from the German publisher. Two new textbooks for teaching the Belarusian language were produced in 2014 and one for teaching Belarusian literature in secondary school was published in 2016. An agreement to develop textbooks was signed between the Ministry of Education and the Catholic University of Lublin in July 2019. Finally, the textbook “Polish Armenians in Descriptions and Images” was purchased in 2018. The Advisory Committee welcomes these developments, in particular the development of new textbooks for the numerically relatively small Belarusian and Lithuanian minorities. It is also positively noted that a number of new Kashubian language textbooks were developed for secondary schools. Finally, the free access to all these materials on one single website is considered a very positive development.

157. Some minorities, however, were not satisfied with the situation regarding teaching and learning materials. Strong concerns were raised by representatives of the Ukrainian minority. They mentioned that not a single textbook on the Ukrainian language has been published since 2011 while the previously used textbooks are outdated and have long been out of print. No officially approved textbooks exist for teaching subject matters in the Ukrainian language. According to the authorities, a joint Polish-Ukrainian expert commission on improving the contents of textbooks on history and geography of both countries meets annually. In contrast, the more high-level “Consultative Commission for the education of the Polish minority in Ukraine and the education of the Ukrainian national minority in the Republic of Poland” has met only once, in 2017 (see Articles 17-18).¹⁷⁰ The Advisory Committee seriously regrets this situation and considers that the development of high-quality teaching materials for learning the Ukrainian language at both primary and secondary levels should have priority.

158. Representatives of the Lithuanian minority mentioned that some of the textbooks were not of high quality and that a Polish-Lithuanian working group has been set up to look into this issue. Also, more textbooks for teaching subject matters in the Lithuanian language, for example in mathematics, would have to be developed.

¹⁶⁸ Written submission by the authorities to the Advisory Committee in September 2019.

¹⁶⁹ For the list of materials for and about national minorities, see the [Scholaris](#) website.

¹⁷⁰ Written submission by the authorities to the Advisory Committee of September 2019.

159. Representatives of the Lemko minority complained that no teaching materials were available for learning the Lemko language, which the Advisory Committee regrets.

160. A general problem encountered by all minorities is connected to the procedure for developing new textbooks. The responsibility for initiating the development of new textbooks lies entirely with the associations of national minorities, who get their costs reimbursed only if the textbooks are approved by the Ministry of Education and what is more, they have to advance all related expenses. This is a considerable investment for the associations of national minorities and always entails the risk that a textbook is eventually not approved for use at Polish schools. The Advisory Committee regrets this situation as it considers that the development of teaching and learning materials for minority languages is the responsibility of the authorities and should not depend on the initiative of minority associations and their financial ability to advance the costs.

Recommendation

161. The Advisory Committee calls on the authorities to take more responsibility for the development and publishing of new textbooks, in particular for the Ukrainian and Lemko minorities.

Minority language teachers

162. In 2014, a new “Regulation of the Minister of Science and Higher Education on the conditions of providing degree programmes in a given field and at a given level of study” lowered the required minimum number of academic personnel required for a degree programme on minority language studies.¹⁷¹ This made it possible to establish a study course in Kashubian Ethno-Philology at the Faculty of Languages of the University of Gdańsk. The Advisory Committee strongly welcomes the creation of this first study course on the Kashubian language as graduates are much needed to satisfy the demands for qualified Kashubian language teachers.

163. According to official data, a total of 106 students was enrolled in this course since its creation in 2014. In the 2018/2019 academic year, however, only three students enrolled. As the University of Gdańsk requires the enrolment of at least 25 students for any academic programme, no first-year bachelor course of study was started. For the 2019/2020 academic year, the threshold was only just met so that the course could start. The Advisory Committee is seriously concerned about the high threshold of 25 students for maintaining it, which appears unrealistic for such a niche field. The Advisory Committee considers that the closure of this course after such short time would be a great loss and put the achievements of the past years in promoting the Kashubian language into question.

Recommendation

164. The Advisory Committee calls on the authorities to support the University of Gdańsk in ensuring the continuity of the study course in Kashubian Ethno-Philology in order to secure the availability of qualified Kashubian language teachers in the future.

