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

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### Second Opinion on Germany, Adopted on 1 March 2006

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#### EXECUTIVE SUMMARY

Following the adoption of the first Opinion of the Advisory Committee in March 2002 and the corresponding Committee of Ministers' Resolution in January 2003, Germany has taken a number of steps to improve the implementation of the Framework Convention. It has continued to provide support to national minorities and to take into consideration their specific needs, both at federal and *Länder* level. New structures allowing for minority consultation have been set up at federal level. Efforts to combat all forms of racism and intolerance have been pursued. In 2005, a Law on Immigration came into force, which sets the frame for the development of integration policies.

However, Germany has still not adopted a comprehensive anti-discrimination law. The overall situation of the Roma/Sinti continues to raise concerns, although efforts have been made since the first Opinion. Urgent steps should be taken to ensure equal opportunities of children of Roma/Sinti and immigrants in the education system. Finally, diminishing support to minority education has a negative impact on the preservation of minorities' language, culture and identity, notably with regard to the Sorbian minority schools.

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

**SECOND OPINION ON GERMANY**

1. The Advisory Committee adopted the present Opinion on 1 March 2006, in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on the information contained in the second State Report (hereinafter the State Report) received on 13 April 2005, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visits to Frankfurt (*Hessen*), Heidelberg (*Baden-Württemberg*), Hannover (*Lower Saxony*), Flensburg (*Schleswig-Holstein*), Bautzen (*Saxony*) and Berlin from 9 to 13 January 2006.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Germany. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
3. Both sections make extensive reference to the follow-up given to the findings of the first cycle of monitoring of the Framework Convention, contained in the Advisory Committee's first Opinion on Germany, adopted on 1 March 2002, and in the Committee of Ministers's corresponding Resolution, adopted on 15 January 2003.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Germany.
5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Germany as well as with the representatives of national minorities and others concerned with the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the current Opinion public upon its receipt.

## **I. MAIN FINDINGS**

### **Monitoring process**

6. Germany has adopted a constructive approach to the Framework Convention's monitoring process. It agreed to early publication of the first Opinion of the Advisory Committee and organised a "follow-up" seminar to discuss with representatives of national minorities and of the Advisory Committee the means of implementing the conclusions set out in the Opinion. The Advisory Committee also welcomes the fact that the German authorities added to their comments on the first Opinion the comments of the four recognised national minorities and it encourages Germany to continue this positive practice. In the preparation of its second State Report, Germany continued its practice to consult to the fullest extent the organisations of the officially recognised national minorities. In this respect, the Advisory Committee is gratified that detailed statements of each minority's position are appended to the second Report. The Advisory Committee also appreciates the effort made by the German authorities to reflect as well as possible the situation both at the federal level and at the level of the various *Länder*.

7. Moreover, the Advisory Committee welcomes the regular organisation by the German authorities of conferences on implementation of the Framework Convention, during which the representatives of minorities, local authorities, *Länder* and federal institutions can discuss the implementation of the Framework Convention and the Advisory Committee's recommendations. The Advisory Committee makes the general point that a climate of openness and participation seems to preside over the monitoring procedure as a whole. It also notes that its first Opinion, together with the Resolution of the Committee of Ministers, seem to have been widely circulated to the recognised national minorities, though not translated into their languages.

### **General legislative framework**

8. Since the adoption of the first Opinion, the legislative framework specifically conceived for national minorities has remained largely unchanged, whether at federal level or for the *Länder*, although a few new legislative provisions have come into force, as for example the law of 2004 on Promotion of Frisian in the public sector in the *Land* of Schleswig-Holstein.

### **Scope of the Framework Convention**

9. The German authorities maintain the position that only the four officially recognised national minorities (Danish, Sorbian, Roma/Sinti and Frisian), whose members are German citizens with a long tradition of residence in German territory, can enjoy the rights secured by the Framework Convention.

10. The Advisory Committee has not been informed of specific demands from other groups, particularly those of immigrant origin, to benefit from the protection afforded by the Framework Convention. Still, it noted that there are other groups with specific ethnic, cultural, linguistic or religious identity living in Germany, whose position with regard to the protection of the Framework Convention merits being considered. The Advisory Committee stands by the view expressed during its first monitoring cycle, that the authorities could consider the possibility of including other groups, that do not meet the criteria of citizenship and traditional residence, in the scope of the Framework Convention, on an article-by-article basis.

### **Combating discrimination**

11. The anti-discrimination bills repeatedly submitted to the *Bundestag* during the last few parliamentary terms have still not resulted in the adoption of comprehensive legislation in this field. The Advisory Committee hopes that the *Bundestag's* fresh examination in January 2006 of an anti-discrimination bill will lead to the speedy enactment of comprehensive legislation, which would be an important tool for fighting various forms of discrimination based on ethnic origin, as well as an instrument for promoting equal opportunities, also for persons belonging to national minorities.

12. The Advisory Committee again stresses that, in its view, the absence of reliable data on the situation of minorities obstructs the prevention of racial discrimination and the development of suitable policies to further the equal opportunities of persons belonging to minorities. It emphasises that methods exist whereby such sociological data could be collected while ensuring the protection of personal data.

### **Tolerance, intercultural relations and equal opportunities**

13. The Act on German citizenship of 2000 enabled 787 217 foreigners to acquire German citizenship between 2000 and 2004. Moreover, the Immigration Act of 2004 represented a substantial step forward as it laid the foundation for an active policy on foreigners' integration. The Advisory Committee considers that these changes can in due course contribute to better interethnic relations and tolerance in Germany. They should also enhance the efforts already being made to combat racist manifestations and acts. In this context, the designation in criminal law of racist motives as an aggravating circumstance could also help intensify the efforts undertaken to combat racism and discrimination.

14. The Advisory Committee is concerned about unnecessary disclosure by certain media of individuals' ethnic origin, above all where criminal cases are at issue and where this information is supplied to the press by the police. Therefore it again invites the German authorities to encourage the media to comply with their own rules of conduct and to ensure that rules imposed on public authorities in this regard be fully complied with.

15. Finally, the Advisory Committee remains deeply concerned by the persistent over-representation of children belonging to the Roma/Sinti minority and of immigrants' children in the special schools for under-achievers (*Sonderschulen*) and their under-representation in secondary and tertiary education. It urges the authorities to continue looking for means of improving equal opportunities in the educational system for these pupils.

### **Situation of Roma/Sinti**

16. The Advisory Committee is still concerned over the situation of persons belonging to the Roma/Sinti minority. Although efforts have been made since the first monitoring cycle, the situation remains particularly difficult for part of the Roma/Sinti population in various areas including equal opportunities in the education system and, as a consequence, access to the labour market. The Advisory Committee is also concerned over the negligible participation of persons belonging to the Roma/Sinti minority in public affairs and the scarcity of appropriate communication channels with the authorities. It invites the authorities to develop a targeted long-term strategy at the national level to remedy this state of affairs.

17. The Advisory Committee has also observed that problems persist as regards unjustified collection of ethnic data by the law enforcement authorities despite progress achieved since the first Opinion. Although there no longer seems to be systematic collection by the police of information on the ethnic background of persons suspected of or charged with offences, the Advisory Committee is informed of allegations that certain terms such as “mobile ethnic minority” are unjustifiably used in place of “Roma/Sinti” in the police records. It is also informed of occurrences of data collection targeting persons belonging to certain minorities, especially Roma/Sinti, for the purpose of crime prevention.

