

**ADVISORY COMMITTEE ON THE  
FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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**Comments of the Government of Germany on the Fifth  
Opinion of the Advisory Committee on the implementation of  
the Framework Convention for the Protection of National  
Minorities by Germany**

received on 7 June 2022

Germany appreciates the constructive cooperation with the bodies of the Council of Europe with regard to implementing the Framework Convention for the Protection of National Minorities. With a view to successfully continuing the dialogue about the best ways to protect and promote national minorities, it is useful and necessary to analyse achievements and examine real or supposed shortcomings.

As part of the Sixth Report submitted by the Federal Republic of Germany pursuant to Article 25 (2) of the Council of Europe's Framework Convention for the Protection of National Minorities, Germany will again only comment on the individual points mentioned in the recommendations of the Committee of Ministers and on the findings of the Advisory Committee after the recommendations have been submitted.

However, I would already like to provide you with the following feedback from representatives of the Federal Government, the federal states and the associations of national minorities on specific aspects of the Advisory Committee's findings.

First of all, the Federal Republic of Germany wishes to reaffirm its commitment to the Framework Convention for the Protection of National Minorities, which has been implemented in all 16 federal states.

With regard to the statements in the Fourth and Fifth Reports of the Federal Republic of Germany in accordance with Article 25 (2) of the Council of Europe Framework Convention for the Protection of National Minorities, Germany points out once again the Framework Convention's scope of application within the Federal Republic Germany:

In Germany, the Framework Convention for the Protection of National Minorities is applied to the protection of the four officially recognised national minorities in Germany based on the title and history of the Framework Convention as well as the wording of its individual provisions. The Framework Convention does not define the term "national minority". It is instead the responsibility of the individual member states to define the various national minorities using objective criteria; the Federal Republic of Germany did this with its declaration at the signing of the Framework Convention on 11 May 1995.

Only Article 6 of the Framework Convention states in very general terms that the Parties should "encourage a spirit of tolerance and intercultural dialogue" (paragraph 1) and "undertake to take 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" (paragraph 2). These provisions, however, must not result in the displacement of the implementation of all other provisions (and hence the essence of the Framework Convention).

The Advisory Committee's assumption that the Framework Convention is a flexible instrument which is supposed to apply in highly diverse social, cultural and economic contexts and in evolving situations is incorrect. This is true not only of the overly broad interpretation of Article 6 of the Framework Convention, but also of the Advisory Committee's request that individual articles

of the agreement be applied to specific groups of migrants, which, given the clear definition of national minorities in Germany, is legally unfounded.

Germany asks the Committee of Ministers and the Advisory Committee once again to abide in future by the Framework Convention's scope of application in line with existing legal limits.

During its visit to Germany, the Advisory Committee met with various organisations representing the interests of the national minorities and other groups in Germany. For the Federal Republic of Germany to better understand specific statements of the Advisory Committee, it would be helpful if the Advisory Committee named the different advocacy organisations it refers to in its opinion.

Furthermore, Germany asks the Advisory Committee to correctly use the self-denominations of the groups recognised in Germany as national minorities throughout its reports. Instead of referring to the "Sorbian minority", it is advisable to use the usual term, "Sorbian people". When only the national minority in the federal state of Brandenburg is concerned, the term "Sorbs/Wends" should be used.

Instead of "Frisian minority", the term "Frisian ethnic group" should be used consistently.

In addition, Germany notes that parts of the Advisory Committee's Opinion and recommendations refer to developments which took place in the Federal Republic of Germany during the reporting period for the next monitoring cycle, i.e. the period between early 2019 and the end of 2023.

For example, the Federal Republic of Germany has become aware that the Advisory Committee asked specific minority organisations to describe the developments between early 2019 and mid-2020, so that the Advisory Committee could refer to them in its opinion. In the view of the Federal Republic of Germany, this is not acceptable. Germany asks the Advisory Committee to address the reporting cycles as laid down in Article 25 in conjunction with Article 26 of the Framework Convention for the Protection of National Minorities.