Article 15 of the Framework Convention

Participation of persons belonging to national minorities in public affairs

165. The legal framework on the representation of national minorities in elected bodies remains unchanged: in elections to the Sejm, electoral committees representing national minorities are exempt from the obligation to obtain at least 5% of the vote nationally. Candidates for the Sejm are elected by

¹⁷¹ Journal of Laws, 2014, item 370; see state report, p. 123.

party-list proportional representation in multi-member constituencies. Therefore, only national minorities comprising a sufficiently large number of persons on a given region can take advantage of the exemption from the 5% threshold. Consequently, since the introduction of this system in 2001, only the German minority in the Opole constituency has been able to have one candidate elected. None of the other national minorities formed an electoral committee. Though exact numbers are not available as the ethnic affiliation of members of the Sejm is not registered, the Advisory Committee understands that some persons affiliating with the Belarusian, Ukrainian, Jewish and other national minorities as well as speakers of the Kashubian language were elected on party lists. In addition, a number of members of the Sejm declare themselves representatives of Silesians. The Parliamentary National and Ethnic Minorities Committee plays an active role in promoting national minority issues both within the Sejm and vis-à-vis the government. As mentioned in previous opinions, the Advisory Committee regrets that “ethnic minorities” (Karaims, Lemkos, Roma and Tatars) do not benefit from the above-mentioned provisions. Furthermore, no specific advantages exist for elections to the Senate and in local elections.

166. The Joint Commission of the Government and National and Ethnic Minorities (hereafter: Joint Commission), established and regulated by the 2005 Act on National and Ethnic Minorities and on the Regional Language, continues to be the principal forum for a regular dialogue on national minority policies. While valuing the Joint Commission in general, representatives of most national minorities voiced dissatisfaction with its day-to-day operation. They informed the Advisory Committee that the amendments to the Act on National Minorities adopted by the parliament in 2015 but eventually not signed into law by the President (see Article 4) would have improved the situation.

167. Also, while being aware that the Joint Commission has a consultative function only and decisions are made by the parliament,¹⁷² the Advisory Committee is concerned about reports by persons belonging to national minorities that the Joint Commission’s views were repeatedly not sought on time or only upon request such as in the case of the general educational reform. In other cases, such as the possibility to receive longer-term funding (see Article 5), minority representatives felt frustration for having requested this for many years without any visible results. The Advisory Committee regrets this situation and recalls that the scope of consultation with national minority representatives has to be clearly defined to ensure, for example, the systematic consultation at an early enough stage in the drafting process of new legislation.¹⁷³

168. Furthermore, the Advisory Committee learned about several cases where minority communities do not support unequivocally the person representing their minority in the Joint Commission. Some of these cases have been brought to the attention of the authorities by the ‘dissenting’ representatives of a given minority. The Advisory Committee recalls that to secure effective participation of persons belonging to national minorities, consultative bodies should reflect the diversity within national minorities and genuinely represent a wide range of views amongst persons belonging to national minorities, while the appointment procedures should be transparent and designed in close consultation with the national minorities.¹⁷⁴ In the view of the Advisory Committee, it may therefore be worth reflecting on a reform of the Joint Commission’s membership and appointment procedure to improve this situation.

Recommendation

169. The Advisory Committee calls on the authorities to enter into a dialogue with representatives of national minorities on a reform of the working mechanisms of the Joint Commission on the basis of the 2015 draft amendments to the Act on National and Ethnic Minorities and on the Regional Language. The new regulations should in particular strengthen the Joint Commission’s mandate and revisit the

¹⁷² See [Comments of the Polish government to the third opinion](#) of the Advisory Committee on Poland.

¹⁷³ [ACFC Thematic Commentary No. 2](#), paras. 116 and 118.

¹⁷⁴ [ACFC Thematic Commentary No. 2](#), paras. 110-111.

appointment procedure in order to ensure effective participation in public policy making and better reflect the diversity within minorities.

Social and economic participation of Roma

170. The overall situation for Roma housing is improving, although there are notable exceptions to this. According to the FRA survey findings published in 2014, 95% of dwellings were connected to a sewage system, 99% had an electricity supply, 94% had heating, and only 3% were thought to be illegal settlements.¹⁷⁵ The data also shows that 84% of residences had a toilet inside, which the authorities informed the Advisory Committee is due to the policy of forced resettlement undertaken in the 1960s, and which resulted in many Roma living in communal flats with shared bathrooms. The authorities also point out that around 92% of Roma live in urban environments, meaning they are connected to basic utilities such as sewerage and electricity.¹⁷⁶

171. The Advisory Committee is aware of notable examples of housing issues faced by the Roma minority, notably the Maszkowice settlement in the Małopolskie Voivodeship, which has been the focus of much national attention. The situation is serious for the 250-300 Roma living there in substandard housing conditions, as the Ombudsperson has underlined a number of times in his annual reports.¹⁷⁷ During exchanges with the Advisory Committee, the authorities and the Ombudsperson explained that there was a willingness on all sides to resolve the problem and provide the Roma living there with adequate housing, explaining also that the central authorities could not overrule the local authorities. There nevertheless appears to be something of an impasse, with no clear way forward despite ongoing negotiations between the national and local authorities and the local residents, both Roma and non-Roma. The Advisory Committee expects, based on the principles of goodwill already shown, that this situation can be resolved as a matter of priority over the next monitoring cycle.