18. The Advisory Committee is concerned about this state of affairs, especially in cases where this type of information has been transmitted by the police to the media. It urges the authorities to maintain vigilance as to the unjustified collection of data on the ethnic background of persons suspected of or charged with offences and to ensure that it does not cause discrimination or stigmatisation of persons belonging to certain groups.

### **Policies in support of national minorities**

19. The four officially recognised national minorities receive support, through various channels, from the federal authorities (Federal Commissioner for Culture and Media, Federal Ministry of the Interior) and from the *Länder*, which are responsible for many issues affecting minorities. However, the information received by the Advisory Committee indicates reduction, zero or little growth of these subsidies since the first monitoring cycle. In addition, the Advisory Committee takes note of the fact that there are uncertainties over medium and long-term financing, that can hamper the preparation of projects which would require a longer-term commitment. The Advisory Committee also reminds the authorities of the need to ensure that budgetary cuts and other reductions of state support do not affect minorities more severely than the population at large.

### **Access to the media**

20. As it found during the first monitoring cycle, the Advisory Committee notes that the Frisian language is virtually absent from the media. It is of the opinion that the competent authorities should better accommodate the needs of the Danish and Frisian minorities as regards broadcasting in their respective language, particularly by public television, which could better reflect the existing cultural diversity.

### **Education**

21. Even though advances have been achieved since the first Opinion, teaching of or in the languages of the minorities seems hampered by current budgetary restrictions. Further Sorbian classes and schools have been or will be closed in the *Land* of Saxony, population decline in that region being the grounds invoked. The association of Danish schools complains of inequality in the granting of subsidies for the network of Danish minority schools. The Frisian representatives are concerned about recent decisions to rationalise the teaching of Frisian, which could have negative effects on teaching in and of Frisian. The teaching of Sater Frisian still depends substantially on the voluntary work.

22. The Advisory Committee strongly urges the authorities to reconsider the decisions taken with regard to the Sorbian schools and to confer with the representatives of the Sorbian minority on ways of maintaining the historic network of Sorbian schools. It also invites the authorities to bear in mind that equal treatment for minorities in education presupposes active measures, and

that a reduction in the support granted to teaching of or in the languages of the minorities will have a very significant impact on such teaching and consequently on preservation of the minorities' languages and culture.

### **Participation**

23. Since the first Opinion was adopted, several arrangements for consultation of national minorities at the federal level have been instituted, over and above the various channels of communication existing at the level of the *Länder*. This is a positive development, and the Advisory Committee hopes that the new platforms of consultation and communication will gradually be of a permanent nature and have the resources to work in an extended time-frame. However, Roma/Sinti still lack channels of communication with the authorities, which take due account of the diversity found within this group.

## II. ARTICLE BY ARTICLE FINDINGS

### Article 3 of the Framework Convention

#### Scope of the Framework Convention

##### *Findings of the first cycle*

24. In its first opinion on Germany, the Advisory Committee urged the German authorities to consider the possibility of including other groups than the four official recognised minorities<sup>1</sup> (including German nationals and non-nationals) in the scope of the Framework Convention, on the basis of an article-by-article approach.

##### *Present situation*

##### Outstanding issues

25. The Advisory Committee notes that the German authorities, in accordance with the declaration made on ratification of the Framework Convention, continue to consider the criterion of German citizenship as essential to the enjoyment of rights granted to national minorities and that no substantial dialogue has been started on the applicability of the Framework Convention with representatives of other groups potentially concerned. In the course of its first visit, the Advisory Committee noted that there were other groups, of both nationals and non-nationals, some of whom had been residing in Germany for several decades but whom the authorities did not consider as being covered by the Framework Convention. The Advisory Committee also notes that, between 2000 and 2004, 787 217 foreigners acquired German citizenship, following the entry into force in 2000 of the Citizenship Act.

##### *Recommendations*

26. While the Advisory Committee agrees that citizenship may be considered a legitimate requirement in respect of certain measures taken in compliance with the Framework Convention, it stands by the view expressed in its first Opinion that the authorities should consider including other groups which do not fulfil the citizenship and traditional residence criteria in applying the Convention on an article-by-article basis, in close consultation with the persons concerned. The Advisory Committee adds that the Citizenship Act of 2000 and the Immigration Act of 2004 will, in all probability, speed up the integration into German society of many Turkish and other people with foreign background who, in the Advisory Committee's view, could benefit from certain rights covered by the Framework Convention.

27. In this regard, the Advisory Committee notes the objection raised by the German authorities who fear that granting the protection afforded by the Framework Convention to persons belonging to groups, other than the four recognised national minorities on an article-by-article basis, could give rise to unequal treatment between various groups. The Advisory Committee recalls that the application of the Framework Convention, as well as other international human rights instruments, to persons belonging to different national minorities often requires differentiated treatment according to their specific situation and needs. Moreover, the German authorities are *de facto* applying differentiated measures to respond to the needs of persons belonging to different minorities and this approach cannot in itself be considered as incompatible with the right to equality as set out in the Framework Convention.

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<sup>1</sup> The four groups officially recognised as national minorities are: the Danes, the Frisians, the Roma/Sinti and the Sorbs.

## Article 4 of the Framework Convention

### Combating discrimination

#### *Findings of the first cycle*

28. The Advisory Committee urged the authorities to continue working towards the adoption of a comprehensive anti-discrimination legislation as part of the transposition of European Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic background (Race Directive).

29. The Advisory Committee was also of the opinion that the Government should seek ways of obtaining more reliable data on national minorities and that it should, in particular, make greater effort to assess the socio-economic situation of persons belonging to the Roma and Sinti minority.

#### *Present situation*

##### a) Positive developments

30. The Advisory Committee notes that the draft anti-discrimination law was once again debated in the *Bundestag* in January 2006. It is essential to enact as soon as possible comprehensive anti-discrimination legislation. Such legislation should, in particular, provide victims of discrimination with effective remedies.

31. The Advisory Committee notes with interest the fact that representatives of some minorities have, during the visit of the Advisory Committee, come out in favour of the collection of more accurate socio-economic data on their situation so as to improve policy-making on issues concerning them.

##### b) Outstanding issues

32. The Advisory Committee expresses its strong regret that Directive 43/2000 (Race Directive) has still not been fully transposed into German legislation and that comprehensive anti-discrimination legislation, covering all forms of discrimination, direct and indirect, both from public and private entities, has still not been enacted by the *Bundestag*. The Advisory Committee takes note that the current legislation, despite offering a guarantee of the principles of equality and non-discrimination<sup>2</sup> at federal level and in the various *Länder*, still does not cover in detail certain key areas such as housing, employment, health and access to goods and services. Finally, the Advisory Committee notes that it appears to be difficult, in practice, to obtain reparation for discriminatory or racist acts committed against persons belonging to national minorities or non-nationals.

33. The Advisory Committee also notes that there continues to be a lack of reliable data to help combat discrimination based on ethnic origin in various sectors and develop effective measures to promote equal opportunities for persons belonging to minorities. It points out that the availability of reliable data on the situation of minorities, broken down according to age, sex and geographical distribution, could lead to a significant improvement in policies to promote equal opportunities in various fields, by making it possible to target more closely the needs of minorities and make the necessary adjustments to the measures relating to them. It is well aware of the opposition in Germany to the gathering of data on ethnic background, given the abuse

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<sup>2</sup> See the first Opinion of the Advisory Committee on Germany and the 3<sup>rd</sup> ECRI report on Germany.

made of such information in the Nazi period. However, it notes, as already stated in paragraph 31 above, that certain representatives of minorities have, during the visit of the Advisory Committee, come out in favour of the collection of more complete and accurate information on their situation being collected in order to improve policies specific to them.

