




# FIFTH OPINION ON GERMANY

Advisory Committee  
on the Framework  
Convention for  
the Protection of  
National Minorities  
(ACFC)



Adopted on 3 February 2022

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

ACFC/OP/V(2021)6

Published on 14 June 2022

Secretariat of the Framework Convention for the Protection of National Minorities  
Council of Europe  
F-67075 Strasbourg Cedex  
France

[www.coe.int/minorities](http://www.coe.int/minorities)

## CONTENTS

.....	1
SUMMARY OF THE FINDINGS .....	5
RECOMMENDATIONS .....	7
Recommendations for immediate action .....	7
Further recommendations .....	7
MONITORING PROCEDURE.....	9
Preparation of the state report for the fifth cycle.....	9
Follow-up activities related to the recommendations of the Fourth Opinion of the Advisory Committee.....	9
Country visit and adoption of the fifth opinion.....	9
ARTICLE-BY-ARTICLE .....	10
Scope of application – citizenship criterion (Article 3).....	10
Recognition as national minority – Poles (Article 3) .....	10
Recognition as national minority – Yenish (Article 3) .....	11
Federal responsibility for the protection of national minorities (Article 4) .....	11
Legal framework for combating discrimination (Article 4) .....	12
Institutional framework for combating discrimination (Article 4) .....	14
Collection of equality data (Article 4) .....	15
Effective equality - specific measures for Sinti and Roma (Article 4) .....	17
Promotion of national minority cultures (Article 5) .....	17
Tolerance and intercultural dialogue (Article 6) .....	18
Portrayal of Sinti and Roma in the media (Article 6).....	21
Protection from hostility and violence (Article 6).....	21
Law enforcement and respect for human rights (Article 6) .....	23
National minorities in TV and radio broadcasting (Article 9).....	25
Representation of national minorities in media regulatory bodies (Article 9) .....	26
Use of minority languages in contact with administrative authorities (Article 10) .....	27
Surnames (patronyms) in Sorbian (Article 11) .....	27
Topographical signs in minority languages (Article 11) .....	28
Education about national minorities (Article 12) .....	28
Equal access to education (Article 12) .....	30
Teaching in Danish in private schools (Article 13) .....	31
Teaching of Danish in public schools (Article 14).....	32
Teaching in and of North Frisian (Article 14) .....	32
Teaching of Sater Frisian (Article 14) .....	33
Teaching in and of Sorbian (Article 14) .....	33
Teaching of Romani (Article 14).....	34
Participation in public affairs – consultative and elected bodies (Article 15).....	34
Participation in public affairs – diversity within minorities (Article 15).....	35
Socio-economic participation of Sorbs in Lusatia (Article 15).....	36
Bilateral and cross-border relations (Articles 17-18).....	36



## SUMMARY OF THE FINDINGS

---

1. Germany has further expanded its solid framework providing multi-annual and sustainable support for the four recognised national minorities Danes, Frisians, Sinti and Roma, and Sorbs. The level of protection granted to persons belonging to national minorities, however, varies across the 16 federal states (*Länder*) in important areas such as non-discrimination and equality, teaching about national minorities, and participation mechanisms. The authorities put the combat against widespread antigypsyism on the political agenda, but more research on existing inequalities affecting Sinti and Roma and a national policy approach to this topic are necessary.

### Scope of application

2. Germany continues to apply the Framework Convention exclusively to Danes, Frisians, Sinti and Roma and Sorbs. The authorities do not systematically extend provisions of the Framework Convention to Sinti and Roma without German citizenship, though a pragmatic approach towards the citizenship criterion is evolving. Representatives of Poles maintain their request for official recognition but prioritise concrete demands in the areas of culture and education. Yenish representatives have asked for recognition as a national minority.

### Federal responsibility

3. The Framework Convention is not applied evenly across the 16 *Länder*. Legal framework and policies relevant to national minorities' rights on non-discrimination (Article 4), protection from hostility (Article 6), promotion of knowledge about national minorities (Article 12), and participation (Article 15) vary considerably between the different *Länder*. An attempt to introduce a clause on the protection of national minorities in the Basic Law has failed. This is regrettable as it would have sent a signal that the implementation of the Framework Convention is a responsibility of the federal level as well as of all *Länder*.

### Anti-discrimination and equality

4. The legal and institutional framework to counter discrimination has hardly changed. Neither the Federal Anti-Discrimination Agency nor associations can represent victims of discrimination in court and language is not explicitly listed as a ground of discrimination in the General Equal Treatment Act. Effective remedy for discrimination can only be obtained through courts, which constitutes a high threshold for persons belonging to national minorities in particular in the case of discrimination by public bodies. Discrimination against Sinti and Roma is widespread and there are structural inequalities in the areas of education, social service provision and housing. Some specific measures are taken at local and *Länder* levels, but there is no coordinated policy and a severe lack of equality data.

### Promotion of national minority cultures

5. Funding for national minorities is secured through multi-annual framework agreements. Several *Länder* concluded new framework agreements with umbrella organisations of Sinti and Roma. A new "Foundation for the Frisian Ethnic Group" was set up in 2020, which is welcome. Concerning decision-making on the promotion of culture, it is important to acknowledge that the primary role of the authorities is to create the conditions necessary so that representatives of national minorities themselves are able to decide how to maintain and develop their culture.

### Tolerance and intercultural dialogue

6. With the establishment of an Independent Commission on Antigypsyism the authorities put the issue high on the political agenda, which is welcome. The Commission's 2021 report deals not only with the Nazi genocide of the Sinti and Roma, but also the injustices done to members of the community in the post-war period. Antigypsyist stereotypes are widespread in German society and continue to be fueled by biased reporting in the media. Action plans against racism and right-wing extremism have been adopted, but more systematic awareness raising of human rights and non-discrimination among professionals is needed to effectively address intolerance in society.

### Protection from hostility and violence

7. The legal framework on combating hate speech and hate crime has improved through amendments to the penal code and the 2017 Network Enforcement Act. Politically motivated crime with bias against Sinti and Roma has increased over the monitoring period. Some such crimes were also registered related to Sorbs, in particular in Saxony. As most discrimination and hostility against Sinti and Roma goes unreported, the federal government's intention to establish an independent reporting mechanism on antigypsyist incidents is welcome. Police misconduct against Sinti and Roma such as racial and ethnic profiling, and insufficient independent investigation mechanisms on police misconduct remain a concern.

### Media

8. Insufficient progress was made. No tangible improvement took place regarding the duration and frequency of broadcasting on national minorities and in their languages on radio and television. A clause in support of national minorities was inserted into the new NDR (*Norddeutscher Rundfunk*) broadcasting agreement in 2021, but the effects in practice are yet to be seen. In particular the Frisian minority needs more support for the professional production of media content. Representation of national minorities in broadcasting councils has improved for the regional broadcaster in Saxony (MDR) and one of the nationwide television channels (ZDF), which is welcome. The representation of Danes and Frisians in the

regional broadcaster NDR as well as Sinti and Roma in general remains unsolved.

### Linguistic rights

9. Legal as well as financial circumstances for the use of minority languages with public authorities and in topographical signage improved for Danish and North Frisian in Schleswig Holstein, as well as for Lower Sorbian in Brandenburg. Sorbian signage on motorways and the use of female suffixes in family names remain a concern.

### Education

10. One of the main concerns of national minority representatives is the lack of knowledge about their history, culture, present situation and contribution to German society among the majority population. Content of curricula varies immensely between the 16 *Länder*. A working group of the Standing Conference of Ministers of Culture and Education of the *Länder* trying to coordinate teaching about

Sinti and Roma has made little progress, efforts to do the same for national minorities in general have just begun. Access of Sinti and Roma children to education is improving, but severe inequalities remain. While the situation of the Danish private school system has improved, North and Sater Frisian as well as Sorbian education suffers from severe lack of teachers.

### Participation

11. Consultation mechanisms are well established for all national minorities at federal level and for Danes, Frisians and Sorbs in the respective *Länder*. The level of involvement of Sinti and Roma varies widely between the different *Länder*. There is increasing diversity within national minorities and new organisations advocating for Sinti and Roma and defending Sorbian interests have been created. It is important for the authorities to take an inclusive approach to consultation processes that takes this diversity into account.

## RECOMMENDATIONS

12. 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 Germany.

13. The authorities are invited to take account of the detailed observations and recommendations contained in the present opinion of the Advisory Committee. In particular, they should take the following measures to improve further the implementation of the Framework Convention:

### Recommendations for immediate action

14. The Advisory Committee urges the authorities to take the necessary legal, policy and administrative measures to ensure the full application of the Framework Convention across all *Länder*.

15. The Advisory Committee urges the authorities to ensure that pupils throughout Germany learn about the history and contribution of Frisians, Danes, Sinti and Roma and Sorbs to German society in order to create understanding for the continuity and benefits of diversity. The authorities should make all necessary efforts so the ongoing and planned initiatives on this matter within the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* are brought to a conclusion.

16. The Advisory Committee urges the authorities to close gaps in the non-discrimination legislation at federal and *Länder* levels and notably to extend non-discrimination legislation to the public sector, include language as a ground of discrimination, fully prohibit unequal treatment also in the housing sector, introduce the right for associations to represent victims in court and to consider the possibility of allowing collective complaints. The authorities should ensure that the institutional framework on anti-discrimination is independent, visible, easily accessible throughout the country, and can provide persons belonging to national minorities who are discriminated against with effective legal remedy. The mandate of the Federal Anti-Discrimination Agency should be broadened to represent victims in court and initiate legal proceedings.

17. The Advisory Committee urges the authorities to address structural inequalities experienced by Sinti and Roma through a coordinated approach and targeted, evidence-based policies that are developed in close consultation with representatives of the minority.

### Further recommendations<sup>1</sup>

18. The Advisory Committee calls on the authorities to enter into a dialogue with Yenish representatives on their request for recognition as a national minority.

19. The Advisory Committee calls on the authorities to 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. Any such data collection needs to be developed and conducted together with the groups concerned and meet the highest human rights and data protection standards, notably the principles of consent, anonymity and information on the purpose of processing.

20. The Advisory Committee calls on the authorities to set up comprehensive reporting mechanisms of hate speech and hate crimes and intensify efforts to prevent, investigate and sanction such incidents. The authorities should further evaluate the effectiveness of the Network Enforcement Act in reducing online hate speech against persons belonging to national minorities.

21. The Advisory Committee calls on the authorities to implement the recommendations of the Independent Commission on Antigypsyism in close co-operation with representatives of Sinti and Roma. Awareness of antigypsyism among professionals in education, public welfare provision, law enforcement and the judiciary should be raised through systematic training on human rights and non-discrimination as a core part of initial and ongoing training. Such training should be developed and conducted with the participation of Sinti and Roma representatives.

22. The Advisory Committee calls on the authorities to investigate promptly and in a transparent manner all cases of alleged police misconduct and appropriately sanction discriminatory behaviour, notably against Sinti and Roma. Independent complaint mechanisms should be available. The authorities should furthermore intensify efforts to counter racial stereotypes among the police through systematic training and taking measures to achieve a more diverse police force.

23. The Advisory Committee calls on the authorities to increase the duration and frequency of programming in minority languages particularly in Danish and North Frisian, including through supporting the production of radio and television content in minority languages by professional journalists.

24. The Advisory Committee calls on the authorities to take effective measures to ensure equal opportunities for Sinti and Roma children at all levels, including by providing consistent learning support with the help of school mediators and by ensuring that teachers are adequately trained to systematically prevent and combat discriminatory attitudes. A comprehensive study on challenges faced by Sinti and Roma children in education should be undertaken to base these measures on solid evidence. Representatives

<sup>1</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

of Sinti and Roma should participate effectively in the design of both the study and the measures taken.

25. The Advisory Committee calls on the authorities to undertake ample measures to incentivise the learning in and of the North Frisian language at preschool, school and university levels.

26. The Advisory Committee calls on the authorities to take all necessary measures in close consultation with Sorbian representatives to ensure that the upcoming structural change in Lusatia following the discontinuation of lignite mining is used as a potential to enhance the attractiveness of the region for young Sorbs both in socio-economic and cultural terms.



## MONITORING PROCEDURE

**Preparation of the state report for the fifth cycle**

27. The state report was received on 31 January 2019. Organisations representing and promoting the rights of persons belonging to national minorities were consulted in its preparation and their statements as well as a statement of the Minority Council are appended to the report. No particular attention was paid to address gender-related aspects of minority rights in the report.

**Follow-up activities related to the recommendations of the Fourth Opinion of the Advisory Committee**

28. The authorities do not translate opinions of the Advisory Committee into German, nor into minority languages. While state reports are published on the website of the ministry in charge, the Federal Ministry of the Interior, Building and Community, opinions are accessible only through a link to the (English) website of the Council of Europe. None of the *Länder* publishes the Advisory Committee's opinions on their websites and only few have links to the respective Council of Europe website.

29. After the Advisory Committee's Fourth Opinion was published, it was sent to all the *Länder* and the representatives of the national minorities. No dedicated follow-up meeting with the participation of the Advisory Committee was organised. However, the Federal Ministry of the Interior, Building and Community holds annual implementation conferences, where representatives of the authorities, of national minorities and of research institutions discuss issues related to the implementation of the Framework Convention for the Protection of National Minorities and/or the European Charter for Regional or Minority Languages. During the period under review, those conferences focused, inter alia, on minority languages in the media, language learning and participation in education, minority languages in public administration, youth work of national minorities, and place of information about national minorities in school curricula.

**Country visit and adoption of the fifth opinion**

30. This fifth-cycle opinion on the implementation of the Framework Convention for the Protection of National Minorities (hereinafter "the Framework Convention") by Germany was adopted in accordance with Article 26(1) of the Framework Convention and Rule 25 of Resolution (2019)49 of the Committee of Ministers. The findings are based on information contained in the fifth state report, other written sources, as well as information obtained by the Advisory Committee from governmental and non-governmental sources during its visit to Bredstedt, Berlin and Cottbus from 23 to 27 August 2021, complemented by an online meeting with the authorities on 1 September 2021. The Advisory Committee expresses its gratitude to the authorities for their excellent co-operation before, during and after the visit.

31. The draft opinion, as approved by the Advisory Committee on 7 October 2021 was transmitted to the German authorities on 15 October 2021 for observations, according to Rule 37 of Resolution (2019)49. The Advisory Committee welcomes the observations received from the German authorities on 17 December 2021.

\*\*\*

32. A number of the articles in the Framework Convention are not covered in the present opinion. Based on the information currently at its disposal, the Advisory Committee considers that the implementation of these articles does not give rise to any specific observations. This statement is not to be understood as signaling that adequate measures have now been taken and that efforts in this respect may be reduced or even halted. Rather, the Advisory Committee considers that the obligations of the Framework Convention require a sustained effort by the authorities. Furthermore, a state of affairs which may be considered acceptable at this stage may not necessarily be the case in further monitoring cycles. Finally, it may be that issues which appear at this stage to be of relatively minor concern prove over time to have been underestimated.

## ARTICLE-BY-ARTICLE

**Scope of application – citizenship criterion (Article 3)**

33. In accordance with the declaration made on ratification of the Framework Convention, the German authorities continue to apply the Framework Convention exclusively to Danes, Frisians, Sinti and Roma, and Sorbs.<sup>2</sup> According to the memorandum accompanying the law on the ratification of the Framework Convention<sup>3</sup>, population groups are recognised as national minorities in Germany when they meet the following five criteria: members of the group are German nationals; they differ from the majority population in that they have their own language, culture and history, i.e. their own identity; they wish to maintain this identity; they have traditionally been resident in Germany and they live in Germany within traditional settlement areas.

34. As far as the criterion of citizenship is concerned, the authorities pursue a flexible approach with respect to the Danish minority. Minority rights are applied regardless of whether persons identifying as Danes have German, Danish or any other citizenship. In the case of Sinti and Roma, the authorities do not systematically extend provisions of the Framework Convention to persons without German citizenship. Apart from local projects (see Article 6), neither Roma migrants nor refugees from the Western Balkans identifying as Roma appear to benefit from special protection.<sup>4</sup> Good practices taking a culturally sensitive approach or using Roma mediators exist but are limited to few project-based and local initiatives.

35. The Advisory Committee reiterates that, while citizenship may be a legitimate requirement in fields such as representation in parliament and certain public offices, a general application of this criterion nevertheless acts as a constraint in relation to the guarantees associated with other important fields covered by the Framework Convention, such as non-discrimination and equality, as well as certain cultural and linguistic rights.<sup>5</sup>

36. The Advisory Committee welcomes the flexible approach towards the citizenship criterion regarding the Danish minority. It considers that Sinti and Roma without German citizenship would also benefit from an at least de-facto application of certain articles of the Framework Convention. The authorities' generalised efforts on promoting equality (see Article 4), integration (see Article 6), and access to education (see Article 12) for disadvantaged groups could better reach out to persons identifying as Sinti

or Roma if this aspect of their identity was taken into account. The Advisory Committee understands that the establishment of an Independent Commission on Antigypsyism, the planned monitoring mechanism on antigypsyism, as well as the authorities' support to the 2020-2030 EU Roma Strategic Framework (see Article 4) are positive steps towards a more flexible and pragmatic approach on this issue.

37. The Advisory Committee encourages the authorities to continue their pragmatic approach to the application of the citizenship criterion. The authorities should extend this approach to Sinti and Roma without German citizenship by applying the provisions of the Framework Convention on an article-by-article basis in close consultation with representatives of the groups concerned.

**Recognition as national minority – Poles (Article 3)**

38. Representatives of the Polish community living in Germany continue to request recognition of Poles as a national minority.<sup>6</sup> As long as such recognition is not possible, Polish representatives ask for the full implementation of the 1991 Treaty on Good Neighbourly Relations and Friendly Co-operation between Poland and Germany. Articles 20 to 29 of that treaty contains a number of commitments regarding the support of Polish culture and language applying to "persons of German nationality in the Federal Republic of Germany who are of Polish descent or who profess the Polish language, culture or tradition". In practice, however, representatives found that support, in particular for Polish language teaching, is too scarce and depends on regional or local circumstances.