172. The Ombudsperson and the authorities informed the Advisory Committee that such examples are not typical, and that Maszkowice may constitute an exception in terms of Roma housing in Poland. Nevertheless, in the absence of clear data about the housing situation of Roma, it is difficult to assess the overall picture. The European network of legal experts report of 2018 describes the situation as 'drastic', even though there are signs of improvement.¹⁷⁸ The Advisory Committee is aware for instance of the positive example of Ochotnica Dolna municipality (Małopolskie), where 12 families were provided with housing with public funds, solving the housing problem in the area.¹⁷⁹

173. The Advisory Committee is also aware of another localised example whereby municipalities, under the Roma Integration Programme, moved Roma to neighbouring or different municipalities in order to house them, but are then refused by the 'receiving' municipality, through for example changing of building usage permissions.¹⁸⁰ This change of permission was declared null and void by the regional

¹⁷⁵ See European Union Agency for Fundamental Rights, [Survey on discrimination and social exclusion of Roma in EU \(2011\)](#); see also European Union Agency for Fundamental Rights (October 2014) [Poverty and employment: the situation of Roma in 11 Member States](#).

¹⁷⁶ Ibid.

¹⁷⁷ See for example Commissioner for Human Rights of Poland, (2018), [Summary of the Report on the Activity of the Ombudsman in Poland in 2017](#), p. 18.

¹⁷⁸ European network of legal experts in gender equality and non-discrimination (2017), [Country report non-discrimination: Poland](#), p. 81: "The situation for a considerable number of Roma in terms of housing and living conditions is drastic (especially Bergitka/Carpathian Roma) and even though the level of renovation and other activities is increasing, it is not satisfactory. There are still flats with no toilets, kitchens or running water."

¹⁷⁹ Supreme Audit Office of Poland, (5 April 2017), [Implementation by Communes from the Małopolskie voivodeship of tasks under the programme of the integration of the roman community in Poland for the years 2014-2020](#), p. 26 (in Polish).

¹⁸⁰ See Commissioner for Human Rights of Poland, (2018), [Summary of the Report on the Activity of the Ombudsman in Poland in 2017](#), p. 18, concerning Limanowa and Czchow municipalities.

courts, but the Advisory Committee remains concerned about the placing of Roma in different municipalities when they present an ‘inconvenience’ to a given municipality, and considers that this does not present the best way to foster intercultural dialogue, understanding and respect between communities or municipalities.¹⁸¹

174. For the housing field of activity under the Roma Integration Programme, in 2015, PLN 2.5 million (€ 590 713) was allocated, which translated into 514 Roma persons being provided with housing or having their housing renovated (including renovating sewerage and electrical installations).¹⁸² However, allocated funding appears to be systematically underspent. A letter from the Parliamentary Commission for National and Ethnic Minorities to the Ministry of the Interior in 2017 states that only 56.4% of funds designated for housing were used.¹⁸³ The Advisory Committee was informed that the regional and local authorities may find it difficult to undertake constructions for Roma housing, owing to opposition from the neighbouring majority population in the municipality. The Advisory Committee recalls that states parties “should develop comprehensive sectoral policies to address problems of substandard housing and lack of access to basic infrastructure, which affect persons belonging to certain minorities”.¹⁸⁴ In this regard, the Advisory Committee considers that the project-led, local government approach currently pursued may not sufficiently address some of the structural housing needs of the Roma minority, and that the local authorities should be allowed to respond more easily to identified needs, including through localised consultation mechanisms (see Article 4), within the framework of the new Roma Integration Programme, by for example providing longer-term assistance programmes where necessary.