34. The Advisory Committee further notes from the information it has received, and even in the absence of detailed statistical data in this respect, that persons belonging to the Roma/Sinti minority continue to find it more difficult than the rest of the population to gain access to employment. This is partly the case because of discrimination against them in accessing the labour market but also because of a lack of skills linked to existing barriers to equal opportunities in the educational system (see remarks regarding Article 12 hereinafter).

35. The Advisory Committee has also been informed that Roma/Sinti have allegedly been refused services in public places and that there are occasionally tense relations with the police which can take the form of more frequent controls, according to information received by the Advisory Committee.

36. The Advisory Committee further notes that there appears to be no overall policy to move towards increased equal opportunities for the Roma/Sinti and that the National Social Inclusion Plans do not contain specific measures designed for them even though, according to information reaching the Advisory Committee, their situation in various fields seems to be noticeably worse than that of other groups and the majority population (see also the comments regarding Article 6 and 12).

#### *Recommendations*

37. The Advisory Committee urges the authorities to ensure that comprehensive anti-discrimination legislation soon be enacted and that the debate in the Bundestag be echoed in broad public debate on the issue of discrimination. The fight against discrimination, as the German authorities have stressed, necessitates public awareness-raising and the Advisory Committee therefore encourages the authorities to continue and step up their efforts in this field.

38. The Advisory Committee urges the authorities to consider the possibility to collect socio-economic and other data using methods offering adequate personal data protection, such as, for instance, sociological studies or surveys. It would also be possible to carry out studies which do not require the individuals surveyed to be identified or which offer a guarantee that any identifying information would be destroyed. Such studies should be based on full consent of the people concerned and the process should provide them with all the necessary information.

39. The Advisory Committee strongly urges the German authorities to address as a matter of priority the disadvantages, due to discrimination, encountered by persons belonging to the Roma/Sinti minority and to step up efforts to narrow the gap between persons belonging to the Roma/Sinti minority and the rest of the population. The Advisory Committee is of the opinion that the authorities should give thought to a targeted and long-term strategy at national level to improve the situation of the Roma and Sinti, possibly by including the latter in the target groups listed in the National Social Inclusion Plans prepared in the context of the European Union.

40. It also believes that the authorities could consider the possibility, already recommended by the European Commission against Racism and Intolerance (ECRI)<sup>3</sup>, of introducing a system of registration in connection with police checks that would enable individuals to document how

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<sup>3</sup> European Commission against Racism and Intolerance, 3<sup>rd</sup> report on Germany, 05/12/2003. Doc. CRI (2004 )23.

frequently they are checked, in order to identify possible patterns of direct or indirect racial discrimination.

### **Gathering of crime-related data**

#### *Findings of the first cycle*

41. The Advisory Committee encouraged the federal authorities and the *Länder* to review the various methods used by the *Länder* to gather crime-related data of an ethnic nature in order to ensure that such methods were fully in compliance with the principles set out in Article 3 of the Framework Convention.

#### *Present situation*

##### a) Positive developments

42. The Advisory Committee notes that the Federal Criminal Police Office (BKA) has assured the Federal Data Protection Commissioner that it did not maintain any database containing information of an ethnic nature. Following an enquiry by the Commissioner in four *Länder* in 2004, it was found that in one Land, there were individual notes mentioning the ethnic background of certain suspects or persons held on remand. The Federal Commissioner requested that this information be deleted.

43. A Directive was issued in 2005 to the police by the Bavarian Ministry of the Interior forbidding the use of substitute terms in police files, further to the prohibition in 1998 of using ethnic characteristics, such as “Roma/Sinti” in police description forms.

##### b) Outstanding issues

44. The Advisory Committee is concerned about allegations of undue use of substitute descriptions which make it possible to identify the ethnic origin of suspects or perpetrators, especially in cases when this type of information was provided by the police to the media (see comments related to Article 6). The Advisory Committee was informed, in particular, about the use in certain police files of the expression “mobile ethnic minority” to refer to the Roma/Sinti, despite the above-mentioned circular from the *Land* of Bavaria.

45. The authorities informed the Advisory Committee in the course of its visit that while no database containing information of an ethnic nature was kept, information could be gathered in particular cases where such information was necessary, for example in order to combat crime which would be, according to the authorities, specific to persons belonging to a particular ethnic group. The Advisory Committee has also received information indicating that the names of people belonging to the Roma/Sinti communities have on some occasions been recorded in police files for the purposes of crime prevention, solely on the basis of their belonging to these minorities. The Advisory Committee believes, however, that associating specific types of criminality with a particular ethnic group is not acceptable under the Framework Convention.

#### *Recommendations*

46. The Advisory Committee urges the authorities to continue to be vigilant as regards the gathering of data on the ethnic background of criminal suspects. The authorities should ensure that this does not lead to discrimination against persons belonging to certain groups or to their being stigmatised.

## Article 5 of the Framework Convention

### Policies for supporting national minorities

#### *Findings of the first cycle*

47. In its first Opinion, the Advisory Committee urged the German authorities to simplify and clarify the financial support system for minority languages and cultures. It also felt that the German Government should ensure that all requests for financial support from the different organisations representing persons belonging to Roma/Sinti groups should be carefully considered.

#### *Present situation*

##### a) Positive developments

48. The federal authorities have continued to offer financial support to the four officially recognised national minorities. The Advisory Committee believes that this demonstrates the will of the German authorities to pursue their policy of supporting preservation of the culture and identity of persons belonging to these four minorities. In addition, the regular awarding of grants to these groups, through specific budgetary lines, is a form of acknowledgement of the needs of persons belonging to minorities and the Federal State's responsibility towards them. The Advisory Committee welcomes this, as well as the commitment made by the present government in Germany to continue to protect and promote recognised national minorities.

49. The Advisory Committee also welcomes the entry into force of the Frisian Language and Culture Act in Schleswig-Holstein in 2004, which reinforces the status of the Frisian minority in this *Land*.

50. Finally, the Advisory Committee welcomes the signing of an agreement by the *Land* of Rhineland-Palatinate in 2005 affirming the status of the Roma/Sinti as a national minority, which will allow them to access funds for activities aimed at preserving the Romani culture and language and it encourages other *Länder* to take a similar approach.

##### b) Outstanding issues

51. Apart from the fact that subsidies for minorities have in general been reduced in recent years, the main problem identified by the Advisory Committee with regard to financial support for minorities is the lack of any stable prospects of sustained support for core funding, which jeopardises the continuity of the minorities' work. The Advisory Committee has noted that even though funds have been earmarked in the case of the Frisians until 2009, their allocation each year will depend on budgetary negotiations at both federal and *Länder* level. As a result, annual arrangements for the awarding of financial support for minorities depend a lot on the political circumstances, thereby contributing to the feeling of uncertainty over the future. This uncertainty over medium and long-term financing hampers the preparation of projects which would require a longer-term commitment.

52. Moreover, the Advisory Committee reminds the authorities that equal opportunities for persons belonging to minorities often requires positive action, and that general budgetary cuts and other restrictions on state support risk having a greater negative impact on minorities than on the majority population. Furthermore, access to European Union funds for projects is often difficult for very small groups, such as the Frisians of Saterland.

53. The Advisory Committee notes that resources are allocated to the recognised minorities on the basis of a separate dialogue with each of the minorities concerned, whereas there is no multilateral forum to discuss such issues. The justification for this is that each of the groups has different needs and the Federal Government's obligations differ accordingly<sup>4</sup>.