39. The Advisory Committee reiterates that the Framework Convention was conceived as a flexible instrument to be applicable in diverse social, cultural and economic contexts, and in evolving situations. Its application to a specific group therefore does not require the latter's formal recognition as a "national minority", nor a specific legal status for such a group of persons.<sup>7</sup> Authorities are asked to 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.<sup>8</sup>

*Minderheiten* (Draft law on the Council of Europe Framework Convention for the Protection of National Minorities of 1 February 1995), 11 February 1997, page 21.

<sup>4</sup> Report of the Independent Commission on Antigypsyism (*Bericht der Unabhängigen Kommission Antiziganismus*) 2021.

<sup>5</sup> 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. 29-30.

<sup>6</sup> See [Third Opinion](#), para. 30, and [Fourth opinion](#), para. 16.

<sup>7</sup> ACFC [Thematic Commentary No. 4](#), 2016, para. 12.

<sup>8</sup> ACFC [Thematic Commentary No. 4](#), 2016, para. 7.

<sup>2</sup> The declaration made by Germany upon ratification in 1997 reads "The Framework Convention contains no definition of the notion of national minorities. It is therefore up to the individual Contracting Parties to determine the groups to which it shall apply after ratification. National Minorities in the Federal Republic of Germany are the Danes of German citizenship and the members of the Sorbian people with German citizenship. The Framework Convention will also be applied to members of the ethnic groups traditionally resident in Germany, the Frisians of German citizenship and the Sinti and Roma of German citizenship." Without prejudice to the more nuanced terms used for the individual groups by the German authorities, this opinion employs the term "national minority" for all four recognised groups.

<sup>3</sup> [Entwurf eines Gesetzes zu dem Rahmenübereinkommen des Europarats vom 1. Februar 1995 zum Schutz nationaler](#)

40. The Advisory Committee understands that representatives of Poles, while not giving up on their request of official recognition, prioritise a number of concrete demands. These are based on the 1991 Treaty on Good Neighbourly Relations and are similar to provisions of the Framework Convention in the fields of non-discrimination, culture and language (see Article 6).

41. The Advisory Committee encourages the authorities to continue to follow a pragmatic article-by-article approach on the implementation of the Framework Convention vis-à-vis the Polish community in close consultation with its representatives and to consider their request for national minority status.

### Recognition as national minority – Yenish (Article 3)

42. In 2019, representatives of Yenish formally approached the “Federal Government Commissioner for Matters Related to Ethnic German Resettlers and National Minorities” (hereafter: Federal Commissioner) with a request for recognition as a national minority. A meeting was held, where the Yenish explained their concerns. According to the Federal Commissioner, Yenish people in Germany do not fulfil the five criteria laid down upon ratification of the Framework Convention because they do not identify as a separate ethnic group. This argument was confirmed by representatives of the Ministry of Interior.

43. In exchanges with the Advisory Committee, representatives of the “Central Council of Yenish in Germany” pointed out that the German Yenish have traditionally been present in Germany and practice a language and culture of their own. Representatives shared with the Advisory Committee their wish to maintain their Yenish identity and pass it on to future generations, for example through a children’s book they developed. Representatives explained that there are Yenish people in all over Germany and expressed satisfaction that some local authorities, notably in Baden-Württemberg and Bavaria, increasingly appreciate the Yenish distinct identity.<sup>9</sup> They also value the recognition of their culture by the Federal President and some German politicians.<sup>10</sup> Having been subject to prejudice for generations and persecution during the Nazi regime,<sup>11</sup> representatives expressed the wish for young Yenish to feel pride in their origin rather than trying to hide it.

44. 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

<sup>9</sup> See for example [website](#) of 2017 exhibition “Auf der Reis” (“On the journey”) on Yenish culture in Hohenlohe-Fichtenau and Pfedelbach (Baden-Württemberg). Festivals on Yenish culture have been organised in Ichenhausen (Bavaria) and Singen (Baden-Württemberg).

<sup>10</sup> Website of the Federal President, 22 January 2019: [Kulturabend mit Musik, Kunst und Literatur der Roma, Sinti und Jenischen](#) (Cultural evening with music, art and literature of the Roma, Sinti and Yenish).

<sup>11</sup> See [Memorial to the Sinti and Roma of Europe murdered under National Socialism](#) in Berlin.

<sup>12</sup> ACFC [Thematic Commentary No. 4](#), 2016, para. 26.

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.<sup>12</sup> It acknowledges that “[i]n a variety of states parties, the understanding of the term ‘national minority’ is linked to specific characteristics that are often considered as emblematic for identity and for differentiating the minority from the majority, including language, religion, culture, ethnic background, specific traditions or visible features. (...) Nevertheless, employing such externally defined markers entails the danger of including or excluding individuals against their will. The Advisory Committee reiterates its position that a person’s identification must be based on free self-identification, unless there is a valid justification for not doing so.”<sup>13</sup> “In the view of the Advisory Committee, a person’s free self-identification may only be questioned in rare cases, such as when it is not based on good faith.”<sup>14</sup>

45. In the case of the German Yenish, the Advisory Committee notes that the definition of national minority in Germany focuses on language, culture and history. The Advisory Committee considers that these aspects correspond well with the wish of the Yenish to keep their identity, language and culture.

46. The Advisory Committee calls on the authorities to enter into a dialogue with Yenish representatives on their request for recognition as a national minority.

### Federal responsibility for the protection of national minorities (Article 4)

47. In line with the German federal system, the competence for the implementation of legal obligations resulting from the Framework Convention lies mainly with the 16 federal states (*Länder*). The federal authorities at national level retain only limited responsibilities and mainly have a coordinating role. Most relevant policy fields such as education, culture, police are regulated at *Länder* level. In addition, *Länder* and local authorities have the responsibility for the implementation of federal legislation in areas such as social protection and justice. According to the authorities, there are no plans to use any legal means to strengthen the oversight function of the federal level such as an ordinance setting out general administrative regulations pursuant to Article 84(2) of the Basic Law.<sup>15</sup> The authorities confirmed, however, that both the federal level and the *Länder* have the duty to implement the Framework Convention in their respective areas of competence.

<sup>13</sup> ACFC [Thematic Commentary No. 4](#), 2016, para. 37.

<sup>14</sup> ACFC [Thematic Commentary No. 4](#), 2016, para. 10.

<sup>15</sup> See fifth state report, available in [English](#) and [German](#), page 142.

48. In September 2019, the *Länder* of Schleswig-Holstein, Brandenburg and Saxony submitted to the Bundesrat, Germany's second chamber representing the *Länder*, a draft resolution on adding an article on national minorities and ethnic groups to the Basic Law. Referring to the fact that that, by ratifying the European Charter for Regional or Minority Languages and the Framework Convention, Germany has assumed a joint responsibility for the protection of national minorities, it was proposed to insert the following clause ("*Achtensklausel*") in the article on non-discrimination (article 3) of the Basic Law: "The State shall respect the identity of the autochthonous minorities and ethnic groups recognised in Germany under the Framework Convention for the Protection of National Minorities of the Council of Europe". The introduction of this clause is seen by proponents as a way of stressing that protection of national minorities is an overall national responsibility. Following an initial discussion, the item was referred to the Committee on Legal Affairs and the Committee on Internal Affairs, which recommended that the Bundesrat not adopt the resolution.<sup>16</sup> The item was subsequently removed from the agenda and has since not been taken up again.

49. Minority associations criticise both the implementation loopholes in certain *Länder* and the insufficient oversight and coordination by the federal level. In its comments to the state report, the Minority Council stresses that minority policy is not only an obligation for the *Länder* and encourages the federal authorities "to make full use of their right to exercise oversight over the actions of the federal states and issue regulations in order to ensure that the rights of persons belonging to national minorities are properly implemented everywhere in Germany, not only in their traditional settlement areas (...) There is much room for improvement in this regard."<sup>17</sup>

50. The Advisory Committee understands that many provisions of the Framework Convention are applied differently among the 16 *Länder*, which results in persons belonging to national minorities enjoying varying levels of protection for their rights according to the Framework Convention *Länder* depending on which *Land* they live in. This concerns, *inter alia*, the legal and institutional framework on protection from discrimination (see Article 4), training of law enforcement officials and members of the judiciary on racism and hate crime (see Article 6), teaching about national minorities in mainstream education (see Article 12), and participation mechanisms for national minorities (see Article 15).

51. Without prejudice to the German constitutional order as a federal state, the Advisory Committee emphasises that the ratification of the Framework Convention constitutes an obligation on both the federal level and all 16 *Länder* to protect the rights of persons belonging to national minorities according to the provisions under the Framework Convention.

52. The Advisory Committee is concerned about the difference in the level of protection under the Framework Convention across the *Länder*. It acknowledges that in the German federal system the *Länder* have a wide margin of discretion as to the means they choose for the implementation of the provisions of the Framework Convention. It also is natural that the application of certain minority rights for Danes, Frisians and Sorbs is specific to the *Länder* where they traditionally reside and the higher protection standards there are welcome. The Advisory Committee, however, finds it difficult to justify the significant differences in the level of protection in other areas. These concern the application of most articles of the Framework Convention with respect to Sinti and Roma, as well as cross-cutting provisions such as those on discrimination, protection from hostility, and the promotion of knowledge about national minorities in mainstream education.

53. The Advisory Committee welcomes coordinating efforts such as those of the Standing Conference of the Ministers of Education and Cultural Affairs to strengthen the teaching about national minorities in mainstream schools (see Article 12) but considers it important to further strengthen the coordinative role at the federal level. A possible measure could be to enhance the capacity of the Department in charge of national minorities within the Ministry of Interior, Building and Community to facilitate exchange of good practices on national minority issues. Stronger coordination is also needed in areas falling within the remit of other federal line ministries, namely on non-discrimination, integration policies, and justice. Finally, the Advisory Committee considers that the introduction of a clause on the protection of national minorities in the Basic Law could send a clear signal that the implementation of the provisions of the Framework Convention for the protection of National Minorities is a responsibility of the federal level as well as of all the *Länder*.

54. The Advisory Committee urges the authorities to take the necessary legal, policy and administrative measures to ensure the full application of the Framework Convention across all *Länder*.

#### Legal framework for combating discrimination (Article 4)

55. The core elements of Germany's anti-discrimination legislative framework remain the constitution (Basic Law), which can be directly invoked in court, and the General Equal Treatment Act of 2006. These are complemented by non-discrimination provisions in sectoral legislation, both at federal and *Länder* levels. Article 3 of the constitution provides for protection from discrimination on grounds of, *inter alia*, "race"<sup>18</sup>, language, "homeland and origin" as well as "faith, or religious or political opinions". The relevant grounds for persons belonging to national minorities covered by the General Equal Treatment Act are race, ethnic origin, religion, and belief.

<sup>16</sup> [Bundesratsdrucksache](#) 447/19 of 17 September 2019 and 447/11/19 of 27 September 2019.

<sup>17</sup> Comments by the Minority Council to the fifth [state report](#), Annex F, pages 240 et seq.

<sup>18</sup> There is an ongoing discussion in Germany on replacing the term 'race' in the constitution. Deutsche Welle (13 June 2020), ['Race' has no place in the German constitution — or does it?](#)



56. The General Equal Treatment Act applies to private and public employment and to private law relationships. Discrimination by public authorities outside employment relationships is meant to be covered by the constitution and the corresponding jurisprudence by the administrative courts. Non-discrimination provisions in public law are also included in sectoral legislation, such as on police and education. As these areas fall within the competence of *Länder*, there is no coherent approach towards discrimination by public authorities. The *Land* Berlin is the only *Land* having adopted, in 2019, its own anti-discrimination law. It is intended to close existing gaps regarding discrimination by *Land* actors, notably discrimination in the public sector, the right of associations to take legal action in courts, and the possibility for a shift of burden of proof also for discrimination by public authorities.

57. In its Fourth Opinion, the Advisory Committee called on the authorities to review the impact in practice of the General Equal Treatment Act with a view to strengthening its effectiveness.<sup>19</sup> In 2016, the Federal Anti-Discrimination Agency (hereafter FADA) published an evaluation report of the General Equal Treatment Act. The report contains recommendations for amending the Act, which partially overlap with those made by the Advisory Committee and ECRI.<sup>20</sup> So far, none of these recommendations on amending the Equal Treatment Act has been followed up upon, which is strongly criticised by representatives in particular of Sinti and Roma.

58. The Advisory Committee emphasises that comprehensive non-discrimination legislation covering both the private and public sphere is essential to guarantee persons belonging to national minorities the right of effective equality before the law and of equal protection of the law as enshrined in Article 4 of the Framework Convention.

59. A number of *lacunae* in the German anti-discrimination legal framework and in the context of anti-discrimination practice are particularly relevant for national minorities. First, neither associations nor the Federal Anti-Discrimination Agency (FADA, see below) are entitled to represent victims of discrimination in courts. There is also no possibility for collective action (*Verbandsklage*) by minority associations.<sup>21</sup> A notable exception is Brandenburg, where Sorbian associations are allowed to initiate legal proceedings. Representatives of the Sinti and Roma reported that members of their communities are

extremely hesitant to take the risk – also financially – of engaging a lawyer and filing a lawsuit when they have been victims of discrimination. The Advisory Committee therefore considers that the possibility for the FADA and associations to represent victims in court and to initiate legal proceedings is important to facilitate access to justice in particular for vulnerable groups such as persons belonging to national minorities.

60. Second, discrimination by public bodies is covered primarily by the equality provision in the constitution (Article 3 Basic Law). However, victims of discrimination by a government body do not benefit from the same legal instruments as the General Equal Treatment Act provides for the private sector, for instance the possibility for reversed burden of proof. In practice, experiences of discrimination in dealing with state institutions are part of the everyday life of Sinti and Roma in Germany. Representatives of Sinti and Roma reported about cases of racial profiling, insulting behaviour and even violence by the police where victims had considerable difficulties in establishing that they have been discriminated against.<sup>22</sup>

61. Discrimination against Sinti and Roma is also widespread in the education sector, as representatives reported. The perceived threshold for seeking legal remedy through filing a lawsuit in an administrative court is too high for most families (see below). Even reported cases are rare as families usually depend on good relations with teachers and the school administration. Only few *Länder* have introduced explicit non-discrimination provisions in their school acts (e.g. Brandenburg, Hesse and Thuringia). According to the Central Council of German Sinti and Roma, the lack of explicit prohibitions of discrimination in school laws “makes it more difficult to fight the discrimination that children and young people from Sinti and Roma families are confronted with at school.”<sup>23</sup> Against this background, the Advisory Committee considers the existing legal protection against discrimination in the public sector insufficient.

62. Third, language is not explicitly listed as a ground of discrimination in the General Equal Treatment Act. In individual cases, it may be covered by the equality provision in Article 3 of the Basic Law and understood as being subsumed under ethnic origin (section 1 of the General Equal Treatment Act).<sup>24</sup> Nevertheless, the Advisory Committee considers that it would be preferable to explicitly include the ground of “language” in the Equal Treatment

<sup>19</sup> [Fourth Opinion of the Advisory Committee on Germany](#), page 41.

<sup>20</sup> Berghahn/Klapp/Tischbirek (2016) [Evaluation des Allgemeinen Gleichbehandlungsgesetzes](#), erstellt im Auftrag der Antidiskriminierungsstelle des Bundes (Evaluation of the General Equal Treatment Law, commissioned by the Federal Anti-Discrimination Agency). See also the 6th ECRI report on Germany (adopted on 10 December 2019 and published on 17 March 2020) available in [English](#) and [German](#).

<sup>21</sup> The possibility for collective action by associations exists in environmental law and on consumer protection.

<sup>22</sup> See for example cases in Cologne ([WDR](#), 27 July 2021), Singen ([Die Tageszeitung](#), 11 February 2021) as well as chapter 8.4 of the 2021 Report of the Independent Commission on Antigypsyism ([Bericht der Unabhängigen Kommission Antiziganismus](#)).

<sup>23</sup> Comments by the Central Council of German Sinti and Roma, in the fifth [state report](#), page 260. See also [Nationaler Aktionsplan gegen Rassismus](#) (National Action Plan against Racism), 21 June 2017, page 110.

<sup>24</sup> See [Rechtsexpertise zum Bedarf einer Präzisierung und Erweiterung der im AGG genannten Merkmale](#) (Legal expertise on the need to specify and expand the characteristics mentioned in the Equal Treatment Act) 2019. The inclusion of language in the scope of the Anti-Discrimination Agency was also recommended by ECRI in its fifth cycle report of 2020 (para. 10).

Act, thus strengthening its clarity and accessibility, as well as its visibility and preventive function.

63. Fourth, in the field of housing the Equal Treatment Act allows an exception for unequal treatment in the rental of housing provided that it serves “to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions”.<sup>25</sup> The Central Council of German Sinti and Roma criticises that this provision can have negative consequences for persons belonging to minorities. The Advisory Committee was informed that institutional and individual discrimination in accessing housing indeed constitute the strongest barrier to improving the housing situation of Sinti and Roma in Germany. The situation is particularly difficult for Roma from other EU countries, but not only: in a survey of 300 German Sinti and Roma, 54 per cent mentioned discrimination experience in the search for a rented apartment.<sup>26</sup> The Advisory Committee therefore considers that the permission of differential treatment when renting housing space may serve to justify discrimination against persons belonging to national minorities and, in turn, makes it more difficult to legally challenge homeowners refusing to accept tenants with a minority background.

64. The Advisory Committee strongly regrets that these gaps in the legal framework have not been addressed over the last monitoring cycle. The Advisory Committee welcomes the adoption of a more comprehensive anti-discrimination law of the *Land* Berlin as a good practice, but considers that persons belonging to national minorities should have a comparable standard of protection from discrimination regardless of the *Land* they live in.

65. The Advisory Committee urges the authorities to close gaps in the non-discrimination legislation at federal and *Länder* levels and notably to extend non-discrimination legislation to the public sector, include language as a ground of discrimination, fully prohibit unequal treatment also in the housing sector, introduce the right for associations to represent victims in court and to consider the possibility of allowing collective complaints.

#### **Institutional framework for combating discrimination (Article 4)**

66. Germany’s equality body is the Federal Anti-Discrimination Agency (FADA) established in 2006 by the General Equal Treatment Act. Other functions falling to

specialised bodies are performed by the German Institute for Human Rights. Neither of these bodies have competence to decide on individual complaints on discrimination by public bodies; this is within the remit of the court system.