In addition to these general remarks, please note the following comments on the Advisory Committee's article-by-article findings. These comments were formulated after consultations with the relevant federal states, ministries and associations.

For formal reasons, Germany would first like to point out that paragraphs 27 and 136 are missing from the Opinion of the Advisory Committee.

With reference to paragraph 96, the **Federal Ministry of the Interior and Community** wishes to point out the following:

Given that the Advisory Committee also commented on developments which did not fall within the reporting period of the Fifth State Report on the implementation of the Framework Convention, it should be noted that the fourth agreement on joint funding for the Foundation for the Sorbian People led to the provision of 23.92 million euros per year since 2021.

With regard to the general criticism of police conduct stated in paragraphs 7, 22, 57, 61, 73, 80, 111, 123 et seqq., 131, 134, 135 and 137–141, the federal state of **Rhineland-Palatinate** wishes to comment as follows:

Rhineland-Palatinate points out that the Advisory Committee generally refers to “the” German police in rather critical terms. It would therefore be desirable for the Advisory Committee to adopt a more nuanced approach and to take positive examples into account when drafting future recommendations.

With regard to paragraph 237, the federal state of **Saarland** asks for the following to be corrected:

There are currently no bodies in Saarland that are equivalent to the ones in Baden-Württemberg (council to address matters concerning the German Sinti and Roma in Baden-Württemberg) and Hesse (body composed of two representatives each from the state government and the relevant association to address matters concerning the German Sinti and Roma). Reference to “Saarland” should therefore be removed from this paragraph.

In paragraph 10, the Advisory Committee refers to the activities of a working group of the **Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (KMK)** aiming to coordinate teaching about Sinti and Roma, and concludes that these efforts have made very little progress. The KMK does not share this conclusion. The process of drawing up a joint declaration of the KMK, the Central Council of German Sinti and Roma and the Alliance for Solidarity with the Sinti and Roma of Europe is almost complete and the joint declaration will be adopted shortly.

**Domowina**, the Federation of Lusatian Sorbs, wishes to comment on the following paragraphs:

Regarding paragraph 84. In principle, we support the Advisory Committee’s recommendation that the authorities enter into a dialogue with representatives of national minorities on the collection of disaggregated data on the status and exercise of the rights of persons belonging to national minorities. However, due to the historical experience mentioned in this context, we cannot support the collection of data to record the affiliation with national minorities. Instead, we recommended collecting data on the language skills acquired in the educational sector, because this would not give any indication of national minority affiliation.

Regarding paragraph 101. We support the recommendation to review the structure of the Foundation. However, we wish to note in this context that a project advisory board was set up in 2016 to decide how available funds are used. This advisory board is solely composed of Sorbian representatives from the Foundation’s governing board, which is an important step towards achieving cultural autonomy.

Regarding paragraph 178. With regard to bilingual signposting on federal motorways in Saxony and Brandenburg, we wish to note that the Federal Government has announced that non-German municipality names resulting from state legislation are also recognised as part of the mu-

nicipality's official name. The federal authorities have thus responded to the changed legal situation in Brandenburg and the wishes of the Sorbian people. The situation in Saxony has not changed.

Regarding paragraph 226: The wording in the first sentence should be reviewed. We recommend reformulating the sentence as follows: "... that legally every pupil in the Sorbian settlement area has the right to receive instruction in Sorbian". The right to receive instruction in Sorbian is enshrined in Article 25 (3) of the Constitution of the Land of Brandenburg and is not limited to the Sorbian settlement area.

Regarding paragraph 239. With regard to the last sentence, we wish to note that not only the associations have the right to propose members of the Council for Sorbian Affairs, but also the municipalities in the Sorbian settlement area. Please see the relevant provisions in the Act on the Sorbs' Rights in the Free State of Saxony (Sächsisches Sorbengesetz, SächsSorbG). In addition, we wish to emphasise that just as in Brandenburg, all individuals identifying as Sorbs in Saxony have the opportunity to stand for elections.