175. The official unemployment rate of Roma stands at 15.5%, which is the highest of the national and ethnic minorities in Poland.¹⁸⁵ However, other sources put the figure higher, for instance the FRA survey published in 2014 puts the figure at around 33%,¹⁸⁶ and the European network of legal experts uses a figure of 70%. In the framework of the Roma Integration Programme, 270 Roma found employment in 2015, although the use of employment measures varied across the country.¹⁸⁷ It is evident to the Advisory Committee that more structural solutions need to be found in order to increase the number of employed Roma, including through tackling discrimination. According to the FRA survey, around two thirds of Roma reported experiencing discrimination when looking for paid work.¹⁸⁸ As the authorities are well aware, however, measures also need to be taken with regard to education, and particularly of adults.

176. Project-based programmes which exist to tackle unemployment and boost the skill set of Roma to make them more employable were reported to be insufficient and short sighted, with very little gained in knowledge or skills on the part of the Roma. Interlocutors reported that such short-term training sessions do not necessarily meet the needs of the local population. Other methods for increasing employment, such as specific work projects in municipalities planned to include Roma, have a time limit on them, which means there is no prospect of long-term employment, whilst the Roma are paid the minimum wage. The Supreme Audit Office also echoed this criticism, stating that the situation of labour

¹⁸¹ See also Supreme Audit Office of Poland, (5 April 2017) [Implementation by Communes...](#), p. 21: “As the example of the city of Limanowa shows, such a way of implementing tasks may lead to conflicts between communities and local authorities, which in no way favours the integration process.” (in Polish).

¹⁸² See [state report](#), pp. 36-37. In 2018, 456 Roma benefited; in 2017, 452 benefited; in 2016, 385.

¹⁸³ Danuta Pietraszewska, Chair of the Parliamentary Committee on National and Ethnic Minorities, to Minister of Interior and Administration concerning the living conditions of the Roma in the Małopolskie Voivodeship [20 April 2017](#) (in Polish).

¹⁸⁴ [ACFC Thematic Commentary No. 2](#), para. 59.

¹⁸⁵ The national average unemployment rate is 6.27%.

¹⁸⁶ European Union Agency for Fundamental Rights (FRA) 2014, [Poverty and employment: the situation of Roma in 11 EU Member States](#), figure 9.

¹⁸⁷ See [state report](#), p. 37.

¹⁸⁸ 64% of Roma reported discrimination.

market participation had not improved.¹⁸⁹ The Advisory Committee also draws the attention of the authorities to another part of the FRA survey, where it is shown that around a third¹⁹⁰ of those in work are doing ‘ad hoc’ jobs,¹⁹¹ meaning there is little guarantee of financial stability which means a continued risk of immiseration for Roma, eight out of ten of whom are at risk of poverty.¹⁹² The Advisory Committee recalls that “[i]n order to promote effective integration of persons belonging to disadvantaged minority groups in socio-economic life, comprehensive and long-term strategies should be designed and implemented. ... Adequate resources need to be provided in a timely manner at all levels of operation, especially locally. Furthermore, the implementation of such policies should be carefully monitored, and their impact evaluated, in close co-operation with representatives of the minorities concerned, with a view to adapting and strengthening them over time”.¹⁹³

Recommendations

177. The Advisory Committee calls on the authorities to increase efforts to collect disaggregated data on the housing and employment situation of Roma, in the framework of the planning of the new programme for Roma inclusion. On this basis, ensure the effective participation of Roma in economic and social life by designing and implementing comprehensive and adaptable policy measures, setting up clear indicators, monitoring them in close co-operation with Roma representatives, with a view to adapting and strengthening them on a periodical basis.

178. The Advisory Committee calls on the authorities at all levels to ensure, including through increased local consultations and long-term assistance programmes, that all funds allocated to improving housing conditions of Roma are spent for that purpose.

¹⁸⁹ Supreme Audit Office of Poland, (5 April 2017) [Implementation by Communes...](#), p. 21; “The labour market situation of Roma has not improved either. The employment opportunities offered under the Integration Programme were of an incidental nature and mainly concerned temporary work.” (in Polish).

¹⁹⁰ 36%.

¹⁹¹ 81% Roma are at risk of poverty, European Union Agency for Fundamental Rights (FRA) 2014, [Poverty and employment: the situation of Roma in 11 EU Member States](#), figure 6.

¹⁹² See European Union Agency for Fundamental Rights, [Survey on discrimination and social exclusion of Roma in EU \(2011\)](#); 81% of Roma have income below the national threshold: 60% of median equivalised income after social transfers.

¹⁹³ [ACFC Thematic Commentary No. 2](#), para. 49.