67. The German Institute for Human Rights is since 2002 accredited as National Human Rights Institution with A-status and complies with the basic conditions for independence.<sup>27</sup> It has no mandate to accept individual complaints or intervene in legal proceedings other than engaging in third party interventions (*amicus curiae*). Its main focus is on research and policy advice, human rights training, and documentation. It has no explicit mandate on national minorities, but covers human rights issues concerning Sinti and Roma under its thematic work on racism.<sup>28</sup>

68. The Federal Anti-Discrimination Agency is affiliated to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. It gives assistance to victims of discrimination through legal counselling and seeking amicable settlements and does awareness raising and research. It can issue recommendations addressed to the parties, but these are not legally binding. The FADA’s mandate is limited to the private sector, where it can deal with individual complaints. It thus still disposes of the same – limited – competences criticised by the Advisory Committee in its Third and Fourth Opinions. The recommendations of the above-mentioned 2016 evaluation report of the General Equal Treatment Act go in a similar direction: the agency should be equipped with investigation powers as well as legal standing to bring discrimination cases to court and intervene as *amicus curiae*, third party or expert.<sup>29</sup> Other frequent points of criticism are the appointment procedure of the agency’s head, the fact that the FADA reports to the parliament only once in four years, and the inconsistent approach to anti-discrimination agencies at *Länder* level.<sup>30</sup> Finally, the agency has no mandate on discrimination in the public sector and on grounds not explicitly mentioned in the General Equal Treatment Act such as language and citizenship.

69. While the Federal Anti-Discrimination Agency’s limited powers have not been broadened during the monitoring period, its resources increased significantly, from €3.22 million in 2014 to €5.41 million in 2019. It has 35 staff. One representative each of the Minority Secretariat

<sup>25</sup> Section 19 (3) [Equal Treatment Act](#).

<sup>26</sup> See also [2nd Roma Civil Monitor](#), page 21.

<sup>27</sup> On 10 July 2015, the Bundestag passed the “Law on the Legal Status and Tasks of the German Institute for Human Rights” ([Gesetz über die Rechtsstellung und Aufgaben des Deutschen Instituts für Menschenrechte \(DIMRG\)](#)), which regulates the legal status, tasks and funding of the Institute in accordance with the UN Paris Principles.

<sup>28</sup> In this context, the German Institute for Human Rights coordinated the work of the Independent Commission on Antigypsyism ([Koordinierungsstelle „Unabhängige Kommission Antiziganismus“](#)).

<sup>29</sup> Berghahn/Klapp/Tischbirek (2016), [Evaluation des Allgemeinen Gleichbehandlungsgesetzes](#), erstellt im Auftrag der Antidiskriminierungsstelle des Bundes (Evaluation of the General

Equal Treatment Law, commissioned by the Federal Anti-Discrimination Agency).

<sup>30</sup> See European Commission against Racism and Intolerance ([ECRI](#)) (2020) [Sixth Report on Germany](#), paras. 1-11 and European network of legal experts in gender equality and non-discrimination (2020), [Country report Non-discrimination: Germany](#), pages 81-86. The Head of the FADA is appointed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth on the proposal of the Federal Government.

and of the Central Council for Sinti and Roma are members of the FADA Advisory Board.<sup>31</sup>

70. About half of the *Länder* and some 15 cities have their own anti-discrimination agencies or bodies with varying mandates, tasks and levels of independence. The FADA supports the networking of these agencies or bodies. In addition, there are more than 200 non-governmental counselling services nationwide, often specialising on particular forms of discrimination.

71. During the monitoring period, the FADA received no discrimination complaints related to the belonging to the Danish, Frisian or Sorbian national minority but about 100 requests from persons identifying as Sinti and Roma. These mainly concerned access to goods and services, for example the case of a Sinti family who had a place on a campground and was rejected once the owner learned that they were Sinti. A considerable number of requests also concerned state action, such as police conduct or discrimination in dealings with authorities, but these do not fall within the scope of the FADA. Representatives of FADA explained that these data are far from representative as Sinti and Roma are often hesitant to report cases of discrimination or may not be aware of the agency, which has no regional offices. Indeed, for an even shorter period (2015-2018), the NGO-led monitoring centre “Amaro Foro” in Berlin registered more than 500 requests in Berlin only,<sup>32</sup> which gives an indication of the significant underreporting. The FADA does awareness raising work but has for budgetary reasons so far not launched a campaign targeted specifically at Sinti and Roma.

72. Discrimination in dealings with public order authorities, police, welfare and housing services, education and medical care is so common for Sinti and Roma that interlocutors of the Advisory Committee spoke of “institutional discrimination”.<sup>33</sup> The current institutional framework for monitoring discrimination and achieving legal remedy is difficult to grasp and insufficient to address the ongoing discrimination, let alone to improve this situation, they said. They are aware that in principle legal remedy can be achieved via courts based on the equality provision of the Basic Law but admit that in practice this path is hardly ever used because of the financial risks and fear of further victimisation.<sup>34</sup>

73. The Advisory Committee emphasises that full and effective equality for persons belonging to national minorities as enshrined in Article 4 of the Framework Convention requires a functioning anti-discrimination

framework with institutions that are independent, known to persons belonging to national minorities and easy to access, adequately resourced, and have a broad enough mandate to effectively support victims in achieving legal remedy.

74. The German anti-discrimination framework, in the view of the Advisory Committee, does not meet the criteria necessary to provide persons belonging to national minorities with adequate and comprehensive protection against discrimination. Firstly, as set out in previous Opinions, the narrow mandates and limited regional outreach of the Federal Anti-Discrimination Agency and the German Institute for Human Rights on the one hand, and the high threshold for claiming legal remedy in courts on the other hand, contribute to a situation that *de-facto* limits access to justice for victims of discrimination belonging to national minorities.

75. Secondly, the Advisory Committee notes with concern that the number of cases taken to court is negligible when compared to the reports from representatives of Sinti and Roma to the Advisory Committee about persistent discriminatory behaviour in both the public and private spheres. Against this background, the absence of formal complaints by victims of discrimination can be interpreted as an indication of their lack of awareness of or trust in the legal remedies available to them. Although the low number of complaints with the FADA may also stem from the fact that victims cannot expect compensation, additional resources are needed to reach out to Sinti and Roma and persons belonging to other national minorities, who may be exposed to discrimination.

76. The Advisory Committee urges the authorities to ensure that the institutional framework on anti-discrimination is independent, visible, easily accessible throughout the country, and can provide persons belonging to national minorities who are discriminated against with effective legal remedy. The mandate of the Federal Anti-Discrimination Agency should be broadened to represent victims in court and initiate legal proceedings.

77. The Advisory Committee strongly encourages the authorities to raise awareness among Sinti and Roma of the remedies and support structures available in cases of discrimination by public and private bodies.

#### Collection of equality data (Article 4)

in gender equality and non-discrimination (2021), [Country Report Germany](#) on the absence of case law on education (page 53) and housing (page 57). On reasons for limited case law on discrimination in general, see the 2020 Country Report, p. 13. One of the few cases on access to education in North Rhine-Westphalia in 2018 is referred to in Art. 12.

<sup>31</sup> See [Equinet page](#) on the Federal Anti-Discrimination Agency. The publicly funded Minority Secretariat acts as liaison office between the four national minorities and the authorities (see also Article 5).

<sup>32</sup> [Fünf Jahre DOSTA – Lebensrealitäten von Rom\\*nja in Berlin](#) (Five years of DOSTA - realities of life of Roma in Berlin).

<sup>33</sup> See also chapter 8.3 of the 2021 Report of the Independent Commission on Antigypsyism ([Bericht der Unabhängigen Kommission Antiziganismus](#)).

<sup>34</sup> Germany provides financial assistance for persons with insufficient income (*Prozesskostenbeihilfe*) but this to be granted the intended legal action must have a reasonable chance of success. Also, it does not cover the costs of the opposing lawyer in case of losing the case. See European network of legal experts

78. For historic reasons and based on the constitution, the German authorities do not collect any nationwide statistical data on the basis of ethnicity and have no intention to do so. The Federal Data Protection act allows the processing of data on “racial and ethnic origin” and other “special categories of personal data” under restrictive conditions such as a strict test of proportionality if the data collection serves the public good.<sup>35</sup> Also, data on migration background (first and second generation), religious affiliation and languages spoken at home is officially collected through micro-census.<sup>36</sup> During the monitoring period, members of parliament from the right-wing party “*Alternative für Deutschland*” (AfD/“Alternative for Germany”) made requests to federal and *Länder* governments asking for such ethnic data on Sinti and Roma. The authorities rejected all these requests.

79. In principle, all four national minorities share the authorities’ position against the collection of ethnic data. The Minority Council, in its comments to the state report, described the requests made by the party “*Alternative für Deutschland*” as “implicitly racist”.<sup>37</sup> Representatives of Sinti and Roma condemn particularly strongly any attempts by law enforcement authorities to gather ethnic data, be it through DNA analysis<sup>38</sup> or through the category of “clan criminality” increasingly used by the police as a sub-category of organised crime.<sup>39</sup>

80. While there remains a broad consensus in German society on the prohibition of nationwide ethnic data collection, there is increasing awareness of the fact that certain forms of ethnic information are necessary in the context of anti-discrimination efforts. Ways to gather such data in a sensitive and participatory way, often through qualitative rather than quantitative research, are increasingly being discussed. The Minority Council states that representatives of national minorities are “not generally opposed to participatory research and projects in which stakeholders and minority members equally and jointly agree on goals” and confirms that such research already is indeed being carried out at local and *Länder* levels.<sup>40</sup> Equally, representatives of Sorbs and of Sinti and Roma state the need for reliable quantitative and qualitative data, be it to evaluate the effectiveness of language policies in the Sorbian case or that any other locally identified needs are being met.<sup>41</sup> The 2021 report of the Independent

Commission on Antigypsyism brings together the existing research on various aspects relevant to Sinti and Roma, but still notes a considerable lack of data for instance on discrimination by public authorities or in the school system.<sup>42</sup>

81. The Advisory Committee reaffirms its view that the regular gathering of reliable and disaggregated equality data related to the situation of persons belonging to national minorities is necessary for a deeper understanding of the specific challenges faced by members of the various groups, as well as the planning, implementation and evaluation of evidence-based minority protection and equality promotion policies.

82. The Advisory Committee acknowledges that German authorities are at this stage not ready to collect ethnic data at large scale and that this position is shared in principle by the national minorities.<sup>43</sup> However, to assess to what extent persons belonging to national minorities are subject to discrimination and consequently address such situations, research that correlates equality indicators with ethnic affiliation is indispensable. It would therefore be important for the German authorities to initiate a dialogue with national minority representatives about the areas where such information is needed, and under which conditions the distrust in ethnic data collection could be overcome. While the traumatic historic experience during the Nazi regime is a fact, the Advisory Committee also notes that today’s German legal system offers strong safeguards against the abuse of such data, not least through the framework provided by the EU General Data Protection Regulation.

83. The Advisory Committee calls on the authorities to 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. Any such data collection needs to be developed and conducted together with the groups concerned and meet the highest human rights and data protection standards, notably the principles of consent, anonymity and information on the purpose of processing.

<sup>35</sup> [Federal Data Protection Act](#) (*Bundesdatenschutzgesetz*), section 23.

<sup>36</sup> Federal Statistical Office, [Menschen mit Migrationshintergrund](#) (Persons with migration background).

<sup>37</sup> Comments by the Minority Council, in the fifth [state report](#), Annex F, page 278.

<sup>38</sup> See [Stellungnahme des Zentralrats zum Entwurf eines Gesetzes zur Modernisierung des Strafverfahrens](#) (Opinion of the Central Council on the draft law for modernization of the criminal procedure) and Lipphardt, V. and Surdu, M. (2020) ‘[DNA Data From Roma In Forensic Genetic Studies And Databases: Risks And Challenges](#)’;

<sup>39</sup> Weber, J. and Töttel, U. (2017) ‘[Research Conferences on Organised Crime](#)’ and Council of Europe - Directorate General of Democracy: ‘Combating hate speech directed against Roma and Travellers’, adopted at 30 December 2020, [DRT0\(2020\)8](#).

<sup>40</sup> Comments by the Minority Council, in the fifth [state report](#), Annex F, pages 240 et seq.

<sup>41</sup> Comments by the Sorbian umbrella organisation “*Domowina*” and by the Central Council of German Sinti and Roma in the appendix to the fifth [state report](#).

<sup>42</sup> See the 2021 Report of the Independent Commission on Antigypsyism ([Bericht der Unabhängigen Kommission Antiziganismus](#)).

<sup>43</sup> There are some noteworthy recent developments in this area, though. In their [2020 state report to UN CERD](#), for instance, the German authorities reiterate their standpoint in principle, but inform about a number of projects exploring options for gathering ethnic data on a voluntary basis and with the involvement of the ethnic communities concerned.



### Effective equality - specific measures for Sinti and Roma (Article 4)

84. Germany has no specific National Roma Integration Strategy as Roma migrants are considered to be covered by the general inclusion policies<sup>44</sup> and German Sinti and Roma by the National Minority Framework. From its exchanges with the authorities, the Advisory Committee understands that this approach may change under the European Union's 2020-2030 Roma Strategic Framework because Germany supports the framework's cross-cutting objective of combating antigypsyism.

85. Organisations of Sinti and Roma appear to have differing views whether Germany should single out the group of Sinti and Roma by adopting a national strategy or action plan. However, there appears to be a common view that there is no sufficiently comprehensive and evidence-based approach to address existing inequalities.<sup>45</sup>

86. As pointed out above, discrimination against Sinti and Roma – both with and without German citizenship – is so widespread and common that representatives of NGOs and researchers speak of “institutional racism”.<sup>46</sup> Migrant Roma are in a particularly vulnerable situation, but the Advisory Committee understands that poverty, bad housing conditions and low educational achievements are also more common among German Sinti and Roma than in the majority population.

87. At school, for example, Sinti and Roma are exposed to structural discrimination on the part of teachers, fellow-students and their parents. Students also complained about a lack of sensitivity on the part of teachers for examples when it comes to using the term “gypsy”. Interlocutors of the Advisory Committee said that antigypsyist motives on the part of teachers are likely to play a role when it comes to assessing the performance of Sinti and Roma children.

88. The housing sector was also often mentioned as an area where discrimination against Sinti and Roma is frequent. However, specific measures to address this remain an exception.<sup>47</sup>

89. The Advisory Committee reaffirms its view that in order to achieve full and effective equality States Parties need to undertake special measures to overcome structural disadvantages between the minority and the majority in all spheres. These must be developed and implemented in close consultation with those affected and due account must

be taken of the specific conditions of the person concerned in their design.<sup>48</sup>

90. Although there are some good examples attempting to address structural discrimination, there is no overarching policy addressing the inequality of Sinti and Roma. The Advisory Committee is concerned that there is no coordinated policy promoting effective equality of Sinti and Roma at federal level and that this issue is not defined as an overarching policy objective.

91. The Advisory Committee urges the authorities to address structural inequalities experienced by Sinti and Roma through a coordinated approach and targeted, evidence-based policies that are developed in close consultation with representatives of the minority.

### Promotion of national minority cultures (Article 5)

92. Support to national minority culture is provided at federal, *Länder* and local levels. At federal level, this falls within the responsibility of the Ministry of Interior, Building and Community and of the Federal Government Commissioner for Culture and the Media. Most *Länder* have framework agreements with the umbrella associations representing a given minority, which provide for multi-annual funding guarantees. In addition, there are various programme lines under which minority associations can apply for project funding.

93. The Minority Council, set up in 2005, has a Secretariat located in Berlin, the annual funding of which increased by 50% during the monitoring period. Funding through the federal budget in 2020 was about at the same level for Danes and Frisians as in 2014. Funding for Sinti and Roma increased by 17% and funding for Sorbs by 13%.<sup>49</sup> In support of the Sater Frisian language, the *Land* of Lower Saxony supported projects of the *Saterland* municipality with up to €10 000 per year since 2015. In 2020, an additional €30 000 were earmarked for the promotion of Sater Frisian by the *Land* of Lower Saxony via the regional association *Oldenburgische Landschaft*.<sup>50</sup>

94. In early 2020, the “Foundation for the Frisian Ethnic Group in the State of Schleswig-Holstein” (*Friesenstiftung* - Frisian Foundation) was established as a foundation under public law. Its purpose is the promotion of Frisian art, culture and language, education about Frisians, and research of local history and customs. The foundation is modelled after

<sup>44</sup> See Federal Ministry of the Interior (2011), Report from the Federal Republic of Germany to the European Commission: An EU Framework for National Roma Integration Strategies up to 2020 – [Integrated packages of measures to promote the integration and participation of Sinti and Roma in Germany](#).

<sup>45</sup> 3rd [Civil Society monitoring report on implementation of the national Roma integration strategy in Germany \(2019\)](#).

<sup>46</sup> See the 2021 Report of the Independent Commission on Antigypsyism ([Bericht der Unabhängigen Kommission Antiziganismus](#)).

<sup>47</sup> A positive example is new social housing legislation in Baden-Württemberg, which since 2018 increased the scope of those eligible for social housing from exclusively income-related indicators to groups assumed to face discriminatory obstacles on the housing market. As a result, investors can use public funding

to build rental accommodation to which Sinti and Roma can then be given priority access. See state report, page 228.

<sup>48</sup> ACFC [Thematic Commentary No. 4](#), 2016, para. 65

<sup>49</sup> Written submission by the government to the Advisory Committee of November 2020.

<sup>50</sup> Seventh periodical report of the Federal Republic of Germany on the European Charter for Regional or Minority Languages (2021), page 207.

the foundation for the Sorbian People (see below) and in 2020 had assets of approximately €2.2 million. Representatives of Frisians were closely involved in the preparation of the foundation and hold four out of the nine seats in the foundation's board.<sup>51</sup>

95. Funding for Sorbs continues to be provided through the Foundation for the Sorbian people, whose budget is provided jointly by the federal authorities and the *Länder* of Brandenburg, and Saxony. It works through multi-annual agreements, which during the monitoring period amounted to €18.6 million per year. Six out of the 15 members of the governing board are representatives of Sorbs. Projects benefiting the Sorbian languages and culture will also be financed as part of the "Coal regions structural strengthening act" which is designed to support structural change in the region following the discontinuation of coal mining (see below).