54. It appears that Roma/Sinti groups receive proportionally less support than other groups, particularly as the federal funds are not supplemented by regular funding from the *Länder*, as is the case for groups with a traditional area of compact residence. Moreover, in some *Länder*, the amount of financial support to Roma/Sinti organisations has decreased since 2004, which puts at risk work in favour of Roma/Sinti. The Advisory Committee also notes that all of the federal funds for the Roma/Sinti are allocated via one umbrella organisation.

55. Finally, the Advisory Committee notes that the Roma and Sinti are not listed in any of the constitutions of the *Länder*, alongside other particular groups which are guaranteed rights for the purposes of minority protection. It notes that the only attempt in this regard has been in Schleswig-Holstein, where the parliament has so far failed to achieve a sufficient majority to include the Roma/Sinti on the same footing as the Danes and Frisians in the constitution of the Land. Such an inclusion in the *Länder* constitutions could positively impact on the support given to them at the *Länder* level.

#### *Recommendations*

56. The Advisory Committee believes that the federal authorities and those of the *Länder* concerned, should ensure that allocating funds to minorities allows for activities over a sustained period of time.

57. The authorities should also ensure that budgetary restrictions do not hamper the continuity of activities in favour of preservation of culture and identity of minorities.

58. The Advisory Committee believes that multilateral discussions should take place, especially at federal level, regarding the allocation of funds to different groups, in addition to the discussions between the authorities and each of the groups individually on their respective needs. This could lead to greater transparency in the decision-making process.

59. In connection with Federal State support for the Roma/Sinti, the Advisory Committee is of the opinion that the authorities should take fully into account the diversity of the Roma/Sinti communities. It believes that a more flexible attitude with regard to the distribution of funds would help develop a variety of projects and activities, reflecting existing diversity among Roma/Sinti communities.

60. Finally, the Advisory Committee encourages the competent authorities to include the Roma/Sinti amongst the groups which benefit from specific protection under the constitutions of the *Länder* as it could help with the development of related support policies.

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<sup>4</sup> The Federal State is bound by the Bonn-Copenhagen Declarations of 1955 with regard to support for persons belonging to the Danish minority and by the German Reunification Agreement for the Sorbians. For the Roma and Sinti, the state holds that it has a responsibility over and above that of the *Länder* since the Roma and Sinti are to be found throughout Germany. Finally, it has also provided support for the Frisians since 2000.

## **Lignite quarrying in the Land of Saxony and its possible consequences for the Sorbian minority**

### *Findings of the first cycle*

61. In its first Opinion, the Advisory Committee was deeply concerned by the resettlement of the mainly Sorbian population of Horno in Lower Lusatia (Brandenburg) because of lignite quarrying. It called on the German authorities to take due account of Article 5 of the Framework Convention when weighting any public interest against the legitimate aspirations of the Sorbian people to maintain their culture and preserve their identity.

### *Present situation*

#### Outstanding issues

62. The Advisory Committee has been informed of the possibility of new relocations, with effect from 2010, affecting Saxon villages where part of the population is Sorbian, because of plans for further lignite quarrying in the region of Schleife/Trebendorf. Such relocations might further undermine possibilities for persons belonging to the Sorbian minority to maintain their culture and their identity and could potentially imply concerns under Article 5 and Article 16.

### *Recommendations*

63. The German authorities should, in cases where it is found necessary to pursue a public interest to relocate villages in this region, take due account of the interests of the Sorbian population, its right to maintain and develop its language, culture and identity and to preserve certain institutions such as schools developing Witaj projects<sup>5</sup>. The authorities should also ensure that the concerned Sorbian population be fully integrated in the process of decision-making on possible further relocations.

## **Article 6 of the Framework Convention**

### **Integration and community relations**

#### *Findings of the first cycle*

64. The Advisory Committee considered that it was important for the authorities to make additional efforts in their integration policies for immigrants.

65. The Advisory Committee also noted that children of Roma/Sinti and immigrants were over-represented at lower secondary school level and in special remedial schools, and correspondingly under-represented in intermediate and grammar schools.

#### *Present situation*

##### a) Positive developments

66. The Advisory Committee notes that, through the Law on Citizenship of 2000, the acquisition of German citizenship has been made easier and 787 217 foreigners acquired it between 2000 and 2004.

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<sup>5</sup> Pre-school immersion education programmes aimed at promoting bilingualism from an early age. Rohne, in the Schleife region, has a nursery school working on the Witaj model.

67. The Advisory Committee also welcomes the entry into force in 2005 of the new Immigration Act which, for the first time, recognises that Germany is a country of immigration and that it therefore needs to develop an integration policy for immigrants. This will clearly have positive effects on the fight against racism and xenophobia. Programmes to ease integration of immigrants have since been put in place, including classes of German culture and language and the setting up of counselling offices for immigrants.

b) Outstanding issues

68. The Advisory Committee takes note of difficulties in the implementation of the Immigration Act and of the related fact that many immigrants continue to reside in Germany on the basis of a temporary authorisation (*Duldung*). This may contribute to uncertainty and insecurity in which many immigrants live and limit their opportunities for integration. It would also appear that there have been problems in implementing the 2000 Citizenship Act, particularly for persons who cannot renounce their original citizenship.

69. The Advisory Committee is concerned about manifestations of islamophobia in Germany recorded over the last few years. In this respect, it is of the opinion that measures such as specific questionnaires addressed to applicants for German citizenship, if addressed only to some groups such as Muslims, would not only be discriminatory but would also be incompatible with the principle of mutual respect and understanding as enshrined in the Framework Convention.

70. With respect to education, the Advisory Committee is deeply concerned that the situation which it described in its first Opinion has not improved. It observes that pupils from immigrant and Roma/Sinti families are still over-represented in special schools for under-achievers (*Sonderschulen*) and correspondingly under-represented in intermediate and grammar schools<sup>6</sup>. In this regard, the Advisory Committee is particularly concerned about the situation of girls and young women. The presence of Roma/Sinti and immigrant children in pre-school education/nursery classes is minimal and, at the other end of the system, they are disadvantaged in their transition to the labour market.

71. The Advisory Committee finds that, in most cases, Roma residing in Germany without German citizenship do not qualify for the measures taken for Roma/Sinti holding German citizenship, even though some of these measures could prove relevant to their situation, for instance in the field of education. Their integration is, therefore, made more difficult and relations with the majority population can sometimes be tense.

72. The Advisory Committee considers that the treatment of Roma asylum seekers who risk being repatriated deserves particular attention and should reflect the principles of Article 6 of the Framework Convention.

*Recommendations*

73. The Advisory Committee urges the German authorities to monitor the implementation of the new integration policy in order to be able to evaluate its impact as promptly as possible and, where necessary, make the appropriate adjustments. It also calls on the authorities to ensure that implementation of the 2000 Citizenship Act meets its objectives and increases integration opportunities for those acquiring German citizenship.

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<sup>6</sup> EUMC, 2004, *Analytical report on education in Germany*, by National Focal Point for Germany/European Forum for Migration Studies (EFMS), by Gisela Will & Stefan Rühl.

74. The Advisory Committee strongly urges the German authorities to adopt measures to improve equal opportunities for children of immigrants and asylum seekers in the education system, with particular emphasis on girls and young women.

75. Finally, the Advisory Committee believes that the authorities should take a more flexible approach with regard to the Roma residing in Germany without holding German citizenship and consider the possibility to allow them to benefit from measures in favour of Roma/Sinti holding German citizenship wherever relevant.