Regarding paragraph 244. With regard to the term "Sorbian Parliament", we wish to emphasise that this is a self-denomination. This group has not been granted any public-law or legal competences, and the elections are held under private law, similar to the elections of an association. With regard to the statement of Serbski Sejm that Domowina claims that it alone represents the interests of the Sorbian people, we wish to point out that this is not correct. We ask for this false statement to be removed. Rather, we wish to point out Domowina's legal role is enshrined in the state laws of Brandenburg and Saxony, according to which it is the legally recognised representative body.

With regard to cultural autonomy, which already exists, and the demand for educational autonomy, we wish to refer to Domowina's previous requests to strengthen both forms of autonomy. Unfortunately, however, it has not been possible yet to reach a consensus with the majority of stakeholders.

The experience of recent years has shown that parallel activities of different or opposing minority groups in the political sphere often lead to an unintentional division of the minority concerned, since policy-makers often respond to conflicting views by adopting a wait-and-see approach and only initiate actions after all minority organisations/groups have reached a consensus. This approach poses the risk of halting the promotion of the respective minority's culture, language and education.

Regarding paragraphs 245 and 246. With regard to the request to create inclusive consultation processes, the Contracting Parties cannot be expected to support and consider all the different perspectives within a national minority. This would inevitably hinder internal democratic processes of a national minority. Rather, the Contracting Party must ensure that the positions expressed in the bodies concerned reflect the majority opinion of the national minority concerned and that the representative bodies encourage a variety of views. With regard to the Sorbian people, we wish to point out that Domowina membership is not subject to any conditions, ensuring heterogeneity of views and democratic opinion-forming.

Domowina was founded more than 110 years ago and, as a result, it currently serves as the umbrella organisation of more than 200 organisations and associations from all over Lusatia and beyond. This reflects the wide range and heterogeneity of its members.

Regarding paragraph 249. We recommend formulating the term “some resistance” in the fourth sentence more precisely, since it is not clear to whom this term refers. It should therefore be clarified whether it refers to the opinion of individual inhabitants of the village or a larger group. Furthermore, it is questionable how the individuals concerned were identified as members of the Sorbian people. This sentence should therefore refer more clearly to the inhabitants of the village.

The educational division of the ***Documentation and Cultural Centre of German Sinti and Roma*** wishes to comment as follows on paragraphs 24 and 203:

The Advisory Committee suggests providing “consistent learning support with the help of school mediators”. In this context, the Documentation and Cultural Centre of German Sinti and Roma wishes to refer to the Council of Europe’s ROMED Programme launched in 2011 and to the recommendations on equal participation of the national working group for improving participation of Sinti and Roma in education. The EVZ Foundation published a second, expanded edition of these recommendations in 2016. According to these recommendations, mediation with the sole aim of supporting learning only focused on one part of the problem and did not lead to long-term structural improvements. Instead, comprehensive education advising should be introduced to integrate Sinti and Roma as equal actors into the education and school policy process. The Sinti and Roma have already introduced such initiatives. A project for specialised training has been created in cooperation with the Heidelberg University of Education (Pädagogische Hochschule Heidelberg) and approved by the Federal Agency for Civic Education. Anti-discrimination training of future teachers is also part of the project.

The Documentation and Cultural Centre of German Sinti and Roma agrees with the statement of the Advisory Committee in paragraphs 24 and 203 that a study on challenges faced by Sinti and Roma children in education should be undertaken. Due to the well-known historical reasons, collecting comprehensive data on Sinti and Roma should be avoided.

The 2011 and 2021 RomnoKher studies presented as a model in paragraph 201 met with strong criticism from the minority. Many aspects such as own initiatives of Sinti and Roma were not considered. The combination of very different discrimination factors and the methodological approach suggest that the studies’ validity is limited. Moreover, they are not representative. We believe that, at best, regional studies could identify needs at the initiative of and in collaboration with members of the minority and lead to the development of incentives and best-practice programmes.