96. For Sinti and Roma, support for the promotion of culture is part of treaties between *Länder* and associations for national minorities. Three more such agreements were concluded during the monitoring period.<sup>52</sup> Funding for Sinti and Roma increased considerably in some *Länder*, notably in Hesse, Lower Saxony, and Schleswig Holstein. At federal level, the Federal Government Commissioner for Culture and the Media continues to provide institutional funding for the Central Council of German Sinti and Roma and the Documentation and Cultural Centre of German Sinti and Roma in Heidelberg as well as funding for projects such as the digital RomArchive of international art expressing culture and identity of Sinti and Roma. Finally, in 2018, the federal level and the *Länder* concluded an agreement on the preservation of the graves of Sinti and Roma persecuted under the Nazi regime.<sup>53</sup>

97. Representatives of national minorities expressed general satisfaction with the level of funding they received. Frisian representatives felt, however, that they could do more if they had a few more permanent positions attached to the Frisian institutions as they still rely a lot on voluntary work of their members.

98. The Advisory Committee strongly welcomes that funding for all national minorities is on safe grounds through multi-annual framework agreements. It particularly welcomes the establishment of the Frisian Foundation. It further welcomes the increase in funding in particular for the promotion of Sorbian culture and for the concerns of Sinti and Roma, which means that minorities participated in

<sup>51</sup> State Portal Schleswig-Holstein (26 August 2020): [Stiftungsrat der Friesenstiftung trifft sich zur konstituierenden Sitzung](#) (Board of Trustees of the Friesenstiftung meets for the constituent meeting).

<sup>52</sup> Such treaties and agreements now exist in [Baden-Württemberg](#) (2014), [Bavaria](#) (2018), [Brandenburg](#) (2018), [Bremen](#) (2012), [Hesse](#) (2017) and [Rhineland Palatinate](#) (2005).

<sup>53</sup> Federal Office for Central Services and Unresolved Property Issues (5 December 2018): ['Bund- Länder- Vereinbarung betreffend den Erhalt der Gräber der unter der nationalsozialistischen Gewaltherrschaft verfolgten Sinti und Roma'](#) (Federal-state agreement on the preservation of the graves of Sinti and Roma persecuted under the Nazi regime).

<sup>54</sup> See also [ACFC Thematic Commentary No. 2](#), The effective participation of persons belonging to national minorities in cultural,

Germany's favourable economic development during this period. Reaffirming its view that support given to numerically smaller minorities needs to be higher on a per capita basis, it considers that solid support for both the Frisian minority both in Schleswig Holstein (North Frisians) and Lower Saxony (Sater Frisians) is particularly important.

99. The Advisory Committee emphasises that states are obliged to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve their identity. In order for national minorities to be able to decide how they want to maintain and develop their culture and identity, their representatives should be effectively involved in processes of allocation of public support for their cultural initiatives and have a substantial influence on decisions taken. Appropriate attention should be paid to the inclusiveness and representativeness of consultative bodies. This implies, inter alia, that the proportion between minority representatives and officials should not result in the latter dominating the work.<sup>54</sup>

100. The share of Sorbian representatives on the governing board of the Foundation for the Sorbian People is 6 out of 15 members representing Sorbian associations, which might place them in a weak position when it comes to deciding on how to maintain and develop their culture.<sup>55</sup> The Advisory Committee finds this situation potentially problematic in light of the spirit of Article 5, according to which the authorities' role is to create the conditions necessary so that persons belonging to national minorities themselves are able to effectively decide how to maintain and develop their culture. To better take into account the concerns expressed by some Sorbs for more influence over the use of funds, the structure of the Foundation needs to be reviewed.

101. The Advisory Committee encourages the authorities to continue promoting the conditions necessary for persons belonging to national minorities to keep and develop their cultures and in particular to maintain and further expand the multi-annual funding approach. Due attention should be paid to the needs of the Frisian minority.

### Tolerance and intercultural dialogue (Article 6)

102. The authorities report on a broad range of measures to promote tolerance and intercultural dialogue, both at federal and *Länder* levels.<sup>56</sup> These include the federal

social and economic life and in public affairs, adopted on 27 February 2008, paras. 66,19 and 109.

<sup>55</sup> See [Shadow report](#) of the "Serbski Sejm", pages 16-17, 23-24 and 35.

<sup>56</sup> [State report](#), pages 53-72. The state report unfortunately contains no information on such efforts by the authorities by most of the East German *Länder*, however, nor by the Free State of Bavaria.

programme “Live Democracy”, the annual budget of which tripled from € 50 million in 2016 to € 150 million for 2021. There is also a wide range of activities conducted by the Federal and *Länder* agencies for civic education. Various activities are undertaken at *Länder* level, such as the programme “Democracy. Diversity. Respect. Against Right-Wing Extremism, Racism and Antisemitism” in Berlin or the “Integrated plan of action against right-wing extremism and racism” in North Rhine-Westphalia. In 2017, the government adopted the first National Action Plan against Racism.<sup>57</sup> Following attacks by far-right extremists in Halle in October 2019 and Hanau in 2020 (see below), the government adopted further measures to fight right-wing extremism and racism. The different action plans and measures are aimed at promoting tolerance towards and integration of migrants as well as countering antisemitism, anti-Muslim hatred, and antigypsyism (see below).<sup>58</sup>

103. Significant steps have been undertaken to counter antigypsyism. In 2017, a research centre on antigypsyism was opened at Heidelberg university. In 2018, Baden-Württemberg designated a commissioner on antisemitism, who also deals with other forms of racism, including antigypsyism. Finally, in 2019, the Federal Government set up an “Independent commission to address antigypsyism”, which was tasked with studying this phenomenon in Germany and making proposals for measures. The report was presented in July 2021 and contains a comprehensive analysis of the situation of Sinti and Roma in Germany and concrete recommendations to the government.<sup>59</sup>

104. The general climate of tolerance and understanding in Germany gives rise to concerns. While mainstream political discourse has come to acknowledge that Germany is an immigration country with an ethnically, linguistically and religiously diverse society, the voice of those opposing diversity has become louder. The far-right political party “*Alternative für Deutschland*” has grown rapidly since it was formed in 2013 and is today represented in all *Länder* and the national parliament. With far-right politicians publicly voicing xenophobic, antisemitic and islamophobic views, previously latent attitudes have begun to resonate in public debates, some entering the mainstream political discourse. Fuelled by social media, the polarisation between those advocating for openness towards diversity and those opposing it is increasing.<sup>60</sup> Also, antisemitism is gaining stronger foothold in Germany society. In a study published in 2019, more than a quarter of respondents agreed with a range of antisemitic statements and stereotypes about

Jewish people.<sup>61</sup> Islam is perceived by about half of those surveyed in a 2019 study as a threat, a view amplified by media reports, which often cast Islam in a negative light.<sup>62</sup>

105. Organisations representing different ethnic minorities living in Germany reported to the Advisory Committee that the authorities’ efforts are not sufficient, in their view, to effectively combat xenophobia, overcome institutionalised discrimination and achieve the integration of society. They criticised for instance that the National Action Plan against Racism does not contain concrete measures and targets, which is also linked to the lack of equality data (see Article 4).

106. Representatives also stressed the relevance of education as a means of integration and underlined the need for more systematic teaching of ‘languages of origin’ (*herkunftssprachlicher Unterricht*) at schools. They quoted the example of North Rhine-Westphalia as a good practice, where mother-tongue teaching for 25 languages of “children with international family history” is integrated into school curricula.<sup>63</sup> In contrast, most other *Länder* offer such teaching only through associations, through consulates, or not at all. This patchy provision of language teaching was also criticised by Polish representatives, who considered that this meant that the 1991 Treaty on Good Neighbourly Relations and Friendly Co-operation between Poland and Germany was not fully implemented.

107. Among the four recognised national minorities, Danes and Frisians expressed satisfaction with the level of tolerance vis-à-vis their minorities and did not report any acts of hostility. Representatives of Sorbs also expressed no major concerns in this respect, though acts of hostility against Sorbian youth do occur (see below). Representatives of all three groups said, however, that they are often confronted with ignorance about their respective minorities and would appreciate if there was more knowledge about their cultures and languages among the majority population (see Article 12). Also, a 2018 study on youth work of national minorities showed that youth representatives of all four recognised minorities are – albeit to different degrees – confronted with prejudice and lack of understanding by the majority population.<sup>64</sup>

108. Representatives of Sinti and Roma reported to suffer from widespread intolerant attitudes, prejudice and negative stereotypes. A 2014 study by the Federal Anti-Discrimination Agency found that one in three respondents would find Sinti and Roma unpleasant as neighbours. In a

<sup>57</sup> See the Federal Government’s [National Action Plan against Racism](#). See also fifth [state report](#), pages 48-49.

<sup>58</sup> See website of the [Federal Government Commissioner for Jewish Life in Germany and the Fight against Antisemitism](#) and the [German Islam Conference \(DIK\)](#).

<sup>59</sup> Deutsche Welle (6 July 2021), [Independent report details anti-Roma discrimination in Germany](#).

<sup>60</sup> See European Parliament Research Service (2019), [Polarisation and the use of technology in political campaigns and communication](#) and Bertelsmann Foundation (2018), [The German population is becoming more tolerant of diversity, but polarization is increasing](#).

<sup>61</sup> Deutsche Welle (24 October 2019), [One in four Germans hold anti-Semitic beliefs, study finds](#).

<sup>62</sup> See Bertelsmann Foundation (2019), [Religious tolerance is widespread – but it does not extend to Islam](#).

<sup>63</sup> See website of the [Ministry of Education of North Rhine-Westphalia](#) (in German).

<sup>64</sup> Minderheitensekretariat/Wienke Reiner (2018), *Ein erster Einblick in die Jugendarbeit der vier autochthonen nationalen Minderheiten und Volksgruppen Deutschlands* (A first insight into the youth work of Germany’s four autochthonous national minorities and ethnic groups).

“hierarchy of social distance” towards different ethnic groups, Sinti and Roma ranked lowest, behind black people, Muslims and asylum seekers.<sup>65</sup> Interlocutors of the Advisory Committee stressed that one reason for this is the reproduction of stereotypes by the media (see Article 9). Antigypsyism is also widespread on social media platforms as well as the ‘below the line’ comments sections of online news websites such as *Der Spiegel*.<sup>66</sup>

109. The above-mentioned far-right political party also fuels anti-Roma rhetoric. In both parliamentary debates on Independent Commission on Antigypsyism in March 2019 and June 2021, politicians of the AfD denounced the commission and used the German word for “gypsy” (“Zigeuner”), a term perceived as insulting and discriminatory by most members of the Sinti and Roma community.<sup>67</sup> The Central Council of German Sinti and Roma expressed concern about the party promoting “nationalism” and attempting to distort historic facts about the Holocaust and the genocide against Sinti and Roma.<sup>68</sup> Among mainstream political parties, however, the work of the commission received broad support. In April 2021 Chancellor Angela Merkel was awarded the Sinti and Roma civic price as recognition for her accomplishments for Sinti and Roma.

110. In order to overcome antigypsyism in German society, the Independent Commission on Antigypsyism demands in its 2021 report a “fundamental shift of perspective in society” and a critical reflection upon persisting “structural and institutional power relations”.<sup>69</sup> The Commission recommends the appointment of a government commissioner and an independent advisory council to fight antigypsyism, and a wide range of measures addressing antigypsyism in society. In their exchanges with the Advisory Committee, representatives of Sinti and Roma stressed the lack of awareness of human rights and non-discrimination issues among professionals such as teachers, public welfare officers and police officials.

111. The Advisory Committee notes with interest that the Independent Commission on Antigypsyism dealt extensively with not only the Nazi genocide of the Sinti and Roma, but also the injustices done to members of the community in post-war Germany. The commission concluded that the effects of anti-gypsyist racism that continued after 1945 are still evident for Sinti and Roma today and that disadvantages in citizenship law, urban segregation and poor economic and educational opportunities after 1945 weigh heavily on later generations, who are “thus directly affected by the long-term consequences of a crime against humanity for which the Federal Republic of Germany bears a historical responsibility”. The report recommends extending

compensations to the descendants of Sinti and Roma persecuted during the Nazi regime and to setting up a commission on the treatment of Sinti and Roma in post-war Germany.

112. The Advisory Committee reiterates that openness and tolerance in society can only be genuine if they are not limited to certain predefined groups but embrace everyone.<sup>70</sup> It reaffirms its view that in the spirit of Article 6 of the Framework Convention, genuine integration of society is a two-way process encompassing all segments of society, majorities and minorities alike.

113. The Advisory Committee welcomes the authorities’ increased attention to diversity management and the higher funding available for the promotion of tolerance and understanding. It notes with regret, though, that it took violent attacks killing persons belonging to minorities for some of the measures to be taken. With action plans and lists of measures now on the table, it is crucial that these will be thoroughly implemented during the next legislature.

114. The Advisory Committee commends the authorities for recognising the problem of antigypsyism in society and bringing the issue on the political agenda through the Independent Commission on Antigypsyism. It considers the Commission’s recommendations very pertinent. It stresses, however, that the analysis of the situation is only the first step. In a second step, concrete and targeted measures need to be developed in close co-operation with representatives of Sinti and Roma, adequately funded, and put in place at federal, *Länder* and local levels. Particular attention should be paid to the promotion of non-biased knowledge about Sinti and Roma and systematic initial and ongoing training on human rights and non-discrimination for professionals in education, public welfare provision, law enforcement and the judiciary.

115. The Advisory Committee calls on the authorities to implement the recommendations of the Independent Commission on Antigypsyism in close co-operation with representatives of Sinti and Roma. Awareness of antigypsyism among professionals in education, public welfare provision, law enforcement and the judiciary should be raised through systematic training on human rights and non-discrimination as a core part of initial and ongoing training. Such training should be developed and conducted with the participation of Sinti and Roma representatives.

116. The Advisory Committee encourages the authorities to further consolidate the support for the promotion of tolerance and understanding and thoroughly implement the action plans to combat racism and right-wing extremism.

<sup>65</sup> *Antidiskriminierungsstelle des Bundes* (2014) [Zwischen Gleichgültigkeit und Ablehnung](#) (Federal Anti-Discrimination Agency: Between indifference and rejection).

<sup>66</sup> Central Council of German Sinti and Roma (2018) [Antiziganismus online](#) (Antigypsyism online).

<sup>67</sup> Minutes of the plenary sittings of the German Bundestag on 22 March 2019 (19/90) and 24 June 2021 (19/236).

<sup>68</sup> Deutschlandfunk (26 January 2019) „[Es geht um Verantwortung für Demokratie und Rechtsstaat](#)“ (“It’s about responsibility for democracy and the rule of law”).

<sup>69</sup> See the 2021 Report of the Independent Commission on Antigypsyism ([Bericht der Unabhängigen Kommission Antiziganismus](#)), page 13.

<sup>70</sup> ACFC [Thematic Commentary No. 4](#), 2016, para. 54



117. The Advisory Committee encourages the authorities to carefully consider the recommendation of the Independent Commission on Antigypsyism on establishing a commission to inquire the injustices done to members of the community in post-war Germany in close consultation with Sinti and Roma representatives.

### Portrayal of Sinti and Roma in the media (Article 6)

118. In their exchanges with the Advisory Committee, representatives of Sinti and Roma expressed dissatisfaction with the portrayal of the national minority in the mainstream public media, as it continues to reproduce antigypsyist stereotypes within the majority population. The Central Council regularly criticises negatively biased reporting in public as well as private TV shows.<sup>71</sup> The association sometimes files complaints with the respective regulatory authorities of the respective *Land*, but these rarely result in a recommendation or even sanction. Sometimes, however, complaints by the Central Council resulted in a dialogue with the journalists in question.<sup>72</sup> The Independent Commission on Antigypsyism also noted widespread antigypsyist stereotypes in German print and audio-visual media and concludes that that “non-stereotypical, minority-sensitive and non-discriminatory reporting is a political and human rights requirement”.<sup>73</sup>

119. The Advisory Committee emphasises that national minorities should be adequately represented and portrayed as members of society also in mainstream public media to promote mutual respect and understanding among all persons in society irrespective of their ethnic, cultural, linguistic or religious identity the creation of a common media space for all members of society. The Advisory Committee reaffirms its view that ethnic bias and stereotypes in reporting strengthens a negative image of the community while the positive contributions to society of that community is left out. Media should help to dispel negative stereotypes and show the contributions of the community to society in culture and other areas.

120. The Advisory Committee finds it disturbing that there is a continued portrayal of antigypsyist stereotypes in the media landscape of Germany. Without prejudice to freedom of expression and the independence of media outlets, it considers it necessary and possible for the

authorities to counter this trend. Apart from a stronger representation of Sinti and Roma in media regulatory bodies (see Article 9), it is important to support own media production by Sinti and Roma journalists and raise awareness among journalists about this issue.

121. The Advisory Committee encourages the authorities to increase their efforts to counter the reproduction of stereotypes about Sinti and Roma in the media through supporting media production by Sinti and Roma themselves and awareness raising among journalists in mainstream media.

### Protection from hostility and violence (Article 6)

122. Since 1 August 2015, racist, xenophobic and “other inhuman motives and aims” are considered aggravating circumstances in the penal code. The notion “other inhuman” refers to other prohibited grounds of discrimination such as antisemitic motives or those directed against religious orientation. In 2021, an explicit reference to antisemitic motives was added. In addition, police service instructions were amended so all cases of violent crime must be checked for possible racist or other political motivations and the results documented. Both measures were taken as a consequence of police’s investigation errors concerning a series of racist murders by the German Neo-Nazi terrorist group “National Socialist Underground”.<sup>74</sup>

123. Data on politically motivated crime is collected nationwide. Hate crime is a sub-category of politically motivated crime. Since 2017, crimes with “antigypsy”, “anti-Christian”, and “Islamophobic” bias as well as “crimes against other ethnic groups” are registered as separate categories.<sup>75</sup>

124. To address hate speech online, a “Network Enforcement Act (NEA)” entered into force in October 2017. The act obliges social media platforms to take down unlawful content, including hate speech, with 24 hours after receiving a user complaint. The Federal Office for Justice can impose fines of up to 50 million Euros for breach of this obligation.<sup>76</sup> A government evaluation of September 2020 stated that the NEA has significantly improved the complaint management and transparency of social network providers in dealing with illegal content. In 2018 and 2019, providers

<sup>71</sup> See press releases by the Central Council of [18 August 2021 concerning the public channel ZDF](#), [9 July 2021 on the private channel RTL](#), [15 April 2021 on the private channel Spiegel TV](#), and [1 February 2021 on the public channel WDR](#). See also Deutsche Welle (23 June 2021), [German media peddling anti-Roma stereotypes](#).