### **Fight against racism and intolerance**

#### *Findings of the first cycle*

76. The Advisory Committee encouraged the German authorities to pursue its fight against racist, xenophobic and antisemitic crimes as a matter of priority.

#### *Present situation*

##### a) Positive developments

77. The Advisory Committee notes with satisfaction that efforts by the authorities to fight against racially motivated violence, xenophobia and antisemitism are continuing. It particularly takes note of efforts to develop preventive action and support granted to various projects aiming at fighting racism and promoting better intercultural relations.

##### b) Outstanding issues

78. The Advisory Committee notes that many of the people it met in the course of its visit, especially in some regions of the country, remain concerned about racist, xenophobic or antisemitic criminal acts. The Advisory Committee also notes that Roma recently arrived in Germany seem to be occasionally targets of racist and xenophobic slanders or other acts. It further notes that under German criminal law, as it currently stands, there is no provision for making racist motivations of offences an aggravating circumstance.

#### *Recommendations*

79. The Advisory Committee urges the German authorities to consider stipulating explicitly that racist motivations constitute an aggravating circumstance for any offence<sup>7</sup>. The Advisory Committee further encourages the authorities to step up their efforts to combat all forms of racism, antisemitism and islamophobia.

80. The Advisory Committee also invites the authorities to pay particular attention to hostility against Roma/Sinti, including those without German citizenship, and to ways of tackling it.

### **Media portrayal of minorities**

#### *Findings of the first cycle*

81. The Advisory Committee called on the German authorities to encourage the media to comply to the letter with their own rules of conduct and to review the effectiveness of the complaints procedures they had established.

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<sup>7</sup> As had already been recommended by ECRI in its third report on Germany and in addition to the Advisory Committee's comments on the need to have a complete legislative framework to combat all forms of discrimination.

*Present situation*

## Outstanding issues

82. The Advisory Committee notes with concern the ongoing publication of press articles making unnecessary reference to the ethnic background of those arrested, particularly in cases involving persons belonging to the Roma/Sinti minority and immigrants. It once again notes that information available to the media on ethnic backgrounds sometimes comes from police sources.

83. Although it is aware that certain sections of the German media strive to combat negative stereotypes of minorities by publishing positive articles concerning them, the Advisory Committee notes that certain sections of the media do not comply with the code of conduct drawn up by the Federal Press Council, in particular its recommendation concerning the prohibition to stir up prejudices against members of minority groups<sup>8</sup>, as shown by recent cases where the ethnic background of suspects and those held on remand belonging to the Roma/Sinti minority has been unduly underlined by journalists. This clearly reinforces stigmatisation of this group.

84. Some *Länder* have also requested that press releases by public authorities should not indicate persons' ethnic origin concerning criminal cases, except when omitting this fact harms understanding of the information. Still, the Advisory Committee was informed of cases in which the ethnic origin of suspects was made public by the authorities.

*Recommendations*

85. As in its first Opinion, the Advisory Committee invites the authorities to encourage the media to comply with their own rules of conduct, in the spirit of the Committee of Ministers' Recommendation N° R (97) 21 on the media and the promotion of a culture of tolerance.

86. The Advisory Committee is also of the opinion that further support for journalists' training programmes and other measures aimed at promoting accurate and balanced reporting on minorities should be encouraged.

87. The Advisory Committee invites the authorities to ensure that rules imposed on public authorities concerning protection of personal data be fully complied with.

**Article 9 of the Framework Convention****Access of minorities to the media***Findings of the first cycle*

88. The Advisory Committee recommended that the competent authorities examine the possibility of supporting the creation of programmes aimed especially at the Danish minority.

89. The Advisory Committee was also of the opinion that the German authorities should contemplate increasing the presence of Frisian in the media.

*Present situation*

## a) Positive developments

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<sup>8</sup> Section 12 of the German Press Code of Conduct.

90. The Advisory Committee welcomes the introduction of a radio broadcast in Sater Frisian supported by the *Land* of Lower Saxony, as a pilot experiment. It expects that this will be continued.

b) Outstanding issues

91. The Advisory Committee notes that the presence of minorities and their languages in the media remains in general weak. It recalls in this connection that implementing active policies in favour of using minority languages in the media, when properly implemented, do not harm the freedom of the media.

92. The Advisory Committee notes, in particular, that persons belonging to the Danish minority still do not have broadcasts specifically aimed at them and that programmes broadcasted in Denmark cannot sufficiently address their needs. In addition, the Advisory Committee has been informed of concerns related to the process of digitalisation of the media, whose likely effect is that people living at some distance from the Danish border will no longer be able to receive Danish television broadcasts.

93. Finally, the Advisory Committee observes that public service television does not broadcast any programme in Frisian and that this language remains sparsely present in the media landscape in general.

*Recommendations*

94. The Advisory Committee is of the opinion that the competent authorities should better accommodate the needs of the Danish and Frisian minorities as regards broadcasting in their respective languages, particularly on public television.

95. The Advisory Committee invites the authorities to take steps to ensure that public service media reflect more fully the cultural diversity of society.

96. The Advisory Committee invites the competent authorities to ensure that the developments linked with digitalisation of the media do not hamper access of persons belonging to the Danish minority to media in their own language.

**Article 10 of the Framework Convention**

**Use of Danish, Frisian and Sorbian in dealings with administrative authorities**

*Findings of the first cycle*

97. The Advisory Committee noted that there was interest in developing the use of these languages in official dealings, whatever the percentage of speakers.

98. The Advisory Committee welcomed the initiatives taken in Schleswig-Holstein with regard to the use of Frisian and/or Danish, particularly the fact that proficiency in minority languages is recognised as an additional criteria in the recruitment of civil servants.

99. The Advisory Committee was nevertheless concerned about possible shortcomings in the implementation of the existing statutory provisions concerning the use of Sorbian in the *Länder* of Saxony and Brandenburg.

*Present situation*

## a) Positive developments

100. The Advisory Committee welcomes the entry into force of the Act on the promotion of Frisian in the public sphere in Schleswig-Holstein in 2004. The Act should give fresh impetus to efforts to preserve the Frisian language and widen its use in the public sphere. It also welcomes the initiatives to develop civil servants' Danish language skills. It further notes the bill being discussed by the Parliament of Schleswig-Holstein seeking, among other aims, to add proficiency in Frisian as a criterion for the recruitment of civil servants in the areas inhabited by the Frisian minority.

101. Proficiency in Sorbian is now a competency included in the files of job-seekers registered with employment agencies in the area of Sorbian settlement (in the bilingual areas).

## b) Outstanding issues

102. The Advisory Committee takes note of the fact that use of Sorbian in contacts with the authorities, while officially possible, is practised only to a limited extent in the *Länder* of Saxony and Brandenburg. In this connection, it recalls that the perfect command of German possessed by persons belonging to minorities is not a reason to refrain from encouraging the use of minority languages in the public sphere and from introducing positive measures in accordance with Article 10 of the Framework Convention.

103. Taking account of proficiency in the language or languages of minorities as a criterion for recruiting civil servants in the areas of traditional settlement is, in the Advisory Committee's experience, an incentive to the use of these languages. Therefore, this criterion ought not to be seen by the German authorities as discriminating against non-speakers of the minority language, but as an act that fosters the use of the language concerned in the area inhabited by the minority in question.