Article 16 of the Framework Convention

179. Article 5(2) of the Act on National and Ethnic Minorities and on the Regional Language prohibits the use of measures aimed at changing national or ethnic proportions on territories inhabited by national minorities. In addition, the Act on Municipal Self-government demands that the “determination and change of municipal boundaries is made in a way that ensures that the territory of the resulting local body: (a) is as uniform as possible in terms of the settlement pattern and spatial arrangement; (b) takes into account social, economic and cultural ties; and (c) ensures that the local body is able to carry out its tasks.”¹⁹⁴

180. With effect of 1 January 2017, 11 localities in 4 municipalities (Dąbrowa, Dobrzeń Wielki, Komprachcice, and Prószków) with a numerically significant German minority population were incorporated into the city of Opole, which has only a small German minority population. Three of the affected municipalities met the 20% threshold according to the 2002 census, and one still met it in the 2011 census. All four municipalities continue to be on the respective Official Register for supporting languages and for place names in minority languages (see Articles 10 and 11).

181. The reasons given by the authorities for the enlargement of the city of Opole are mainly of an economic nature, aiming to “contribute to the development of Opole, and consequently the entire region”.¹⁹⁵ Representatives of the German minority and, according to a consultation, also the overwhelming majority of other inhabitants in the affected four municipalities, strongly contested the amalgamation of parts of their municipalities with the city of Opole.¹⁹⁶ The Advisory Committee notes that the time span between the announcement of the administrative territorial reform and its entry into force was only 18 months.

182. As noted under Article 10, the plaques with bilingual place names of the villages incorporated into the city of Opole were replaced by plaques in only the Polish language. Furthermore, following the 2018 municipal elections, representatives of the German minority in those former villages have no representative in the Opole City council, while they used to have several in the municipalities to which they previously belonged. Furthermore, interlocutors informed the Advisory Committee that while the economic benefit of the territorial reform for the city of Opole was obvious, it clearly made the economic situation of the remaining, now smaller, municipalities more difficult as they were deprived of parts of what were their industrial sites.

183. The Advisory Committee recalls that changes to the territorial structure of a country, while beneficial to some, may have a negative effect on others, in particular those persons belonging to national minorities who will find themselves residing outside of the borders of the newly established territorial units. Consequently, “when considering reforms which aim to modify administrative boundaries, the authorities should consult persons belonging to national minorities so that they can consider the possible impact of such reforms on the enjoyment of their linguistic rights”.¹⁹⁷ The Advisory Committee recalls that the enjoyment of minority rights should not be unduly linked to a particular part of the territory.

184. In this light, the Advisory Committee regrets that the enlargement of the city of Opole has – notwithstanding its original intentions – clearly limited the access of persons belonging to the German minority to rights enshrined under the Framework Convention. It finds it very disturbing that the reform was conducted in a short time frame and notwithstanding the results of the official consultation, where

¹⁹⁴ Journal of Laws 2016, item 446, Art. 4.

¹⁹⁵ Written submission by the authorities to the Advisory Committee, September 2019.

¹⁹⁶ See [Open letter by representatives of the German minority to the Prime Minister](#) of 9 June 2016 and a [chronology of events](#) on the website of FUEN.

¹⁹⁷ See [ACFC Thematic Commentary No. 3](#), para. 91.

an overwhelming majority of the local population expressed itself against the reform. The results seem to show that the authorities failed to convince the population in the affected municipalities of the benefits and added value of the reform. The Advisory Committee, furthermore, regrets that the case created a politicised debate, which representatives of the German minority perceived as playing on anti-German sentiments.¹⁹⁸ To conclude, the Advisory Committee considers that more care should have been taken to balance the expected economic benefits of this territorial reform against the factual loss in access to minority rights of a significant number of persons belonging to the German minority.

Recommendation

185. The Advisory Committee calls on the authorities to ensure that the rights of persons belonging to national minorities are duly taken into account in territorial and administrative reforms. In the case of Opole, it calls on the authorities to minimise the negative effects for the persons belonging to the German minority concerned in both the city of Opole and the surrounding municipalities. This includes entering into a constructive dialogue with minority representatives about possibilities for participation, use of the German language in contacts with the local administration, and making the historical presence of the minority visible through signage for place names.

Articles 17 and 18 of the Framework Convention

186. Poland has concluded a large number of bilateral agreements with neighbouring countries containing clauses aimed at protecting persons belonging to national minorities. Representatives of national minorities informed the Advisory Committee that the implementation of those agreements is often made conditional to progress recorded on similar issues in neighbouring countries, which they perceive as unfair. The Advisory Committee recalls that such an approach is not in line the spirit of the Framework Convention.