<sup>72</sup> Comments by the Central Council of German Sinti and Roma, in the fifth [state report](#), page 271.

<sup>73</sup> 2021 Report of the Independent Commission on Antigypsyism ([Bericht der Unabhängigen Kommission Antiziganismus](#)), page 148.

<sup>74</sup> See state report, pages 166-169. The “National Socialist Underground” perpetrated the attacks between 2000 and 2007 throughout Germany, leaving ten people dead and one wounded. For years, police denied that the crimes were racially motivated, blaming them on immigrant communities instead. Deutsche Welle (11 July 2018) [German authorities' many failures in investigating the NSU](#).

<sup>75</sup> On methodology, see also [OSCE/ODIHR Hate Crime Reporting on Germany](#).

<sup>76</sup> Website of the Federal Ministry of Justice and Consumer Protection [Act to Improve Enforcement of the Law in Social Networks \(Network Enforcement Act, NetzDG\) - Basic Information \(2017\)](#). The NEA is controversial from a freedom of expression point of view, though. See for example Politico.eu (1 October 2020), [Germany's balancing act: Fighting online hate while protecting free speech. The fight against online hate speech runs into trouble: privacy](#).

received almost three million complaints from users about illegal content of which about 28 per cent were deleted.<sup>77</sup> The Advisory Committee is not aware of any independent evaluation on the effect of the law in fighting antigypsyist and other racist hate speech on the internet.

125. In 2020, the general number of cases of politically motivated crime and hate crime with racist, xenophobic, antisemitic and anti-Muslim background reached a new high. According to the Federal Criminal Police Office, “the statistics reflect the extent of social tensions and the increasing radicalisation of parts of the population”.<sup>78</sup> In 2019, a far-right extremist’s attack in Halle on Yom Kippur killed two individuals outside a synagogue.<sup>79</sup> In several cases, persons wearing a Kippa on the street were brutally attacked. In May 2019, the German Commissioner on anti-Semitism said that he could not recommend that Jews wear kippahs in public at any time and place in Germany and, as early as in February 2015, the head of the Central Council of Jews in Germany, has already warned that Jews in some large cities are potentially exposed to danger if they are recognised as Jews.<sup>80</sup> At a far-right motivated shooting in a Shisha Bar in Hanau, 9 persons were killed; three of the victims were Roma.<sup>81</sup>

126. The numbers of registered politically motivated crimes with bias against Sinti and Roma increased over the past years: 41 were registered in 2017, 63 in 2018, 78 in 2019 and 128 in 2020. The figures of 2019 include several cases of violence and two cases of attempted murder, namely an arson attack on a Roma family in South Germany.<sup>82</sup>

127. The Central Council of German Sinti and Roma presumes the actual number of crimes with a bias against Roma is higher than the official records show. In 2018, the authorities launched a nationwide online platform for reporting antisemitic incidents, including those that do not rise to the level of a crime. The platform is funded by the government and run by the non-profit organisation “Research and Information Center for Antisemitism (RIAS)”. The Advisory Committee learned that the Ministry of the Interior, Building and Community is looking into the possibility of setting up a similar monitoring platform on antigypsyist incidents, also in co-operation with civil society organisations of the Sinti and Roma community.

128. As in the last monitoring cycle, racially motivated hostility affected also Sorbs. Between January 2015 and December 2018, the Federal Criminal Police Office registered 14 politically motivated criminal incidents with

anti-Sorbian bias, usually attributed to perpetrators from the far-right spectrum. Most offences were recorded in Saxony.<sup>83</sup> Incidents range from insults and vandalism against Sorbian wayside crosses or bilingual place-name signs to the use of right-wing extremist symbols and bodily harm. Some Sorbian representatives link the attacks to the increased xenophobia in Saxony in recent years and criticise that anti-Sorbian motives are not properly taken into account in the investigation process.<sup>84</sup>

129. The Advisory Committee reiterates that “Article 6(2) contains the obligation of states parties to protect all persons against violence and discrimination on ethnic grounds, in other words not only persons belonging to national minorities. Minorities cannot thrive in a society in which diversity is not tolerated or even serves as a pretext for hate crimes and discrimination.”<sup>85</sup> It therefore welcomes the introduction of the Enforcement Act (NEA) which obliges social media platforms to take down unlawful content, including hate speech and the positive effect it seems to have had. The Advisory Committee considers it necessary to further investigate the effect of the legislation on the number of complaints from persons belonging to national minorities and the deletion of material following such complaints.

130. The Advisory Committee also welcomes the recognition of racist and xenophobic motives as an aggravating circumstance and the improved data collection methodology for hate crime including the introduction of a separate category for antigypsyist bias. It expects that this new methodology comes along with training to police officers to detect racial bias. The Advisory Committee further notes the importance to complement these data with information about racist and antigypsyist incidents below the criminal threshold and welcomes the planned nationwide reporting centre on antigypsyism which can be given such a task. It considers, however, that such a mechanism requires solid institutional funding and a functioning connection with law enforcement agencies wherever reported incidents require a response by the police. Furthermore, while noting the advantages of community-based reporting mechanisms, the Advisory Committee wishes to emphasise that systematic collection of data on hate speech and hate crime against minorities is primarily a responsibility of the state.

131. The Advisory Committee is deeply concerned about the continuing rise of hate crime and other politically motivated crime against visible minorities, Jews, Muslims,

<sup>77</sup> Written information provided to the Advisory Committee by the government on 6 September 2021.

<sup>78</sup> Website of the Federal Criminal Police Office; *Politisch motivierte Kriminalität 2020 - Vorstellung der Fallzahlen in gemeinsamer Pressekonferenz* (Politically motivated crime 2020 - Presentation of the number of cases in a joint press conference), page 7.

<sup>79</sup> The Guardian (21 December 2020), [Halle synagogue attack: gunman sentenced to life in prison](#).

<sup>80</sup> Deutsche Welle (26 February 2015), [German Jewish leader: Don't wear kippa in Muslim areas](#); The Jerusalem Post (26 May 2019), German antisemitism officer: Don't wear kippot in public.

<sup>81</sup> 2021 Report of the Independent Commission on Antigypsyism (*Bericht der Unabhängigen Kommission Antiziganismus*), page 10.

<sup>82</sup> Submission by the Central Council of 6 August 2020. Deutsche Welle (11 May 2020), [Germany: Group confesses to arson attack on Roma family](#). For 2020, disaggregated data is not yet available.

<sup>83</sup> Deutscher Bundestag (21 March 2019), [Antwort der Bundesregierung auf die Kleine Anfrage der \(...\) Fraktion DIE LINKE, Drucksache 19/8144, Sorbenfeindliche Vorfälle und Straftaten seit 2015](#) (Answer of the Federal Government to the Small Question of the (...) parliamentary group DIE LINKE, 19/8144, Anti-Sorb incidents and crimes since 2015).

<sup>84</sup> See Leipziger Volkszeitung (17 February 2019), [Sachsens Sorben in Angst: „Seit 2014 haben die Angriffe eine andere Qualität“](#) (Saxony’s Sorbs in fear: “Since 2014 the attacks are of a different quality”).

<sup>85</sup> ACFC [Thematic Commentary No. 4](#), 2016, para. 55.

Sinti and Roma and Sorbs. This alone should be a sufficient reason to consolidate and expand the above-mentioned measures to promote tolerance and understanding in society rather than only reacting *ex-post* to severe crimes as such that happened in Halle and Hanau.

132. The Advisory Committee calls on the authorities to set up comprehensive reporting mechanisms of hate speech and hate crimes and intensify efforts to prevent, investigate and sanction such incidents. The authorities should further evaluate the effectiveness of the Network Enforcement Act in reducing online hate speech against persons belonging to national minorities.

### Law enforcement and respect for human rights (Article 6)

133. In response to the Advisory Committee's recommendations in its Fourth Opinion on racist bias in law enforcement, the federal authorities report on a range of measures following from the inquiry into a series of xenophobic murders, including changes to the criminal code and police instructions (see above) and training of law enforcement personnel. As policing is mainly a responsibility of the *Länder*, some of them also reported on measures taken. North Rhine-Westphalia, for instance, drew up a comprehensive strategy to systematically improve the intercultural skills of all staff in the justice system and plans to make intercultural competence a subject of all key trainings in this field. Others, such as Brandenburg, only list a number of seminars and manuals developed, while Bavaria does not report any measures at all.<sup>86</sup>

134. Responding to the Advisory Committee's recommendation on racial and ethnic profiling, some *Länder* report specific prevention measures (e.g. Bremen, Baden-Württemberg) while others simply refer to the prohibition of this practice and state that it is not tolerated and not practiced (e.g. Lower Saxony, North Rhine-Westphalia).<sup>87</sup> A recommendation by ECRI in 2020 to conduct a study on racial profiling in the police has created much debate. Having initially resisted to the idea of such a study, the government decided in October 2020 to commission a study on relationship between the police and society as a whole.<sup>88</sup>

<sup>86</sup> See [state report](#), pages 168-184

<sup>87</sup> Written submission by the government to the Advisory Committee of October 2020.

<sup>88</sup> See European Commission against Racism and Intolerance (ECRI) (2020) Sixth Report on Germany, para. 109 and Euractiv.com (20 October 2020), [German police study will focus on 'daily work' instead of structural racism](#).

136. Referring to the current monitoring period, the Central Council of German Sinti and Roma informed the Advisory Committee about continued recording of ethnicity by the Police in Berlin, references to the (assumed) ethnic background of suspects when reporting on crimes, investigations based on general suspicions (“searches in the gypsy milieu”), and extended police prerogatives on DNA analyses (in Bavaria allowing even the determination “bio-geographical origin”).<sup>89</sup> Representatives of the Central Council further reported to the Advisory Committee that cases of police violence continue to happen. The latest incidents have occurred in Chemnitz, Cologne, Freiburg (all in 2020) and Singen (in 2021).<sup>90</sup> Due to the lack of accessible reporting mechanisms and the impossibility for associations to represent victims in court, it is reportedly very difficult for victims of discrimination and violence by the police to obtain legal remedy. A 2019 study found that criminal proceedings against police officers concerning the unlawful use of force exhibit a remarkably high number of dismissed cases, and a very low number of indictments. Not all *Länder* have established complaints bodies to investigate police misconduct and even fewer are fully independent.<sup>91</sup>

137. The Independent Commission on Antigypsyism stresses that antigypsyism is a “significant structural problem within German police authorities” and recommends systematic and independent surveys on the extent of this problem. It further recommends revising police education and training with the aim of countering antigypsyist attitudes, “raising awareness of discriminatory police structures and activities and preventing antigypsyist practices”.<sup>92</sup>

138. As already stressed in its previous Opinion, the Advisory Committee underlines that beyond the individual harm caused to the victims of discriminatory treatment by the police, racial profiling stigmatises the groups of persons targeted in the eyes of the general public, generates feelings of humiliation, injustice and resentment amongst these groups, and leads to a direct loss of trust in the police on their part. Minorities who lack confidence in the police due to such practices will be particularly reluctant to turn to the latter in cases where they have been victims of racist offences, meaning that such crimes may go unnoticed and unpunished.<sup>93</sup>

139. The Advisory Committee regrets that despite some measures taken by the authorities, discriminatory behaviour by the police such as references to the (assumed) ethnic background of suspects when reporting on crimes, investigations based on general suspicions, and incidents

of police violence continue to occur. It is troubled by the lack of confidence on the side of Sinti and Roma in the police and the reports about insufficient investigation mechanisms within the police. Besides systematic training, the Advisory Committee considers that mistrust can be also addressed by taking measures to achieve a more diverse police force.

140. The Advisory Committee calls on the authorities to investigate promptly and in a transparent manner all cases of alleged police misconduct and appropriately sanction discriminatory behaviour, notably against Sinti and Roma. Independent complaint mechanisms should be available. The authorities should furthermore intensify efforts to counter racial stereotypes among the police through systematic training and taking measures to achieve a more diverse police force.

<sup>89</sup> See comments of the Central Council to the fifth [state report](#).

<sup>90</sup> See Tagesspiegel (10 August 2020), [Rechte Tendenzen in der sächsischen Polizei? Wenn ein Routine-Einsatz eskaliert](#) (Right-wing tendencies in the Saxony police? When a routine mission escalates); WDR (27 July 2021) [Kölner Polizei entschuldigt sich bei Schriftstellerin](#) (Cologne police force apologizes to writer); Press release (15 May 2020) [Zentralrat Deutscher Sinti und Roma fordert lückenlose Aufklärung von Polizeigewalt gegen eine Roma Familie in Freiburg](#) (Central Council of German Sinti and Roma calls for complete clarification of police violence against Roma family in Freiburg); and Deutsche Welle (12 February 2021), [German police face probe over 11-year-old in handcuffs](#).

<sup>91</sup> See “[Website of the Research Project “KVIAPOL”](#) at Ruhr Universität Bochum and 2019 [English summary](#) “Police Use of Excessive Force in Germany. An Executive Summary and First Results”, [Tagesschau.de](#) and OHCHR (30 April 2019), [Committee against Torture examines the situation in Germany](#)..

<sup>92</sup> 2021 Report of the Independent Commission on Antigypsyism ([Bericht der Unabhängigen Kommission Antiziganismus](#)), pages 507-508.

<sup>93</sup> See also [CERD General Recommendation No. 36](#) on Preventing and Combating Racial Profiling by Law Enforcement Officials (24 November 2020).



## National minorities in TV and radio broadcasting (Article 9)

141. Germany's federal structure also applies to public broadcasting, which is organised into nine regional broadcasters. In the state report, the authorities stress their limited influence on public broadcasters' programming due to their constitutionally guaranteed autonomy. Likewise, licensing requirements in private programmes can only be imposed to a very limited extent.<sup>94</sup>

142. The regional public broadcaster covering Schleswig Holstein, *Norddeutscher Rundfunk* (NDR) provides no TV broadcasting in Danish or Frisian. On radio, NDR broadcasts only a weekly 3-minute report in the Frisian language. According to the state report, Danish and Frisian are still present on the NDR network because journalists and interlocutors are encouraged to use minority language during interviews, which are then only subtitled in German. Also, the new NDR broadcasting agreement which entered into force in September 2021 provides that regional and minority languages "are to be regularly and appropriately taken into account in the NDR's programmes".<sup>95</sup> The possible effects of this agreement will have to be seen.

143. Representatives of both Danish and Frisian minorities find the presence of their respective languages on the NDR network insufficient. Danish representatives said that they can access Danish TV and radio but would appreciate more coverage also on German media because they are part of German society. Frisians expressed the wish for a regular programme on NDR radio specifically dedicated to their minority and language. In a meeting organised by the Minority Secretariat in 2020, the broadcaster NDR offered to provide a digital platform for the languages of the national minorities of Northern Germany and for issues relevant to them.<sup>96</sup> According to Frisian representatives, however, this could only work if much more public support was provided for the production of professional and attractive journalistic content.

144. The two-hour programme "*Friiskfunk*" is aired daily in North Frisian via the *Offener Kanal Westküste*, a publicly supported community radio. The NDR supports this initiative through providing free access to its content and training for *Friiskfunk* employees. *FriiskFunk* is, however, equipped with only one full-time editor's position that is currently split between three employees. Representatives of Frisians consider this insufficient for ensuring a sufficiently attractive radio programme.

145. The North Frisian offer on private radio is negligible, ever since the local private radio station on the island of Sylt, *Syltfunk*, has terminated its activity in 2018. Although the authorities had the objective to maintain the programming focus,<sup>97</sup> the Advisory Committee was informed that the scope of North Frisian programmes starkly decreased since the new operator took over the frequency.

146. There are currently no public TV or radio programmes dedicated to Sinti and Roma or using Romani language. The radio programme *Latscho Dibes* is realised by the Sinti association in Hildesheim and aired once monthly in the community channel *Radio Tonkuhle* and transmitted in other regions of Lower Saxony. The Central Council of German Sinti and Roma regrets this very limited offer and finds that channels should be encouraged and supported to broadcast programmes about Sinti and Roma and in the Romani language.

147. The two regional broadcasting stations in the Sorbian area (*Rundfunk Berlin-Brandenburg* (RBB – Lower Sorbian) and *Mitteldeutscher Rundfunk* (MDR – Upper Sorbian) air approximately 30 minutes per month of Sorbian-language TV programme. On radio, MDR expanded its offer to 27.5 hours per week, which representatives of Sorbs welcomed.<sup>98</sup> RBB's Sorbian radio programme has been made available via live stream since 2020 and on a special Sorbian RBB app since April 2021.<sup>99</sup> On private radio, since May 2018, the radio station Radio PSR has been broadcasting religious news in Upper Sorbian once a month in cooperation with the Sorbian magazine *Katolski Posol*.

148. From 2016 to 2018, the Federal Government, Saxony and Brandenburg funded the project "Sorbian in new electronic media" supporting film, teaching materials and video games in the Sorbian language.

149. The association *Domowina* considers, in its comments to the state report, the current Sorbian language programmes insufficient and requests that all-day programmes in Upper Sorbian and Lower Sorbian be made available.<sup>100</sup>

150. The Advisory Committee reiterates that "the availability of broadcast and electronic media in minority languages has very specific emblematic value for national minorities, in particular for the numerically smaller ones, as minority language media also raise the visibility and prestige of the minority language as an active tool of communication."<sup>101</sup> As already pointed out in its previous Opinion, the Advisory Committee furthermore reaffirms its view that foreign broadcasts are ill-suited to transmit issues of interest to local communities interested, inter alia, in local affairs affecting them daily.

<sup>94</sup> See [state report](#), page 94.

<sup>95</sup> [NDR-Staatsvertrag](#) (NDR State Treaty), § 5 (2).