*Recommendations*

104. The Advisory Committee considers that the authorities should continue their efforts to develop the use of languages of the minorities in dealings with the authorities, especially with regard to the Sorbian language, and to ensure that the existing legislation in this field be fully implemented. The progress achieved in Schleswig-Holstein in this respect could be drawn upon in other *Länder* as well.

**Article 11 of the Framework Convention****Bilingual signposting***Findings of the first cycle*

105. The Advisory Committee expressed the wish that bilingual signposting for the benefit of North Frisians, already well advanced, should be completed rapidly. On the other hand, it expressed some concerns over the Sorbian area, where the local authorities seemed reluctant to replace monolingual signs with bilingual ones.

*Present situation*

## a) Positive developments

106. The Advisory Committee welcomes the entry into force of the Act on the promotion of Frisian in the public sphere, the effects of which include the further extension of bilingual signposting for the benefit of North Frisians in Schleswig-Holstein.

b) Outstanding issues

107. The Advisory Committee notes that, according to the information which it was able to obtain, only limited progress has been made with the introduction of bilingual signs in areas where Sorbian language is spoken, and especially in the *Land* of Brandenburg. Furthermore, there remain differences of opinion between the authorities and the representatives of the Sorbian minority over the attachment of certain municipalities in Brandenburg to areas where Sorbian language is spoken.

*Recommendations*

108. The Advisory Committee urges the German authorities to ensure that the legislation on bilingual signposting is fully implemented in the areas where Sorbian is spoken.

**Article 12 of the Framework Convention**

**Roma/Sinti in the education system**

*Findings of the first cycle*

109. The Advisory Committee noted that children of Roma/Sinti (and of immigrants, see remarks with regard to Article 6) were over-represented at lower secondary school level and in special remedial schools, and correspondingly under-represented in intermediate and grammar schools.

*Present situation*

a) Positive developments

110. The Advisory Committee has been informed of the setting up of numerous support programmes on behalf of children of Roma/Sinti and of immigrants in the various *Länder* to assist the inclusion of these children in the school system.

b) Outstanding issues

111. The Advisory Committee is deeply concerned about the fact that Roma/Sinti children are still over-represented at lower secondary school level and in special remedial schools (*Sonderschule*), and correspondingly under-represented in intermediate and grammar schools. The presence of children from these minorities in pre-school education/nursery classes is minimal.

*Recommendations*

112. The Advisory Committee strongly urges the German authorities to adopt measures to improve participation of Roma/Sinti children in the education system, on an equal footing with others. Among other measures, they should encourage greater participation by these categories of Roma/Sinti children in pre-school education/nursery classes, and increase teachers' awareness of the cultural differences and needs.

## **Multicultural curricula**

### *Findings of the first cycle*

113. The Advisory Committee expressed the wish that the authorities would continue in their efforts to extend the multicultural and multi-ethnic content of school curricula, even in areas outside those traditionally inhabited by national minorities.

### *Present situation*

#### a) Positive developments

114. The Advisory Committee welcomes the projects that continue to be conducted at the level of the *Länder*, as described in the State Report, to promote better knowledge of the culture and history of minorities.

#### b) Outstanding issues

115. As already mentioned under Article 6, the Advisory Committee notes that more efforts could be made to disseminate information on the culture and history of minorities among the majority population. Despite existing programmes to encourage tolerance and combat racism, the Advisory Committee notes that the information delivered to pupils concerning cultural diversity is not always adequate. In particular, information on Roma/Sinti history and culture could be improved.

### *Recommendations*

116. The Advisory Committee is of the opinion that the authorities should pursue their efforts aiming to include information in textbooks on history, culture and traditions of the various groups living in Germany, including outside the areas inhabited traditionally by national minorities.

117. In particular, the Advisory Committee considers that there should be more extensive instruction concerning Roma/Sinti history and culture under the school syllabi and teacher training programmes.

118. Furthermore, the dissemination of information on the Holocaust of Roma/Sinti to the general public should continue to be systematically supported.

## **Teacher training**

### *Findings of the first cycle*

119. The Advisory Committee considered it important to take account of the concerns expressed by certain representatives of the Sorbian minority regarding centralisation of provision for further teacher training in Sorbian at the University of Leipzig and of the clear need for the University of Leipzig to provide adequate training in Lower Sorbian as well.

### *Present situation*

#### a) Positive developments

120. The Advisory Committee notes with satisfaction that positive developments have occurred in the field of teacher training. According to the information obtained, Frisian language training modules have been introduced into teacher training in Schleswig-Holstein. It also

appears that in Saxony, Sorbian mother tongue entrants to teacher training in this *Land* have the assurance of obtaining a teaching post in the Sorbian schools or classes.

121. Several projects have been launched to train Roma/Sinti assistants for the classes attended by many children belonging to this minority, in order to help them overcome possible difficulties.

b) Outstanding issues

122. The Advisory Committee finds that the projects or programmes for introducing Roma/Sinti mediators into schools are marred by a lack of continuity in the funding and support provided, which prevents sustainable results from being achieved.

123. The Advisory Committee has been informed that there is a lack of teachers of the Frisian language. In this context, it is concerned about the recent decision to close down the Chair of Frisian language at the University of Flensburg.

124. The Advisory Committee notes that the number of teachers of the Sater Frisian language is insufficient, that teacher training is provided essentially by volunteers and that the preparation and production of educational material for the teaching of Sater Frisian is also based on voluntary work.

125. The Advisory Committee again refers to the concerns expressed by Sorbian representatives following the centralisation in Leipzig of provision for teachers' further training in Sorbian, particularly as regards the implications for the quality of the instruction given in Lower Sorbian.

*Recommendations*

126. The Advisory Committee is of the opinion that the authorities should continue to develop training of teachers involved in minorities' education.

127. The Advisory Committee encourages the authorities at the level of the *Länder* and at federal level to provide ongoing support for projects for Roma/Sinti children, particularly by means of the programmes to appoint Roma/Sinti teaching assistants and mediators. It should be ensured that such assistants receive high-quality vocational training.

**Article 13 of the Framework Convention**

**Funding of schools for the Danish minority in Schleswig-Holstein**

*Findings of the first cycle*

128. The Advisory Committee encouraged the authorities to maintain a dialogue with the Danish minority to find an appropriate solution to the problem of funding its network of private schools, which is the only existing option for persons belonging to the Danish minority to receive education in their own language.

*Present situation*

a) Outstanding issues

129. The Advisory Committee takes note of the concerns expressed by persons belonging to the Danish minority with regard to decreasing subsidies for school transportation of pupils

attending Danish minority schools. This may impact negatively on the commendable practice of equal funding for all pupils and might threaten the existence of certain Danish minority primary schools. The Advisory Committee reminds the competent authorities of the need to ensure that budgetary restrictions do not affect minorities more than the population at large.

#### *Recommendations*

130. The Advisory Committee urges the authorities to take full account of the need to guarantee equal access to education for persons belonging to minorities, and encourages them to find an appropriate solution to the problems of funding of the Danish minority education system.

### **Article 14 of the Framework Convention**

#### **Teaching of and in Sorbian**

##### *Findings of the first cycle*

131. The Advisory Committee urged the authorities to give serious consideration to the persisting threats of closure of Sorbian schools so as to secure the long-term future of the historic network of Sorbian schools in the area traditionally inhabited by this minority.

##### *Present situation*

#### a) Positive developments

132. The Advisory Committee welcomes the recent introduction in the *Land of Saxony* of new school syllabi including learning of Sorbian at primary and secondary level.

#### b) Outstanding issues

133. As in its first Opinion, the Advisory Committee remains deeply concerned about the continued steps to close the Sorbian secondary schools, particularly the 5<sup>th</sup> class of the Radibor secondary school<sup>9</sup>, the threatened closure of the Panschwitz-Kukau school and thus, the reduction of the number of Sorbian schools in the Kamenz district from four to two. Though well aware of the demographic recession affecting the *Land of Saxony*, which is the principal cause of the closure of many schools in the *Land* as a whole, it reminds the authorities that these schools situated in the heart of the Sorbian settlement areas are essential not only for educational reasons but also for the preservation of Sorbian language and culture, which are affected by difficult economic and demographic conditions. It is also of the opinion that the closure of secondary classes and schools could run counter to the significant advances achieved towards revitalisation of Sorbian, particularly under the Witaj schemes.

134. It also observes that the legislation of the *Land of Saxony* allows exceptions to be made to the minimum thresholds for Sorbian classes. Such exceptions are applied in a certain number of cases but not in respect of the secondary schools referred to above.

135. The Advisory Committee also takes note of the wish expressed by several Sorbian representatives to move towards more independent management of the Sorbian schools network, on the same pattern as the network of Danish schools, in order to accommodate to the extent possible the Sorbian community's educational and linguistic needs, including by means of the establishment of a foundation for Sorbian education.

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<sup>9</sup> Note that the decision to close down this class is in abeyance for the time being, pending a judicial ruling in proceedings brought by Radibor pupils' parents.

*Recommendations*

136. The Advisory Committee strongly urges the authorities to reconsider the decisions to close down Sorbian classes or schools taking into account the damage that these decisions are likely to cause to the preservation of Sorbian language and culture. It urges the authorities to apply the exemptions to the minimum threshold to secondary Sorbian schools and classes, which are at risk of closing down.

137. The Advisory Committee again urges the authorities to seek ways of ensuring the survival of the historic network of Sorbian schools. It invites the authorities to consider the proposal of the Sorbian minority representatives to establish a foundation for the Sorbian education as a possible means of contributing to the survival of the network of Sorbian schools.

**Teaching of Frisian and Sater Frisian**

*Findings of the first cycle*

138. In its first Opinion, the Advisory Committee considered that the authorities should examine ways of developing and financing more Frisian language teaching hours, also at levels beyond primary school.

*Present situation*

a) Positive developments

139. The Advisory Committee welcomes the formation of a working group with representatives of the Frisian minority and of the Schleswig-Holstein Ministry of Education to develop the teaching of Frisian. It welcomes the pilot project devised by the working group to introduce the study of Frisian as part of the regular curriculum in the fifth and sixth classes, with the further aim of extending it to classes 7-10 as well.

140. The Advisory Committee welcomes the introduction of Sater Frisian as a teaching subject in primary schools in the area traditionally inhabited by the Saterland Frisians.

b) Outstanding issues

141. Following a decision by the Schleswig-Holstein State Audit Board (*Landesrechnungshof*) in 2005, it was decided to rationalise the teaching of Frisian, that is to reduce the number of Frisian classes, restrict them to the localities of traditional settlement, move towards an offer based on the explicit and written demand of pupils' parents and impose a threshold of 12 pupils by class of Frisian. The Advisory Committee underlines that the objectives of rationalising for economic reasons should not be pursued if they undermine teaching of Frisian - or other minority languages - which is important for the preservation of the Frisian language.

*Recommendations*

142. The Advisory Committee considers that for lasting results to be achieved, it would be important to ensure continuity in teaching of the language beyond the early years of schooling. It accordingly hopes that the pilot project on introducing Frisian into the 5<sup>th</sup> and 6<sup>th</sup> classes can in future be extended to classes 7-10.

143. In addition, the Advisory Committee invites the authorities concerned to take account of the educational needs of the Saterland Frisians and to step up official efforts for the preservation of their language through education.

144. Finally, the Advisory Committee invites the authorities to give particular attention to the needs of dispersed members of minority groups in educational matters.

## **Article 15 of the Framework Convention**

### **Consultation bodies and participation of persons belonging to minorities in political life**

#### *Findings of the first cycle*

145. The Advisory Committee welcomed the fact that a consultative committee for the Danes had been set up at federal level. It highlighted the positive example of the Foundation for the Sorbian People but suggested that the Sorbian minority be given greater representation on this body.

146. It also noted with concern that further significant effort was required to ensure effective participation by the Roma/Sinti.

#### *Present situation*

##### a) Positive developments

147. The Advisory Committee welcomes recent developments in the representation and consultation of the officially recognised national minorities at federal level. It refers in particular to the creation of a public position of the Secretariat of Minorities, tasked with representing the minorities which are members of the Minorities Council<sup>10</sup> in their dealings with the federal institutions, and in particular the Federal Ministry of the Interior. It also highlights the importance of other communication and consultation bodies such as the *Bundestag* parliamentary working panel on minorities and the Federal Commissioner for Repatriates and National Minorities. Finally, it welcomes the regular holding of conferences by the Federal Government on implementation of the Framework Convention, which are an additional means of communication and dialogue with representatives of minorities.

148. The Advisory Committee stresses that these various mechanisms represent a real instrument for minorities to have their voice heard, particularly with regard to the policies and legislation of direct concern to them. The Advisory Committee feels that this is all the more important now that a debate on reform of federalism has begun, the outcome of which will be of obvious interest for national minorities. The Advisory Committee notes the opinion of several representatives of minorities who take the view that policies for minorities could be better co-ordinated between the *Länder* and the federal authorities. They argue that the reform of federalism could help clarify the responsibilities of each level of Government with regard to policies for minorities.

149. At *Länder* level (in Brandenburg, Saxony and Schleswig-Holstein), the Advisory Committee notes that the existing consultation arrangements are such that national minorities are in practice able to express their viewpoints.

##### b) Outstanding issues

150. The Advisory Committee notes that representatives of minorities, while welcoming the consultation mechanisms, especially in the *Länder*, would like them to be consolidated, institutionalised, go beyond mere consultation and become more efficient.

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<sup>10</sup> An NGO grouping of the organisations of the four officially recognised national minorities, based in Berlin, with the aim, amongst others, of maintaining ongoing contact with the federal institutions.

151. The Advisory Committee remains deeply concerned at the continuing poor level of participation by Roma/Sinti in economic and social life of the country and in public affairs.

152. Although the Secretariat for Minorities is now responsible for conveying the concerns of the Roma/Sinti as well as those of the other recognised minorities, the Advisory Committee notes that there is a persisting need for additional consultation structures by which the Roma/Sinti could regularly participate in matters concerning them. This should be done by taking into account the diversity within this group.

#### *Recommendations*

153. The Advisory Committee encourages the authorities to ensure that the new communication and consultation bodies and arrangements set up at federal level will gradually become permanently established and have the means to work over a sustained period of time.

154. The Advisory Committee encourages the authorities to pursue their efforts to improve the participation of minorities in the decision-making process. Accordingly, as in its first Opinion, it encourages the authorities to examine the possibility of strengthening the representation of the Sorbian minority in the Foundation for the Sorbian People, which in itself is a positive example of effective co-operation between the public authorities and the minority.

155. The Advisory Committee strongly urges the authorities to develop a comprehensive strategy to meet the needs of the Roma/Sinti minority (see also the comments in connection with Article 4). In this context, it would be essential to promote full and equal participation by the latter in all fields.

156. Finally, the Advisory Committee finds that the authorities should set up specific institutional mechanisms for regular consultation of the Roma/Sinti, having due regard for the diversity found within this group.

### **Participation by minorities in elections**

#### *Findings of the first cycle*

157. In its first Opinion, the Advisory Committee welcomed the exemption of the political parties representing national minorities from the 5% threshold, applicable for the elections to the Bundestag and to the parliaments of the *Länder* of Schleswig-Holstein and Brandenburg.

#### *Present situation*

##### Positive developments

158. The Advisory Committee welcomes the Federal Constitutional Court's decision<sup>11</sup> of 2005 refusing to accept the argument that the work of political parties representing national minorities, and which are exempted from the 5% threshold, should be restricted to activities pertaining to national minorities. The Federal Constitutional Court took the view that such political parties could engage in all political issues.

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<sup>11</sup> See Decision of the Federal Constitutional Court of 16 February 2005, 2BvL 1/05.

## **Article 16 of the Framework Convention**

### **Possible dissolution of municipalities in Saxony**

#### *Findings of the first cycle*

159. In its first Opinion, the Advisory Committee expressed concern with regard to the dissolution of the municipality of Horno, inhabited in part by Sorbians for reasons of lignite quarrying, and as concerns the relocation of the inhabitants to another municipality.

#### *Present situation*

##### Outstanding issues

160. The Advisory Committee has been informed of the possibility of extending the lignite quarrying with effect from 2010, involving also new relocations of villages inhabited in part by persons belonging to the Sorbian minority.

#### *Recommendations*

161. This question is addressed in the comments on Article 5.

## **Article 17 of the Framework Convention**

### **Formalities relating to the crossing of the German-Danish border**

#### *Findings of the first cycle*

162. The Advisory Committee recommended that the German authorities address the administrative problems sometimes facing workers from the Danish minority who cross the border on a daily basis in order to work in Denmark.

#### *Present situation*

##### Positive developments

163. The Advisory Committee notes that the difficulties encountered by border workers are dealt with by the Consultative Committee on Issues concerning the Danish Minority in the Federal Ministry of the Interior.

#### *Recommendations*

164. The Advisory Committee calls on the authorities to pursue their policy of dialogue with representatives of the Danish minority in order to deal with difficulties faced by workers who commute over the border.

### III. CONCLUDING REMARKS

165. The Advisory Committee considers that these concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers in respect of Germany.

#### **Positive developments**

166. Germany has adopted a number of measures to improve implementation of the Framework Convention since the adoption of the Advisory Committee's first Opinion on 1 March 2002 and the Committee of Ministers' Resolution on 15 January 2003. This has entailed a number of changes in practice and in legislation.

167. The German authorities have recently supplemented the mechanisms for consulting minorities at federal level with the creation of the position of Secretariat for Minorities. This is a new step forward in dialogue between minorities and the federal bodies. It helps strengthen the visibility of minorities at federal level and offers greater opportunities for minorities to voice their concerns to the federal executive and legislative. In general, the authorities continue to show a commitment to the implementation of the Framework Convention.

168. With regard to legislation of relevance to minorities, the Law on the promotion of Frisian in public life, adopted in 2004, strengthened the position of the Frisian minority in Schleswig-Holstein. At the federal level, the Immigration Act of 2004 should help improve the integration of immigrants and strengthen efforts to combat racism, xenophobia and discrimination.

169. The authorities continue to take into consideration the specific needs of each officially recognised minority and to grant them financial support, from both federal and *Länder* level sources, the *Länder* having direct competency in a number of areas of relevance to national minorities.

170. Projects and activities against racially motivated crimes and in favour of tolerance and better community relations continue to be supported by the authorities.

171. The provision of radio broadcasts for the Frisians of Saterland (Lower Saxony), the introduction of Frisian in the 5<sup>th</sup> and 6<sup>th</sup> grades (Schleswig-Holstein) and Roma/Sinti school mediators (Schleswig-Holstein, Baden-Württemberg, for example) are also initiatives that merit being highlighted.

#### **Issues of concern**

172. The German authorities maintain the position that only the four officially recognised national minorities (Danish, Sorbian, Roma/Sinti and Frisian), whose members are German citizens with a long tradition of residence in German territory, can enjoy the rights secured by the Framework Convention.

173. Despite progress in terms of opportunities for the integration into German society of persons of foreign origin made through the Citizenship Act of 2000 and the Immigration Act of 2004, there has been no substantial dialogue on the possibilities to extend the protection afforded to national minorities to those who do not meet the criteria of citizenship and traditional residence.

174. Germany has still not adopted comprehensive anti-discrimination legislation offering effective remedies for victims of discrimination, which hampers the many activities being implemented as part of the fight against discrimination and racism. It is of concern that in spite of several attempts in the *Bundestag* to pass a law on anti-discrimination, which would also transpose the European Council Directive 43/2000 (Race Directive), progress has not yet been made on this matter.

175. There is a lack of data on the socio-economic situation of minorities. This can be an obstacle in the design and implementation of policies for equal opportunities for national minorities and it also impedes development of awareness regarding the issues involved.

176. The situation of the Roma/Sinti remains an issue of deep concern, even though efforts have been made to bring about an improvement. They are frequently victims of discrimination and stigmatisation in the media, and occasionally the target of racist acts or insults. Their access to public and political life remains very limited and the opportunities for consultation are fewer than for other groups. They do not always enjoy equal opportunities in the education system and this hampers their subsequent access to the labour market.

177. Relations between Roma/Sinti and representatives of the law enforcement agencies appear to be at times tense, and the situation is aggravated by allegations that unjustified records are kept of the ethnic background of Roma/Sinti suspects or offenders and that such information is, in some cases, given to the press. The situation of Roma residing in Germany without German citizenship appears to be particularly precarious and in general they do not qualify for the measures to which Roma/Sinti of German citizenship are entitled.

178. Even though the German authorities continue to support each of the four recognised national minorities, the amount of this support has in some fields been reduced. This has led to the closure or threats of closure of schools, notably some Sorbian secondary schools in Saxony, to reduced teaching in or of minority languages, and to a certain lack of continuity in the support of projects for minorities.

179. Finally, national minorities still have limited access to the media, particularly the public service media.

### **Recommendations**

180. In addition to the measures to be taken to implement the detailed recommendations contained in sections I and II of the Opinion of the Advisory Committee, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- Enact comprehensive anti-discrimination legislation, guaranteeing wide scope of protection and effective remedies;
- Ensure that the gathering of personal data by the police does not entail or lead to any discrimination against or stigmatisation of persons belonging to certain groups based on their ethnic origin;
- Adopt a strategy to improve substantially the situation of the Roma/Sinti in all fields, which also pays particular emphasis to women and children. Continue to take a firm stand against the racism and discrimination to which they may be exposed. Continue to

raise public awareness of the history and culture of the Roma/Sinti. Improve the mechanisms for consulting the Roma/Sinti, with due regard for their diversity in order to increase participation of persons belonging to the Roma/Sinti minority in public life;

- Urgently address the problem of the over-representation of Roma/Sinti and immigrants children in special schools for under-achievers (*Sonderschulen*) and their low level of participation in secondary and university education;
- Ensure compliance with the principle of equal treatment and guarantee more long-term support for national minorities, including in the field of education. In this respect, ensure that the historical network of Sorbian schools is able to continue to operate;
- Ensure that the legal provisions in force are fully implemented with regard to the use of minority languages in the public sphere and in bilingual signs;
- Improve the access to and representation in the media of persons belonging to national minorities, particularly in the public service media;
- Continue to strengthen the mechanisms for consultation and participation of persons belonging to national minorities.