187. The Advisory Committee is pleased to note that there is a continuing dialogue between Polish and Lithuanian authorities, for example on matters concerning education, and that meetings of the Polish-German Round Table were resumed in June 2019.

188. Furthermore, the Advisory Committee welcomes the Agreement between the respective Ministries of Education of Poland and Ukraine on Co-operation in the field of Education, concluded in Kyiv on 19 January 2015, which sets a regulatory framework for co-operation in the field of education. It notes that the practical implementation of this treaty is accompanied by political difficulties but welcomes that meetings of a Joint Polish-Ukrainian Expert Commission on Improving the Contents of Textbooks on the topic of history and geography of both countries take place regularly each year, including in 2019.

Recommendation

189. The Advisory Committee encourages the authorities to implement the existing bilateral agreements pertaining to minority protection in the spirit of good neighbourliness, friendly relations and co-operation between states, without making the implementation of protective measures for national minorities living in Poland conditional on progress on similar issues in neighbouring countries.

¹⁹⁸ See for example NTO.pl (8 March 2016), [Opole authorities: 'German minority harms us' \(in Polish\)](#).

III. Conclusions.

190. The Advisory Committee considers that the present concluding remarks and recommendations could serve as the basis for the resolution to be adopted by the Committee of Ministers with respect to the implementation of the Framework Convention by Poland.

191. The authorities are invited to take account of the detailed observations and recommendations contained in Sections I and II of the Advisory Committee's Fourth Opinion. In particular, they should take the following measures to improve further the implementation of the Framework Convention:

Recommendations for immediate action¹⁹⁹

- Adopt, implement, monitor and regularly evaluate, with the participation of Roma, a Roma Integration Programme for 2020 onwards, incorporating measures targeting the majority population to combat anti-Gypsyism, developing consultation mechanisms at local level, and granting multi-annual financial support to projects where necessary. In the framework of this programme, expand the Roma school assistants programme and take measures to increase participation of Roma children especially in preschool and in secondary education. Furthermore, ensure that all funds allocated to improving housing conditions of Roma are actually spent for that purpose;
- Strengthen the protection and promotion of cultures and identities of persons belonging to national minorities, effectively addressing the needs of numerically smaller ones, including through the provision of adequate funding for associations of national minorities and making it more sustainable in the long term;
- Take resolute measures to promote intercultural dialogue and mutual understanding between the majority and the different minority groups, as well as religious communities, in Poland. Condemn at the highest political level all manifestations of intolerance and ethnically motivated hostility in political discourse and in the media and promote actively a sense of belonging to a shared country, based on the acceptance of the complexity of Poland's history. Increase efforts to combat hate speech and effectively identify, register and investigate cases of alleged hate crime, and prosecute and sanction those responsible;
- Take measures to enhance the quality of minority language teaching through taking more responsibility for the production of new teaching materials, ensuring that funds transferred to local authorities for minority language teaching are earmarked for that purpose, and securing the availability of qualified teachers, in particular in the Kashubian language.

Further recommendations²⁰⁰

- Take a pragmatic and constructive approach in the dialogue with groups having expressed an interest in the protection afforded by the Framework Convention, including the Silesians, and consider the application of the Framework Convention on an article-by-article basis;

¹⁹⁹ The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

²⁰⁰ The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

- Step up efforts to raise awareness of the legislative standards and remedies available for victims of discrimination, in particular among groups most frequently exposed to discrimination such as Roma. Provide adequate political and financial support to the Office of the Commissioner for Human Rights to enable it to effectively pursue its independence and fulfil its mandate in protecting persons belonging to national minorities;
- Ensure, if necessary, by taking legislative measures, the effective participation of national minorities in regional public radio and television programme councils; continuously monitor the impact of media legislation on the rights afforded to national minorities and ensure that all national minority languages and cultures that exist in society are visibly and audibly present in both regional and national broadcasting;
- Increase efforts to collect disaggregated data on the socio-economic participation of the Roma minority in Poland, especially on housing and employment, and on that basis ensure the effective participation of Roma in economic and social life by designing and implementing comprehensive and adaptable policy measures;
- Enter into a dialogue with representatives of national minorities on a reform of the working mechanism of the Joint Commission of the Government and National and Ethnic Minorities, to strengthen its mandate and revisit the appointment procedure with a view to better reflecting diversity within minorities;
- Ensure that the rights of persons belonging to national minorities are duly taken into account when planning and implementing administrative territorial reforms.