<sup>96</sup> See [Minderheitenrat: Öffentlich-rechtlicher Rundfunk wichtiger Partner für Minderheiten in Deutschland](#) (Minority Council: Public broadcasting is an important partner for minorities in Germany).

<sup>97</sup> See [state report](#), page 186.

<sup>98</sup> Comments by *Domowina* to the Seventh periodical report of the Federal Republic of Germany on the European Charter for Regional or Minority Languages (2021), page 426.

<sup>99</sup> Seventh periodical report of the Federal Republic of Germany on the European Charter for Regional or Minority Languages (2021), page 67.

<sup>100</sup> Comments by *Domowina*, in the fifth [state report](#), page 252.

<sup>101</sup> ACFC [Thematic Commentary No. 4](#), 2016, para. 69.

152. The Advisory Committee regrets that no tangible improvement took place with regard to public broadcasting in Danish and North Frisian. Persons belonging to the Danish minority remain almost exclusively reliant on media produced in Denmark. North Frisian is somewhat more present due to the programme *Friiskfunk* on a community channel, but its editorial unit appears to be underfunded. The Advisory Committee further regrets that the declared goal to preserve the North Frisian language broadcasting after the insolvency of the private radio *Syltfunk* has not been achieved. The Advisory Committee was informed that the scope of Frisian speaking programmes starkly decreased since the new operator *Antenne Sylt*, a large radio station operating in several regions of Germany, took over the frequency. As already stressed in its previous Opinion, the Advisory Committee considers that the grant of a license could legitimately be made conditional on the extent to which the relevant application accommodates the rights and needs of specific audiences, such as speakers of minority languages.

153. The Advisory Committee emphasises that digital media offer considerable potential to make audio-visual productions available in minority languages at a lower cost than is incurred by traditional media and irrespective of broadcasting hours. It therefore considers initiatives to complement the linear offer with digital formats such as the proposed NDR platform for Danish and North Frisian as a positive step. It however considers that only voluntary engagement in that field cannot guarantee the necessary quality in the journalistic work. Thus, the Advisory Committee takes the view that offers of this kind need to ensure that these formats are sufficiently resourced, e.g. through the establishment of public funded positions for journalists to guarantee their adequate operation.

154. The Advisory Committee calls on the authorities to increase the duration and frequency of programming in minority languages particularly in Danish and North Frisian, including through supporting the production of radio and television content in minority languages by professional journalists.

155. The Advisory Committee encourages the authorities to follow-up to the implementation of the licencing agreement with the private channel *Antenne Sylt*.

### Representation of national minorities in media regulatory bodies (Article 9)

156. The representation of national minorities in regional media regulatory councils has improved for Sorbs. In addition to the RBB broadcasting network in Brandenburg, since 2021 a Sorbian representative is now also member of the MDR broadcasting council in Saxony.<sup>102</sup> Frisians and Danes are still not represented in the NDR broadcasting council in Schleswig Holstein. Sinti and Roma continue to be represented only on the broadcasting council of the *Südwestrundfunk* (SWR) which covers Baden Württemberg and Rhineland Palatinate.

157. At national level, minority representation has improved on one of the two nationwide broadcasting public TV stations (*Zweites Deutsches Fernsehen – ZDF*). As part of the reorganisation of the ZDF television council, Schleswig-Holstein nominated one representative of the regional and minority languages, who was elected. The representative is a member of the South Schleswig Voters' Association, which represents the interests of the Danish and Frisian national minorities.

158. In their exchanges with the Advisory Committee, the authorities explained the necessity to keep the number of members of the broadcasting councils limited so they remain operational. Where only one national minority is represented, they encouraged that this person would also represent the interest of the other national minorities, similarly to the model of the ZDF broadcasting council.

159. The Advisory Committee reiterates that it is important to ensure that minority representatives effectively participate in relevant decision-making processes as well as in media supervisory bodies. The more minority representatives take part in shaping their image in the public media, the more the negative effects of stereotyping can be reduced.<sup>103</sup>

160. The Advisory Committee welcomes the inclusion of a Sorbian representatives into the broadcasting council of the MDR and a person representing the Danish and Frisian minorities into that of the nationwide TV network ZDF. While the Advisory Committee understands the authorities' preference for compact broadcasting councils, it considers that the representation of Frisians and Danes in the NDR and of Sinti and Roma nationwide remains important.

161. The Advisory Committee strongly encourages the authorities to support demands for better representation of persons belonging to national minorities in media regulatory bodies, with due regard for the independence and the cultural diversity of the bodies concerned.

<sup>102</sup> See [MDR-Staatsvertrag](#) (MDR State Treaty), § 16 (1), 18.

<sup>103</sup> ACFC [Thematic Commentary No. 4](#), 2016, para. 70.

### Use of minority languages in contact with administrative authorities (Article 10)

162. For North Frisian and Danish, an amendment to Schleswig-Holstein's *Land* Administration Act in 2016 made it possible to submit applications, petitions, records, deeds or other documents in North Frisian in the districts of North Friesland and Helgoland and in Danish in the districts of North Friesland, Schleswig-Flensburg, Flensburg and Rendsburg-Eckernförde. Since 2018, Danish can also be used in Kiel. The Advisory Committee welcomes the extension of the possibility to use North Frisian and Danish in contact with the administration, although this is reportedly not widely used in practice. Moreover, it hopes that the decision taken by Germany in January 2021 to allow administrative authorities in the *Land* of Schleswig-Holstein to draft documents in North Frisian or Danish, in accordance with Article 10.1.c of the European Charter for Regional or Minority Languages, will constitute an incentive for a greater use of these languages by administrative authorities.<sup>104</sup>

163. Representatives of the Danish minority welcomed the increased possibilities in Schleswig-Holstein. They also inquired with the Federal Government whether this was possible for administrative services provided at federal level such as tax declarations, but were told by the Ministry of Finances that there is “no necessity” for that. The Advisory Committee reiterates in this context that the availability of documents in minority languages does not depend on the inability of persons belonging to national minorities to speak the official language and their consequent dependence on services in their minority language. A threat to the functionality of the minority language as a communication tool in a given region is sufficient to constitute a ‘need’ in terms of Article 10.2 of the Framework Convention.<sup>105</sup>

164. As for Lower Sorbian, several measures were taken in Brandenburg. Since 2016, the *Land* reimburses municipalities for any additional costs related to the use of a minority language. According to a further amendment to the Act on Sorbs' Rights in force since January 2019, districts in the traditional settlement areas of the Sorbs are obliged to appoint a full-time Commissioner for Sorbian affairs, who is paid by the federal state. Since 2019 the *Land* reimburses the municipalities and districts in the traditional settlement area of the Sorbs for the costs of staff employed to represent the interests of Sorbs. The Commissioner for Sorbian affairs from Cottbus reported on an increase in written submissions to the administration in the Sorbian language. Finally, several texts were translated into Lower Sorbian language within the framework of online access to administrative services.<sup>106</sup>

165. The Advisory Committee welcomes the establishment of local Commissioners for Sorbian affairs, which it considers good practice. From the exchanges with the Commissioners for Sorbian affairs from Cottbus and the district Oberspreewald-Lausitz, the Advisory Committee was able to see the added value of a staff member in the local administration advocating for a Sorbian perspective in all relevant areas.

166. The Advisory Committee encourages the authorities to continue creating an environment conducive to the use of Danish, North Frisian and Sorbian in contacts with administrative authorities.

### Surnames in Sorbian (Article 11)

167. As described in the Advisory Committee's previous Opinions, German law does not allow the addition of female suffixes to the names of Sorbian women. In the context of a general plan to amend the German law on names, a joint expert group of the Federal Ministry of the Interior and Community and the Federal Ministry of Justice published in March 2020 a policy paper on reforming the law on names. According to this, any such amendment could also take the interest of women belonging to the Sorbian minority into account beyond the already existing option of using the specifically female version of the surname<sup>107</sup> provided for in the Sorbian languages in also having it entered into the civil status records.<sup>108</sup>

168. The Advisory Committee welcomes the suggestion put forward that there seems to be political will to change regulations on the possibility to add feminine suffixes to the surnames of women in the civil status records, but regrets that so far, this has not resulted in change of the law.

169. During the monitoring period, the Advisory Committee's recommendation on the representation of Sorbian language characters in electronic forms has been implemented both in Brandenburg and Saxony, which is welcomed.

170. The Advisory Committee asks the authorities to bring the legislation governing names in line with Article 11 of the Framework Convention so suffixes can be appended to female last names.

<sup>104</sup> See Treaty Office of the Council of Europe (conventions.coe.int): CETS No.148, Declaration contained in letter from the Permanent Representative of Germany, dated 6 January 2021, registered at the Secretariat General on 7 January 2021.

<sup>105</sup> ACFC Thematic Commentary No. 3, para. 56.

<sup>106</sup> See [state report](#), pages 96-98.

<sup>107</sup> The term “surname” as used in the Framework Convention corresponds to the term “*Familiennamen*” (family name) in German law.

<sup>108</sup> Written submission to the Advisory Committee by the Ministry of Interior, Building and Community of November 2020.

### Topographical signs in minority languages (Article 11)

171. The Frisian Act of Schleswig-Holstein was amended in 2016 to the effect of extending the possibility for bilingual signage in the district of North Friesland beyond the place-name signs to cover also tourist signs, information signs on waterways and signposts. The costs of the additional signs are covered by the *Land*. The *Land* aims to achieve full German-North Frisian bilingualism in North Friesland. Frisian representatives assessed the situation as satisfactory. Bilingual signage in Danish is also allowed and paid for by the federal state, but implemented only sporadically as this is not a priority for the Danish minority.

172. The Advisory Committee takes note of the decision taken by Germany in January 2021 to allow and/or encourage the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in Danish and Low German in the *Land* of Schleswig-Holstein, in accordance with Article 10.2.g of the European Charter for Regional or Minority Languages.<sup>109</sup>

173. In Lower Saxony, bilingual information boards in Sater Frisian providing information about the history of buildings were installed in 2017 in front of public buildings in addition to the bilingual place names installed back in 2000. In 2018, the signposts were linked to the “Sater Frisian dictionary” app developed in 2017, which enables smartphone and tablet users to access a map depicting all information boards and to have the text on the signposts read out in Sater Frisian.

174. In the respective traditional settlement area of Sorbs in the *Länder* of Brandenburg and Saxony, bilingual signposts indicating the names of localities are still mandatory. New provisions during the monitoring period include for Brandenburg that any additional costs incurred by the municipalities by use of the minority language are to be borne by the *Land*.

175. Sorbian representatives criticise that there are still no general provisions for bilingual signposting on motorways in the Sorbian settlement area. According to the Sorbian comments to the state report, the Federal Ministry of Transport and Digital Infrastructure argues that bilingual signposting would distract drivers and therefore affect their security. However, bilingual signs do exist for destinations abroad (e.g. Prag/Praha and Breslau/Wrocław).

176. The Advisory Committee reiterates that road traffic safety may not be used as arguments against bilingual signposts. On the contrary, bilingualism in signposts should be promoted as it conveys the message that a given territory is shared in harmony by various population groups.<sup>110</sup> As the bilingual place names in the Sorbian settlement areas are officially bilingual, the Advisory Committee finds that these official names should indeed also be used for road signs on motorways.

177. The Advisory Committee asks the authorities to display the official bilingual names of Sorbian localities in the Sorbian settlement areas of Brandenburg and Saxony also on road signs on motorways.

### Education about national minorities (Article 12)

178. Education is a competence of the German *Länder* and, as a result, the extent to which knowledge about national minorities is taught in schools varies significantly. At national level the Federal Agency for Civic Education produced new materials, e.g. the online dossier “Sinti und Roma in Europa”. Further materials are produced at *Länder* level, for example the brochure “Sinti and Roma in Berlin - 28 Questions and Answers” published in 2018 by the Regional Centre for Civic Education Berlin or a handbook for teachers, which also contains suggestions for lessons aimed at incorporating Sorbian into German lessons published in 2017 by the Institute for German Studies at the University of Potsdam in Brandenburg.

179. In an effort by the federal level to strengthen the provision of knowledge about national minorities nationwide, the 2021 implementation conference held by the Federal Ministry of Interior, Building and Community focused on this issue. It was decided that a stock-taking exercise would be organised to collect information on how knowledge about national minorities is taught in each federal state. The ministry also provided financial support for a touring exhibition produced by the Minority Secretariat in co-operation with the Secretariat for Low German, which will be launched in the first quarter of 2022 in the German *Bundestag*.

180. Representatives of the Danish minority expressed general satisfaction with the knowledge about their minority within the *Land* of Schleswig-Holstein, which they also attributed to the fact that the Danish regional party used to be part of the federal state’s government coalition (see Article 15). However, they found that people in other parts of Germany knew very little about their minority. The fact that some German schools in the region teach Danish as a foreign/neighbouring language was also appreciated.

181. Representatives of Frisians found that even children in the North Friesland region learn too little about the Frisian culture, history and language. They criticised that information about Frisians features only to a very limited extent in the science (*Sachkunde*) curricula of elementary schools in Schleswig-Holstein and is not addressed at all in secondary school, though this would be interesting for teenagers in the context of defining their identity. Frisians appreciated that such information is now part of the curricula of the Danish private school system. To make full use of this opportunity, appropriate materials need to be produced, for which the minority lacks sufficient funding.

<sup>109</sup> See Treaty Office of the Council of Europe (conventions.coe.int): CETS No.148, Declaration contained in letter from the Permanent Representative of Germany, dated 6 January 2021, registered at the Secretariat General on 7 January 2021. This provision of the Charter already applies, since 2003, to North Frisian in the *Land* of Schleswig-Holstein and Sater Frisian

in the *Land* of Lower Saxony; and since 1998 to Upper Sorbian in the Free State of Saxony and Lower Sorbian in the *Land* Brandenburg.

<sup>110</sup> [ACFC Thematic Commentary No. 3](#), The language rights of persons belonging to national minorities under the Framework Convention, adopted on 24 May 2012, para. 67.



182. Sorbs are in a similar situation as Danes and Frisians: the curricula of Brandenburg and Saxony contain some information about Sorbian culture, history and language, but it seems likely that pupils going to school in one of the other 14 *Länder* may never hear about the fact that such a national minority exists in Germany. Also, neither Brandenburg nor Saxony evaluate or monitor whether pupils actually attain knowledge on this issue.

183. The Minority Council, speaking for all four national minorities, criticises in its comments to the state report that the materials of the Central Agency for Civic Education on national minorities require revision and updating.

184. As for Sinti and Roma, the insufficient knowledge in society is recognised not only by representatives of the minority, but also both the authorities and a study commissioned by the Federal Anti-Discrimination Agency.<sup>111</sup> According to a recent government-funded study by the Georg-Eckert-Institute, approaches of the *Länder* vary considerably. Some, such as Baden-Württemberg and North-Rhine Westphalia seem to attach significant importance to the issue. For instance, since 2016 the curriculum for secondary schools in Baden-Württemberg explicitly formulates the expectation that students are able to describe the framework for national minority protection at the example of the Sinti and Roma. The curricula of Lower Saxony and Saxony only mention the minority as an option, which means students may not have any contact with the topic at all. For Saxony-Anhalt, Schleswig-Holstein and Thuringia, no mentions of the minority could be found in their curricula. Where Sinti and Roma are mentioned in curricula as well as textbooks, it is usually in the context of the genocide during the Nazi regime. Information about Sinti and Roma is also provided in the context of the status as a national minority and in the context of exclusion and societal participation. None of the 197 examined curricula from 16 *Länder* explicitly names antigypsyism as a teaching topic.<sup>112</sup>

185. In May 2018, the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* agreed together with the Central Council of German Sinti and Roma and other relevant associations and institutions to draw up a recommendation for dealing with the history and the current situation of Sinti and Roma in Germany. This process, however, is still underway.

186. The situation regarding teacher training is even more heterogenous and the Advisory Committee was not able to obtain a full picture. Intercultural competences are part of teacher training at all universities nationwide, following decisions of the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder*. On national minorities, the most explicit mention is made in Schleswig-Holstein, where the Teacher Training Act makes it obligatory to include the importance of the language, history and culture of the national Danish minority, the Frisian ethnic group and the national minority of the German

Sinti and Roma, as well as the importance of Low German for the *Land* of Schleswig-Holstein in teacher training.

187. The Advisory Committee reiterates that States Parties are expected to review the curricula and textbooks in subjects such as history, religion and literature regularly so as to ensure that the diversity of cultures and identities is reflected, and that tolerance and intercultural communication are promoted.<sup>113</sup>

188. The Advisory Committee regrets that teaching about Danes, Frisians and Sorbs is almost exclusively limited to the *Länder* where these minorities traditionally reside. Not least in the context of the increasing awareness of the need to teach respect for diversity, the Advisory Committee is of the view that all pupils in Germany, regardless of where they live, should have at least some knowledge about the four recognised national minorities and their positive contribution to German society. It therefore welcomes the decision to undertake a stock-taking exercise covering all 16 *Länder*. The Advisory Committee is furthermore convinced that more emphasis on the common regional history of Germans and the respective national minorities also in secondary school can be a promising way to create understanding that diversity is nothing new or something to be afraid of, but rather creates benefits for society as a whole.

189. As Sinti and Roma are concerned, it welcomes that the coverage in school curricula and textbooks has been researched extensively as well as the initiatives undertaken by the Federal Agency for Civic Education. The results are worrying, however, as only few *Länder* cover both history and the present situation of the minority as well as their positive contribution to German society. The Advisory Committee refers to the “Council of Europe’s recent Recommendation on the inclusion of the history of Roma and Travellers in school curricula and teaching”, which could provide guidance in this process. It entails information both about the contributions of Roma and Travellers to the majority societies where they live as well as ideas for teacher training and teaching materials. It is regrettable that the work on a recommendation in the framework of the Standing Conference of the Ministers of Education and Cultural Affairs is not progressing. The Advisory Committee understands that this may be linked to diverging views among the involved Sinti and Roma representatives. It however finds that this should not stop the authorities to proceed with the work and in doing so to find a way to deal with the diversity within national minorities (see also Article 15).

190. The Advisory Committee urges the authorities to ensure that pupils throughout Germany learn about the history and contribution of Frisians, Danes, Sinti and Roma and Sorbs to German society in order to create understanding for the continuity and benefits of diversity. The authorities should make all necessary efforts so the

<sup>111</sup> Antidiskriminierungsstelle des Bundes (2014) ‘*Zwischen Gleichgültigkeit und Ablehnung*’ (Federal Anti-Discrimination Agency: Between indifference and rejection).

<sup>112</sup> See *Schulbücher und Antiziganismus: Zur Darstellung von Sinti und Roma in aktuellen deutschen Lehrplänen und Schulbüchern* (School books and antigypsyism: On the representation of Sinti and

Roma in current German curricula and school books), pages 10-14.

<sup>113</sup> ACFC *Thematic Commentary No.3*, page 11. See also OSCE High Commissioner for National Minorities (2012), *The Ljubljana Guidelines on Integration of Diverse Societies*, page 56.

ongoing and planned initiatives on this matter within the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder are brought to a conclusion.

### Equal access to education (Article 12)

191. In most *Länder*, the German school system consists of four years of primary school, followed by four to six years of lower secondary and two or three years of upper secondary education. Graduation from upper secondary (*Abitur*) qualifies for enrolling at university. Children with special educational needs are increasingly attending mainstream education, though most of them still attend special needs schools.

192. Germany has no comprehensive strategy or policy aimed at Sinti and Roma in the area of education. Some *Länder* reported about education integration measures, including through school assistants and mediators (Berlin, Bremen, Hamburg and Schleswig-Holstein). Some noteworthy local initiatives exist, such as the *Schaworalle* day care centre and youth vocational training projects in Frankfurt (Main) or the *Madhouse* parenting support centre in Munich.

193. In the state report, the authorities challenge the Advisory Committee's statement about unjustified placement of Sinti and Roma children in special needs schools. They state they have "no idea on what basis data could have been collected concerning the placement of Sinti and Roma children in special schools that could indicate institutional discrimination in the education system. The ministries of education and cultural affairs are not aware of any representative results from published scientific studies of this matter."<sup>114</sup>

194. The Advisory Committee confirms that until today no representative study on this matter is available. The Central Council of German Sinti and Roma admits in its comments to the state report that it is not possible to quantify the extent to which Sinti and Roma children are referred to schools for pupils with special educational needs. "Individual examples suggest, however, that this option is used to a disproportionate extent. The Hesse Association of German Sinti and Roma reports that in the municipalities of Hanau and Bad Hersfeld in particular it is standard practice to refer children from Sinti and Roma families to schools for pupils with special educational needs."<sup>115</sup> In 2018, a young Roma man from Cologne successfully sued the *Land* of North Rhine-Westphalia because he, for no valid reason, had to undergo school education at a school for pupils with mental disabilities (*Sonderschule*).<sup>116</sup>

195. In the absence of official data, the association "RomnoKher" published in 2021 a study analysing in detail the education biographies of 729 Sinti and Roma in Germany.<sup>117</sup> The study finds that among older age groups, a relatively high proportion indeed attended special needs schools: 25% among those aged 51 and older, and 10.4% of those age 26-50. Among those age 18-25, however, the share has decreased to 5.6%, which is similar to that in the population in general.

196. The study also identifies progress on a number of other indicators: Participation of Sinti and Roma in elementary education has increased to 100%. Attendance of preschools and secondary schools has also gone up, and numbers of school drop-outs have fallen in comparison with a similar study of 2011. More young Sinti and Roma than before attend secondary education and 17% of those aged 18-25 obtained the A-levels equivalent *Abitur*. In the overall population, however, this rate is as high as 40%. In terms of school drop-outs, the picture is also less positive when compared to the overall situation: While 15% of the young Sinti and Roma left school early, the general average stands at 7%. Sinti and Roma also less often proceed to vocational training than their peers.

197. In their exchanges with the Advisory Committee, representatives of Sinti and Roma stressed that educational attainment is negatively affected not only by the particularities of the German school system, which evidently does not sufficiently support social mobility.<sup>118</sup> Families also struggle with the consequences of exclusion from education and participation over generations, with a particular traumatic period being the persecution during the Nazi regime. This corresponds to the finding of the above-mentioned study, that the parents of about two thirds of respondents had no professional education and only one per cent had a university degree. Finally, interlocutors consistently referred to discrimination as a factor affecting educational achievement (see Article 4). Of the respondents to the above-mentioned study, 67% reported having experienced insulting or hostile behaviour based on their Sinti/Roma background and more than half experienced violence in this context.

198. Interlocutors reported that in particular Roma families with migrant background experienced difficulties coping with distance education during the COVID-19 pandemic due to a lack of space, technology and knowledge on the part of the parents. A Berlin-based NGO reported about long delays in handing out school funded tablets and expressed concerns how young Sinti and Roma will be able to catch up.

<sup>114</sup> [State report](#), page 37.

<sup>115</sup> Comments by the Central Council of German Sinti and Roma, in the fifth [state report](#), page 263.

<sup>116</sup> [Romea.cz](#) (21 July 2018), [German court says immigrant Romani pupil incorrectly assigned to "special school" deserves compensation](#).

<sup>117</sup> See Deutsche Welle (8 April 2021), [Sinti, Roma face systemic prejudice in Germany](#). Unless otherwise noted, all data in this section is from Strauß D. (co-ord.) (2021) '[RomnoKher-Studie 2021:Ungleiche Teilhabe. Zur Lage der Sinti und Roma in](#)

[Deutschland](#)' (RomnoKher Study 2021: Unequal Participation. On the situation of the Sinti and Roma in Germany), pages 26-32. Although the study includes interviewees from all 16 *Länder* and a mix of age groups and backgrounds, the authors consider it not representative because they could not sufficiently reach out to refugees who were Sinti and Roma. Two thirds of respondents had German citizenship.

<sup>118</sup> See OECD (2018), [Equity in Education: Breaking Down Barriers to Social Mobility](#).

199. The Advisory Committee reiterates that ensuring equal opportunities for access to education at all levels for persons belonging to national minorities as enshrined in Article 12(3) of the Framework Convention requires states to act resolutely in a number of areas. Apart from monitoring and ensuring enrolment and attendance, states should “[monitor] school attainments, including absenteeism and drop-out rates, literacy, completion of studies, grades, gender disparities, access to higher educational levels and subsequently access to employment. In some cases, preparatory classes and class or individual assistants/mediators/advisors may be necessary for pupils from disadvantaged environments. Adult education is a necessary complement to the basic education system.”<sup>119</sup> It further reaffirms its view that, in accordance with Article 4.3 of the Framework Convention as well as under international and EU law, positive measures which are put in place temporarily to counter past or present discriminatory effects, shall not be considered to be an act of discrimination.

200. The Advisory Committee welcomes the progress made on a number of indicators, in particular the decreased share of Sinti and Roma in special needs schools and higher shares in kindergartens and secondary schools. It deeply regrets, though, that the evidence base is extremely scarce, and the authorities have still not commissioned any comprehensive and representative research on this matter. The study by “RomnoKher” demonstrates that such research can be performed in a voluntary and participatory manner while respecting the rights to self-identification and data protection.

201. The Advisory Committee further regrets the persisting inequalities in education outcomes demonstrated by the existing research and confirmed by its interlocutors during the visit. The few existing local and regional initiatives to support Sinti and Roma families in this respect are clearly insufficient. Achieving education equality for Sinti and Roma children is not formulated as a national policy objective. The lack of targeted positive measures in this area is hard to understand, not least as Sinti and Roma representatives point out that exclusion of the minority during the Nazi period and the first decades after the Second World War contributed to the inequalities experienced by young Sinti and Roma today.<sup>120</sup>

202. The Advisory Committee calls on the authorities to take effective measures to ensure equal opportunities for Sinti and Roma children at all levels, including by providing consistent learning support with the help of school mediators and by ensuring that teachers are adequately trained to systematically prevent and combat discriminatory attitudes. A comprehensive study on challenges faced by Sinti and Roma children in education should be undertaken to base these measures on solid evidence. Representatives of Sinti and Roma should participate effectively in the design of both the study and the measures taken.

### Teaching in Danish in private schools (Article 13)

203. The *Dansk Skoleforening for Sydslesvig e.V.* (Danish School Association for South Schleswig) runs 57 day-care centres and 43 schools, providing education in Danish to approximately 8 300 children. These are private schools, but in 2014 the *Land* of Schleswig-Holstein has established full financial equality between Danish schools and state schools and enshrined funding at the same level as state schools in the constitution.

204. In their exchanges with the Advisory Committee, representatives of the Danish minority expressed satisfaction with their situation as regards education. They expressed relief that the equality of the Danish private school system has been inscribed in the constitution and said that participation of the Danish regional party in the federal state’s ruling coalition from 2012 to 2017 has made a real difference and contributed to a good relationship with the Ministry of Education that lasts until today (see also Article 15).

205. During the Covid-19 crisis, Danish private schools managed even better than public mainstream schools as they were technically better equipped, representatives of the minority said. However, the time was still difficult for the schools, as headmasters and pupils explained to the Advisory Committee. For example, it was not possible to come together for after-school activities, sing the daily Morgensang (morning song) and practice other traditions that are important for cohesion of the Danish school community. The Covid-19 period also showed that the specific status of the Danish private school system is not always automatically on the radar of the authorities. At the beginning, they were “forgotten” both in the federal authorities’ funding programme for digital equipment (“Digitalpakt Schule”) and in the federal state’s vaccination programme for schools. Both situations were rectified after the Danish School Association intervened.

206. The Advisory Committee commends the authorities in Schleswig Holstein for having managed to establish a stable and secure legal framework and budgetary support for education in and of the Danish language.

207. The Advisory Committee encourages the authorities to continue supporting the Danish private school system at the level necessary to provide for the needs of the minority.

<sup>119</sup> ACFC [Thematic Commentary No. 1](#), Education, adopted on 2 March 2006, page 21.

<sup>120</sup> See also the 2021 Report of the Independent Commission on Antigypsyism ([Bericht der Unabhängigen Kommission Antiziganismus](#)), Chapters 3 and 8.1.

### Teaching of Danish in public schools (Article 14)

208. In addition to the education in Danish provided by the private schools (see Article 13), 4 622 pupils in 61 mainstream public schools in Schleswig Holstein receive teaching of the Danish language. The overall number has slightly gone down compared to the situation in 2015/16 but has recently increased for primary schools due a new pilot project in 10 primary schools.<sup>121</sup>

209. Most teachers in Danish private schools are educated in Denmark. To prepare Danish teachers for public mainstream schools, the universities of Kiel and Flensburg offer study programmes for Danish as a third teaching subject and subsequent qualification programmes. As Schleswig-Holstein is the only *Land* offering Danish a teaching subject, there is a shortage in interested students, which is mainly a problem for vocational education (*Berufsschulen*).

210. In their exchanges with the Advisory Committee, Danish representatives regretted that graduates of Danish schools who do not proceed to higher education (usually in Denmark) but decide to stay in the region, have few possibilities to continue learning and practicing Danish in vocational education or apprenticeships. Many thus lose the contact to the Danish community.

211. The Advisory Committee reiterates that in order to develop minority language skills as an added value for their speakers, whether belonging to a minority or not, there must be continuity in access to teaching and learning of and in minority languages at all levels of the education system, from pre-school to higher and adult education.<sup>122</sup> The Advisory Committee therefore welcomes the continued efforts to promote teaching of Danish as a foreign language in mainstream public schools. It regrets that there are few possibilities for graduates of Danish schools to continue being exposed to the language in vocational education.

212. The Advisory Committee encourages the authorities to continue supporting the teaching of Danish as a foreign language in mainstream public schools. Solutions should be sought to create environments where graduates from Danish schools continue being exposed to the language and culture while in apprenticeships or vocational education.

<sup>121</sup> Written submission by the federal state of Schleswig Holstein to the Advisory Committee in November 2020 and Schleswig-Holsteinischer Landtag (3 September 2019), [Bericht der Landesregierung zur Umsetzung der Europäischen Charta der Regional- oder Minderheitensprachen in Schleswig-Holstein](#) (Government report on the implementation of the European Charter for Regional or Minority Languages).

### Teaching in and of North Frisian (Article 14)

213. North Frisian is currently taught at 14 mainstream public schools in Schleswig Holstein, reaching 824 pupils. The number declined compared to five years ago, where North Frisian was taught to 979 pupils in 19 schools.<sup>123</sup> In addition, there are three schools of the Danish minority teaching Frisian. Frisian is offered as an optional subject outside the core curriculum and usually in the form of extracurricular working groups or project work. Only the Danish-Frisian *Gymnasium* on the island of Föhr offers North Frisian as a foreign language in upper secondary and as a medium of instruction in project-oriented lessons such as acting.

214. The authorities admit that there is an acute shortage of teachers. At many schools, North Frisian language lessons depend on a single teacher and in some places a single teacher covers up to four schools in different locations. There are no North Frisian teachers at all in vocational education. Teaching certificates for Frisian can be obtained at the universities in Flensburg and Kiel. Enrolment in the respective courses at both universities is low, although capacities exist. There are also courses for teachers who are already in the service.<sup>124</sup>

215. In their exchanges with the Advisory Committee, representatives of the Frisian minority expressed dissatisfaction with the situation of North Frisian teaching. Considering that Frisian is a small language which only few children consistently speak at home, they expressed the need for more ample support on a number of fronts. In order to make learning the language as attractive as possible, they would need more funding for the creation of attractive teaching materials, the establishment of permanent posts for North Frisian teachers, and innovative ways to reach out to young families. They demand that North Frisian teaching at schools should not only be an additional offer for those speaking the language at home, but also cater to those learning the language only at school. Frisian representatives also regretted that school closures and restrictions for extra-curricular activities during the COVID-19 pandemic had an impact on Frisian teaching at schools.

216. The Advisory Committee reiterates that special attention must be paid to the languages of numerically smaller minorities, as their languages are often particularly threatened.<sup>125</sup> It therefore acknowledges that the authorities have undertaken various measures to expand the offer of North Frisian teaching at day care centres, schools and university, but regrets that the outcomes are so far not satisfactory. It appears that more ambitious measures are necessary to sustain and potentially revitalise the North Frisian language, for example through immersion projects such as language nests, scholarships for prospective teachers, and generous support for the creation of attractive teaching materials. Also, knowledge of Frisian should be

<sup>122</sup> [ACFC Thematic Commentary No. 3](#), para. 75.

<sup>123</sup> Figures for the 2020/21 and 2015/16 school years, provided in a written submission by the federal state of Schleswig Holstein.

<sup>124</sup> [State report](#), pages 216-218 and written submission by the federal state of Schleswig Holstein.

<sup>125</sup> [ACFC Thematic Commentary No. 3](#), para. 70.



considered a merit in public recruitment procedures. Innovative measures should be developed in close co-operation with the Frisian minority.

217. The Advisory Committee calls on the authorities to undertake ample measures to incentivise the learning in and of the North Frisian language at preschool, school and university levels.

#### Teaching of Sater Frisian (Article 14)

218. Sater Frisian (*Seeltersk*) is spoken by approximately 2 000 persons belonging to the Frisian national minority and settling traditionally in the municipality of *Saterland* in the *Land* of Lower Saxony. Sater Frisian is used, to some extent, in five day care centres and offered as an optional subject outside the core curriculum in five primary schools and one secondary school. Some teacher training is offered by the University of Oldenburg and the *Land* Institute for Quality Development at Schools. The authorities supported the development of a dictionary app and the app "*Kleine Saterfriesen*" for preschool children to learn Sater Frisian in a playful way.

219. The *Land* of Lower Saxony adopted in September 2017 a motion for a resolution on stabilising and expanding the promotion of Low German and Sater Frisian. This resolution provides for support in terms of staff and funding for Sater language teaching at schools and the creation of a professorship covering amongst others the Sater Frisian language at Oldenburg University.

220. Representatives of Sater Frisians, in a written contribution to the Advisory Committee, welcomed the support provided by the *Land* and municipal authorities and in particular the establishment in 2020 of a part-time position for a Sater Frisian "Commissioner". In order for Sater Frisian to be taught more widely, representatives would wish for Sater Frisian to be introduced as a compulsory subject in local schools. They further suggested to establish an institute for the Sater Frisian language to remedy the shortage of teachers.

221. The Advisory Committee commends the authorities of Lower Saxony for the increasing financial support to the teaching of Sater Frisian. It welcomes the appreciation demonstrated by high-level politicians and the municipality of *Saterland* to the personal commitment of volunteers of the Sater Frisian association *Seelter Buund*. In order to keep the momentum in the ongoing language revitalisation, it is important to continue supporting initiatives that are likely to foster this objective.

222. The Advisory Committee encourages the authorities to further expand the offer of Sater Frisian teaching in day care centres, schools and at university.

#### Teaching in and of Sorbian (Article 14)

223. In the 2019/2020 school year, 1 806 pupils learned the Sorbian languages (Lower Sorbian) in Brandenburg and 2 741 in Saxony (Upper Sorbian). This constitutes an increase both in absolute numbers and percentage of all pupils in comparison to the previous monitoring period.<sup>126</sup> Lower Sorbian in Brandenburg is mostly taught as an optional subject; only the Lower Sorbian *Gymnasium* in Cottbus provides Sorbian as a compulsory subject and teaching in the language. Upper Sorbian in Saxony is mainly taught in the framework of the bilingual '2plus Concept' where students learn in German and Sorbian and acquire additional foreign languages. Both *Länder* have bilingual preschool education, which however suffers from a lack of Sorbian-speaking educators.

224. The authorities of both Brandenburg and Saxony recognise that the biggest challenge is the lack of Sorbian language teachers. The respective ministries of education have been taking various steps ranging from promotional activities, bonus points and scholarships for Sorbian speakers for accessing university, special qualifications for graduates from other careers, and recruitment from abroad. The latter option has been tested by Saxony with teachers from the Czech Republic and is currently being prepared by Brandenburg with teachers from Poland. One problem for schools in Brandenburg is that at the moment only the University of Leipzig in Saxony prepares Sorbian teachers, while many students from Brandenburg prefer to go to study in their own federal state, in Potsdam. Since 2016, the *Land* of Brandenburg has been funding an additional half-time position for a research assistant on Lower Sorbian didactics to make the study programme more attractive.

225. In their exchanges with the Advisory Committee, representatives of Sorbs in Brandenburg explained that legally every pupil in the Sorbian settlement area has the right to receive teaching of Sorbian. In practice, however, this is not always implemented, for various reasons: The described shortage of teachers, difficulties to gather the necessary five children for opening a class and thus the need to commute to a school further away, and finally the lack of will to make the necessary extra effort for Sorbian at some schools. They stressed the importance of a "Sorbian-friendly" atmosphere at schools. This includes tiny gestures such as Sorbian teachers using the minority language with Sorbian pupils not only in the classroom, but also in breaks or not immediately switching to German as soon as non-Sorbian speakers are present. In particular during the first phase of school closures due to the COVID-19 pandemic in 2020, Sorbian language teaching was not always ensured as emphasis was put on main subjects.

226. Similarly, a serious shortage exists in terms of educators at day care centres for younger children. This is, like the shortage of teachers, a general phenomenon. Interlocutors at a *Witaj* day care centre in Cottbus explained to the delegation of the Advisory Committee that the bilingual aspect of their work requires more time and effort than if they worked at an ordinary kindergarten. Their

<sup>126</sup> Written submissions by the *Länder* of Brandenburg and Saxony to the Advisory Committee. The figures include both teaching of and in Sorbian.

salaries and working hours, however, are the same. In a context of general shortage of educators, it is therefore not necessarily attractive.

227. The Advisory Committee reiterates that teacher training is a particularly important aspect in ensuring the quality of education in and of minority languages. It is essential that teachers working in minority languages are trained in sufficient numbers and that such training is of adequate quality, preparing teachers for all levels of education, including at pre-primary or nursery levels.<sup>127</sup>

228. The Advisory Committee therefore recognises the efforts undertaken by the *Länder* of Brandenburg and Saxony to address the shortage of Sorbian speaking teachers and early childhood educators. It regrets, however, that the impact of these measures is only moderate. Given the relatively small number of speakers and the general lack of teachers and educators, it admits that this is a challenging task. It is therefore necessary to continue investing in a multitude of measures over a long time as building up teaching capacity is clearly a long-term task. The Advisory Committee considers that the teaching about Sorbian culture and identity (see Article 12) can help in creating the positive environment needed to make learning the Sorbian language more of an attractive choice for Sorbian Children and youth.

229. The Advisory Committee strongly encourages the authorities to continue and further enlarge their investment in a broad variety of measures aimed to increase the learning of the Sorbian languages, among those to address the shortage of Sorbian language teachers and early childhood educators.

### Teaching of Romani (Article 14)

230. In line with the wishes of the Central Council of German Sinti and Roma and its member organisations in the *Länder*, who for historical reasons do not wish to use their language outside the community, there is no teaching of Romani in German public schools and German Romani is not codified. Some *Länder* such as Lower Saxony provide funding to civil society initiatives to teach Romani. In Frankfurt (Main), the *Schaworalle* association continues to offer children the possibility of communicating in Romani in the so-called “little school” which works with Roma children who have difficulties at school. Some *Länder*, such as Rhineland Palatinate expressed openness for supporting teaching Romani teaching if Sinti and Roma associations expressed this request. Some *Länder* (Berlin, Hamburg, North Rhine-Westphalia, Schleswig-Holstein) work with educational advisors, mediators or so-called “integration

assistants” who may use Romani in their work with children and families.<sup>128</sup>

231. On the side of representatives of Sinti and Roma, there appears to be a growing interest in the Romani language. In its comments to the state report, the Central Council of German Sinti and Roma referred to the language courses offered by local associations, for which financial support would be welcome. In 2018, a first collection of classic German poems translated into Romani was published.<sup>129</sup> In 2019, the Central Council and the “Documentation and Cultural Center of German Sinti and Roma” organised for the first time an exhibition stand at the Frankfurt Book Fair.

232. The Advisory Committee welcomes that the authorities both respect the wish of Sinti and Roma in Germany not to have Romani language taught at school, but are open to support other forms of passing on the language wherever this wish is expressed. It reaffirms its view that school mediators belonging to the Sinti and Roma community and speaking the language can make an essential contribution to promoting school achievement and preventing early drop-out.

233. The Advisory Committee encourages the authorities to remain open towards supporting the teaching of Romani in whatever form is considered adequate by representatives of Sinti and Roma.

### Participation in public affairs – consultative and elected bodies (Article 15)

234. At federal level, following the addition of a consultative committee on Sinti and Roma issues in 2015, consultative committees have now been established for each of the four recognised national minorities. The committees comprise representatives of associations of national minorities, of the federal and respective *Länder* governments and are chaired by the “Federal Government Commissioner for Matters Related to Ethnic German Resettlers and National Minorities”. Members of the Bundestag from all parliamentary groups also participate in the meetings. Meetings are held once a year, either in the traditional settlement area of the national minorities or in Berlin.<sup>130</sup>

235. In addition to the established consultative structures, the Danish minority continues to be represented by the South Schleswig Voter Association (SSW) in the Parliament of Schleswig-Holstein. The SSW is the only party of a national minority active at *Länder* and federal level and thus benefiting from the more advantageous election system for national minorities and also aims to represent Frisian interests.<sup>131</sup> In September 2021, SSW took part in

proportional seats in the federal state parliaments of Schleswig Holsten and Saxony as well as in the Bundestag. In Brandenburg, no vote threshold applies.

<sup>127</sup> [ACFC Thematic Commentary No. 3](#), para. 76.

<sup>128</sup> [State report](#), pages 220-222.

<sup>129</sup> Reinhold Lagrene (2018), [Djiparmissa – Klassische deutsche Gedichte auf Romanes](#) (Djiparmissa – Classical German poems in Romani).

<sup>130</sup> See overview of the various consultative bodies on the [website of the Minority Secretariat](#).

<sup>131</sup> Parties of national minorities are not subject to the general requirement of passing a 5% vote threshold in order to receive

the elections to the Bundestag for the first time since 1961 and obtained one mandate.

236. For Sinti and Roma, the situation at *Länder* level varies significantly. Separate councils on Sinti and Roma issues exist in Baden-Württemberg, Hesse, Saarland and Schleswig-Holstein, while in some other *Länder*, Sinti and Roma representatives have a seat in councils on integration and migration issues<sup>132</sup> or in national minority councils.<sup>133</sup>

237. Representatives of Sinti and Roma are concerned about a construction project by “Deutsche Bahn” in Berlin, which risks affecting – at least temporarily – the memorial to the Sinti and Roma murdered during national socialism in Berlin. Though views on negotiating positions vis-à-vis the authorities differ within the community, it appears evident to the Advisory Committee that representatives of Sinti and Roma were not consulted early enough in the project’s preparation phase.<sup>134</sup> The Advisory Committee will follow the situation closely.

238. Regarding consultation mechanisms for Sorbs, no changes have been reported for Saxony. In Brandenburg, the amended “Act on the Specification of the Rights of the Sorbs/Wends in the State of Brandenburg” established the function of a Commissioner for Sorbian Affairs at the level of a State Secretary. In 2014 and 2019, members of the Brandenburg’s Council for Sorbian Affairs were voted for in direct elections. The council is an honorary body of the federal state’s parliament consisting of five members and has an advisory role on all issues that affect Sorbian interests.<sup>135</sup> It also nominates the Lower Sorbian representatives in the Foundation for the Sorbian People, whereas those from Saxony are nominated by the umbrella association “*Domowina*”. The Advisory Committee considers the direct election of Brandenburg’s Sorbian Council a good practice as it gives all persons identifying as Sorbs a possibility to stand for and take part in elections. In Saxony, members of the Council for Sorbian Affairs are elected by Landtag upon proposals by Sorbian associations.

239. The Advisory Committee reiterates that “consultation of persons belonging to national minorities is particularly important in countries where there are no arrangements to enable participation of persons belonging to national minorities in parliament and other elected bodies. Consultation alone does not, however, constitute a sufficient mechanism for ensuring *effective* participation of persons belonging to national minorities. (...) It is important to ensure that consultative bodies have a clear legal status, that the obligation to consult them is entrenched in law and

that their involvement in decision making processes is of a regular and permanent nature.”<sup>136</sup>

240. The Advisory Committee welcomes the existence of consultative commissions at federal level, which however meet only once a year and have a solely advisory role. It therefore considers it important that alongside these committees there is ongoing dialogue with policymakers so urgent policy matters are not delayed. The Advisory Committee further regrets that Sinti and Roma are not represented in any consultative councils in more than half of the *Länder*, including in large ones such as Bavaria, Berlin, Lower Saxony, and Saxony.

241. The Advisory Committee strongly encourages the authorities to establish mechanisms for Sinti and Roma to effectively participate in and influence decision-making on all matters affecting them at federal level and in all *Länder*.

### Participation in public affairs – diversity within minorities (Article 15)

242. In the consultative committee at federal level, Sinti and Roma are represented by two organisations, namely the umbrella organisation Central Council of German Sinti and Roma and the Sinti Allianz. In the context of the EU Roma Strategic Framework, ad-hoc consultations are also carried out with organisations focusing on migrant Roma. While some *Länder* (e.g. Hamburg) reported to involve a variety of organisations in their work with Sinti and Roma, the federal authorities seem to distinguish between organisations understood as representing “German” Sinti and Roma and those representing Roma with migrant background. The Advisory Committee observes, however, that Sinti and Roma organisations do not consistently follow this separation in practice. They seem to unite on the basis of issues they consider important rather than according to the criterion of citizenship (see also Article 3). The landscape of Sinti and Roma associations in Germany is increasingly diverse and not all associations feel equally represented by the Central Council in specific problem areas such as education (see Article 12). In August 2021, some 20 organisations set up a new national umbrella organisation, which focuses on combating discrimination in economic life, housing and education as well as on women’s rights.<sup>137</sup>

243. In 2018, a group of Sorbs established a 24-person strong “*Serbski Sejm*” (Sorbian Parliament) based on self-organised elections in which approximately 900 persons participated. The *Serbski Sejm* challenges the claim by the umbrella organisation *Domowina* to alone represent the

<sup>132</sup> Hamburg, North Rhine-Westphalia, Rhineland Palatine.

<sup>133</sup> In Bavaria, Sinti and Roma are represented only in the foundation for the memorial sites in former Nazi concentration camps.

<sup>134</sup> See [statement](#) by the Chair of the Central Council for German Sinti and Roma, Romani Rose, of April 2021. See also [statement](#) of the alliance “Our monument is untouchable” of December 2020.

<sup>135</sup> For more information on the election procedure, see [Fourth Opinion of the Advisory Committee on Germany](#) para. 137 and [state report](#), pages 225-226. 1 200 persons participated in the vote in 2015, 900 in 2019. A similar council exists in Saxony, but its members are not directly elected.

<sup>136</sup> ACFC [Thematic Commentary No. 2](#), paras. 106-107.

<sup>137</sup> dROMa-Blog (5 August 2021): [“Bundesvereinigung in Deutschland gegründet”](#) (Federal association founded in Germany).

interests of the Sorbian minority. In addition to the promotion of culture, language and education, the *Serbski Sejm* demands cultural and educational autonomy and the recognition of Sorbs as an indigenous people.<sup>138</sup>

244. The Advisory Committee reiterates that “when specific consultative mechanisms in respect of an individual national minority are set up, due regard should be paid to the diversity within this group. State Parties are encouraged to periodically review the appointment procedures to make sure that the bodies concerned are as inclusive as possible (...) and genuinely represent a wide range of views amongst persons belonging to national minorities”.<sup>139</sup>

245. The Advisory Committee emphasises that national minorities cannot be expected to identify as a homogenous group because identification with a national minority intersects with other identity markers such as gender, age or political and religious worldview. The Advisory Committee considers, therefore, that the authorities need to take an inclusive approach reflecting the heterogeneity of national minorities in consultation processes and taking the time and resources it needs to reflect accurately the variety of views among persons belonging to a national minority.<sup>140</sup>

246. The Advisory Committee strongly encourages the authorities to create inclusive consultation processes which facilitate and take into account different perspectives within national minorities.

### Socio-economic participation of Sorbs in Lusatia (Article 15)

247. Since the Advisory Committee’s last opinion, the situation as regards lignite mining in the Lusatia region has changed fundamentally. After the political transformation in 1990, several villages in the traditional Sorbian settlement area in Brandenburg and Saxony were relocated due to mining operations and the Advisory Committee had expressed concerns about the risks this entailed for the Sorbs.<sup>141</sup>

248. In 2017, however the German government decided to terminate lignite mining in the medium term to curb carbon dioxide emissions. Consequently, the mining company LEAG shelved its plans for most mines and plans for further relocations of villages were stopped. The village of *Mühlrose* in Saxony is the last one to be resettled; demolition works started in summer 2020. While the main Sorbian association *Domowina* supports the compromise found with the authorities on the resettlement of *Mühlrose* and most people have already moved out, there is still some resistance among Sorbs.<sup>142</sup> In the *Schleife/Slepo* area in Saxony, the inhabitants of two villages<sup>143</sup>, who had already prepared to resettle, can now stay in their villages. According to Sorbian representatives, investments in modern infrastructure is now needed in these places.<sup>144</sup>

249. Generally, Sorbian representatives anticipate that the end of lignite mining bears opportunities, but also considerable risks. The mines are an important economic factor in the region, and their closing down will mean that Lusatia will have to undergo a second drastic structural change, after the first one following reunification. According to representatives of *Domowina*, it is vital that young families continue to find adequately paid jobs and good infrastructure so that they can remain and plan their future in the Sorbian settlement area in Lusatia.<sup>145</sup>

250. In July 2020 the *Bundestag* adopted the “Coal Regions Structural Strengthening Act” setting aside up to €40 billion to support structural change until 2038. The explanatory statement of the act stresses the need to support interests of Sorbs in this context. Representatives of Sorbs welcomed this decision and expressed hope that it paves the way for “effective compensation” for the fact that over the past years “137 places in the Sorbian settlement area were sacrificed for state energy policy”.<sup>146</sup> On the basis of the act, projects benefiting the Sorbian languages and culture will be financed over the coming 10 years, of which for the time being €42.5 million have been reserved for projects in Saxony and €19 million for Brandenburg.<sup>147</sup>

251. The Advisory Committee welcomes that further plans for relocations of villages, which the Advisory Committee has criticised throughout the last four monitoring cycles, have been abandoned. At the same time, it is concerned that due to the end of lignite mining the Lusatia region will lose, in the medium term, an important economic factor, employer and possibly even more population. From the perspective of minority protection, both economic factors and the continued existence of a vibrant Sorbian culture and community are crucial to ensure that young families remain in the region and carry the Sorbian heritage and language into the future.

252. The Advisory Committee calls on the authorities to take all necessary measures in close consultation with Sorbian representatives to ensure that the upcoming structural change in Lusatia following the discontinuation of lignite mining is used as a potential to enhance the attractiveness of the region for young Sorbs both in socio-economic and cultural terms.

<sup>138</sup> See website of the *Serbski Sejm*, available at <https://serbski-sejm.de>.

<sup>139</sup> ACFC [Thematic Commentary No. 2](#), paras. 110-111.

<sup>140</sup> See also ACFC [Thematic Commentary No. 2](#), para. 21.

<sup>141</sup> See [Fourth Opinion of the Advisory Committee on Germany](#), Article 5.

<sup>142</sup> Alternative Report by the *Serbski Sejm* provided to the Advisory Committee in August 2021.

<sup>143</sup> *Rowno/Rohne and Mulchwitz/Mulkecy*.

<sup>144</sup> Comments by *Domowina* to the state report, page 253.

<sup>145</sup> Comments by *Domowina* to the state report, page 253-254.

<sup>146</sup> FUEN (8 July 2020) [“Germany takes a historic step by taking over responsibility for the Sorbs”](#).

<sup>147</sup> Written submissions by the federal state of Brandenburg and Saxony, September 2021.



**Bilateral and cross-border relations (Articles 17-18)**

253. A German-Danish cross-border application was submitted jointly by the Association of Germans in North Schleswig (*Bund Deutscher Nordschleswiger*) and the South Schleswig Association (*Sydslesvigsk Forening*) for the register of good practices for UNESCO intangible heritage in the 2017-2019 round. The title of the application is "The coexistence of minorities and majorities in the German-Danish Border Region". In 2018, two sites with connection to Danish history were added to the UNESCO World Heritage List: the *Danevirke* border landscape and the *Hedeby (Haithabu)* maritime trading centre. In 2020, the 100th anniversary of the Danish-German border region was celebrated, albeit due to Covid-19 in partially in virtual format. The Advisory Committee strongly welcomes these initiatives.

254. As a consequence of the Covid-19 crisis in 2020 and 2021, persons belonging to the Danish minority met with difficulties due to the border closures. After protests by the Danish minority in spring 2020, a number of exceptions

were introduced.<sup>148</sup> Cross-border exchanges with schools in Denmark, which are an important aspect of the Danish education system in Schleswig-Holstein, had however to be cancelled.

255. In the context of multilateral co-operation to promote minority rights, the Advisory Committee notes with interest that the authorities put the fight against antigypsyism on the agenda of Germany's presidencies both of the Council of the European Union (July-December 2020) and of the Committee of Ministers of the Council of Europe (November 2020-May 2021). Furthermore, in 2017 the German authorities helped establish and co-fund the European Roma Institute for Arts and Culture (ERAC) in Berlin, a joint initiative of the Council of Europe, the Open Society Foundations, and the Roma Leaders' initiative – the Alliance for the European Roma Institute.

256. The Advisory Committee welcomes the authorities' efforts with respect to bi- and multilateral co-operation and reiterates the importance of transfrontier contacts in particular for the Danish minority.

<sup>148</sup> See also FUEN, 12 June 2020, [Border closures were a major concern of the Danish minority in Germany](#).

The Advisory Committee on the Framework Convention for the Protection of National Minorities is an independent body that assists the Committee of Ministers of the Council of Europe in evaluating the adequacy of the measures taken by the Parties to the Framework Convention to give effect to the principles set out therein.

The Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and entered into force on 1 February 1998, sets out principles to be respected as well as goals to be achieved by the states, in order to ensure the protection of national minorities. The text of the Framework Convention is available, among other languages, in German.

This Opinion contains the evaluation of the Advisory Committee following its 5<sup>th</sup> country-visit to Germany.

[www.coe.int/minorities](http://www.coe.int/minorities)

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE