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

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**Third Opinion on Germany**  
adopted on 27 May 2010

## EXECUTIVE SUMMARY

Germany has continued its constructive approach to the Framework Convention's monitoring process and, as in previous monitoring cycles, has provided ample opportunity for minority representatives to participate in the drafting process of the 3<sup>rd</sup> State Report.

The General Equal Treatment Act of 2006, as well as other measures against racism and racial violence, were adopted and a Federal Anti-Discrimination Agency set up. The authorities have continued to give support to the preservation and development of the languages and cultures of persons belonging to national minorities. A range of mechanisms are available to enable persons belonging to national minorities to participate in the decision-making process on issues of relevance to them.

However, the approach to the scope of application of the Convention remains inflexible despite ongoing dialogue with some groups. Both the implementation of the General Equal Treatment Act and the work of the Federal Discrimination Agency have attracted some criticism. The Agency is limited to providing advice to potential victims but cannot itself instigate proceedings or gather additional information. It further seems that potential victims of discrimination are still unfamiliar with the Act's provisions and that too little use is made of these provisions in cases of ethnically-motivated discrimination.

Roma and Sinti representatives deplore the fact that they are still unable to obtain funding for their projects. Participation in public life by the Roma and Sinti also remains very low at all levels. Cases of discrimination against the Roma and Sinti in the education system continue to be reported as are instances of their being denied access to public places or of ethnic profiling by the police force.

There has been no decrease in the number of racist, xenophobic or anti-Semitic offences perpetrated in recent years. Measures to combat racism are concentrated mainly on extreme right-wing movements but do not provide an adequate response to the many dimensions and manifestations of racism. Prejudice against and stereotyping of the Roma and Sinti and other minorities continue to be spread by some media. A bill put forward in 2007 seeking inclusion in the Criminal Code of the motivation of racial hatred as an aggravating factor of any offence was, regrettably, not adopted.

### Issues requiring immediate action

- **Intensify measures to raise public awareness of the General Equal Treatment Act, and ensure that compliance with the Act is regularly monitored; take additional measures to ensure that persons most vulnerable to discrimination be fully informed of the legal remedies available to them;**
- **Continue resolutely to combat racism in its many dimensions and manifestations; adopt targeted measures to prevent the spread of prejudice and racist language through certain media, on the Internet, and in sports stadiums; adopt specific legislation that expressly punishes racist motivation as an aggravating factor of any offence;**

- **Take measures to bring about a significant increase in participation in public life by the Roma and Sinti, with due regard for the cultural diversity found within these groups; promote and support projects and initiatives which will contribute to improving their participation in social and political life, and take resolute action without delay to end the unjustified placing of Roma and Sinti pupils in ‘special’ schools.**

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

**THIRD OPINION ON GERMANY**

1. The Advisory Committee adopted the present Opinion on Germany 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 State Report due on 1 February 2009 and received on 9 April 2009 (the State Report), and other written sources, and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Berlin and Bautzen from 7 to 10 December 2009.
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 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 monitoring of the Framework Convention contained in the Advisory Committee's first and second Opinions on Germany, adopted on 1 March 2002 and 1 March 2006, and in the Committee of Ministers' corresponding Resolutions, adopted on 15 January 2003 and 9 July 2008.
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. The Advisory Committee also draws the attention of the Parties to the fact that on 16 April 2009 the Committee of Ministers adopted new rules for the publication of the Advisory Committee's opinions and other monitoring documents, in an effort to improve transparency and enable all the parties involved to share, at an early stage, information on findings and conclusions reached during the monitoring process (see Resolution CM/Res(2009)3 amending Resolution (97) 10 on the monitoring arrangements under Articles 24-26 of the Framework Convention for the Protection of National Minorities).

## **I. MAIN FINDINGS**

### **Monitoring process**

6. Germany has adopted a constructive approach to the Framework Convention's monitoring process. The Advisory Committee notes in particular that, as was the case for the first two monitoring cycles, the authorities held a conference in November 2008 to discuss implementation of the Framework Convention. This brought together representatives of the national minorities and government at federal and *Land* level. Those attending the conference were able to debate the findings and conclusions of the 2<sup>nd</sup> monitoring cycle and to assist in drafting the 3<sup>rd</sup> State Report for Germany, which was submitted in a timely manner. The Advisory Committee again points out that these regular conferences are an example of good practice in that they allow the representatives of national minorities to be properly consulted, and it trusts that the practice will continue in the future.

7. The Advisory Committee also notes that whilst its second Opinion and the second Resolution of the Committee of Ministers were translated into German and circulated to the national minorities, these documents were not translated into the languages of the national minorities. The authorities justify this lack of translation into the minority languages by the fact that individuals belonging to the national minorities all have a perfect understanding of German. They are also anxious not to treat the Roma and Sinti communities in any way that singles them out or discriminates against them, since many of them do not want their language to be used by persons from outside their community. The Advisory Committee refers the authorities to its comments made in this Opinion on the use of national minority languages as covered by Article 10 of the Framework Convention. It makes the point that however familiar persons belonging to a national minority are with the main language of a country, it is important, in order to preserve and promote the use of minority languages, that these be used wherever possible in official contexts.

8. The Advisory Committee particularly welcomes the fact that representatives of the national minorities were again involved in the drafting of the 3<sup>rd</sup> State Report and that their detailed comments were appended to it. Likewise it is pleased to see that the national minorities' observations were included with the comments formulated by the German Government on the Advisory Committee's 2<sup>nd</sup> Opinion.

9. The Advisory Committee visited Germany from 7 to 10 December 2009. This visit, at the invitation of the German Government, provided an opportunity for direct talks with the parties concerned. The additional information obtained from the Government and other sources, including the representatives of national minorities, proved particularly valuable. Meetings were held not only in Berlin, but also in Bautzen (Saxony). The Advisory Committee welcomes the clear willingness to co-operate shown by the German authorities during the process leading up to the adoption of this Opinion.

### **Progress on implementation of the Framework Convention at the end of the first two monitoring cycles**

10. Whilst the number of persons belonging to the four groups officially protected under the Framework Convention seems to be small, the authorities have operated a steadfast policy of support to persons belonging to these four groups since the Framework Convention came into force for Germany in 1998.

11. This support is largely concentrated in the regions where these minorities traditionally live, apart from support for the Roma and Sinti who are dispersed throughout the country. However, in recent years, a pattern has begun whereby national minorities have migrated away from some of their traditional areas of settlement towards other areas of Germany, chiefly for economic reasons. This process is especially marked in the *Länder* of Saxony and Brandenburg, which have experienced substantial population loss over the last 10 years. This migration also involves persons belonging to the Sorbian minority. Coupled with a falling birth rate, this migration results in significant demographic changes in the national minorities' traditional areas of settlement and, ultimately, represents a threat to the survival of their languages and cultural heritage.

12. Moreover, persons belonging to national minorities who live outside the traditional areas of settlement enjoy considerably less protection of their national minority rights, since the responsibility for protecting them rests essentially with the *Länder* in which these groups are traditionally resident. Given the above trend, improved safeguards for national minorities outside their traditional areas of settlement may be crucial to the preservation of their minority languages and cultures.

13. A number of general policies that impact on the Framework Convention's implementation have developed since the first monitoring cycle. The legislative framework for combating discrimination, in particular, has been expanded and new measures have been taken against discrimination and racism, in a climate which has seen no decrease in the number of racist, xenophobic or anti-Semitic offences perpetrated. Such acts continue to target the Roma and Sinti communities in particular, as well as persons of foreign origin. On the other hand, policies designed to integrate immigrants and promote diversity and intercultural dialogue have steadily progressed and are currently the subject of debate within German society.

14. The German authorities stand by their initial approach concerning the scope of application of the Framework Convention. However, they have said they are willing to discuss this matter further with the Advisory Committee which is considered a welcome development, notably as regards the Polish community in Germany.

### **Legislative framework and institutional structures**

15. Adoption of the 2006 General Equal Treatment Act (*AGG*) is one of the chief legislative developments since the Advisory Committee's 2<sup>nd</sup> Opinion was adopted. Some progress has also been seen in the laws of the *Länder* (see the remarks in paragraph 19 and below in respect of Article 6), which should give improved protection to the rights of national minorities in the areas concerned.

16. Consultation of national minorities has continued via existing representation and consultation structures. However, there are still no consultation procedures specifically for the Roma and Sinti communities. Responsibility for issues concerning the Sorbian minority has been transferred from the Commissioner for Culture and the Media to the Federal Ministry of the Interior. A general debate is ongoing among representatives of the national minorities about how responsibilities for protecting national minorities should be divided amongst central, *Land* and local government. The current system is unclear and co-operation between the various levels of authority does not always seem to work effectively. One consequence, amongst others, is that procedures for funding activities designed to assist national minorities are sometimes complex.

### **Combating discrimination and racism**

17. As the General Equal Treatment Act is now in place, it is essential to intensify measures aimed at raising awareness of this law, particularly among potential victims, and the legal remedies available in the event of discrimination. The Federal Anti-Discrimination Agency (*ADS*) also needs to have at its disposal sufficient resources so that it can perform its remit entirely independently and so offer effective support to victims of discrimination. Its powers should further be broadened to allow it to instigate proceedings itself or gather information on individual cases rather than merely providing advice to potential victims.

18. The authorities, and most representatives of national minorities, remain unwilling, for historical reasons, to collect data on people's ethnic origin, even in the context of action against discrimination. However, some statistical information is available on the circumstances of persons belonging to national minorities in a number of fields. Whilst this is sporadic and limited, it may contribute to improving anti-discrimination policies and measures to protect national minorities.

19. Progress has been made, both federally and at *Land* level, towards eradicating the use of discriminatory or stigmatising terminology by the police. It is essential to ensure that the newly adopted rules for police conduct are actually enforced, to prevent future abuses that discriminate against persons belonging to specific minorities.

20. Action to counter racism and intolerance has continued, targeting especially movements on the extreme right while measures against "ordinary" racism have been more limited. Particular attention has been paid to the way in which prejudice against certain minorities, including the Roma and Sinti, is spread by the media, and to racism on the Internet. Roma and Sinti children continue to face difficulties in education, due to the persistence of prejudice and stereotyping. It is a matter for concern that they are persistently over-represented in 'special' schools.

### **Support for the preservation and development of national minority languages and cultures**

21. Financial support to the Foundation for the Sorbian People was substantially increased for the period 2009-2013. An agreement was also reached for year 2009-2010 on subsidies to cover the transportation costs of pupils attending private Danish-language schools in Schleswig-Holstein. However, some Roma and Sinti representatives deplore the fact that they are still not able to obtain public funding for their projects.

22. The legal framework which allows the use of minority languages in the public domain, and the use of topographical signposts and indications in minority languages, is in place. It has actually been taken further in Schleswig-Holstein, which adopted a decree in 2007 allowing municipalities in Schleswig-Holstein to put in place multilingual road signs. However, more determined action is needed to create an environment more likely to encourage the use of minority languages, including by allowing for the addition of the suffix "-owa" to names of female persons belonging to the Sorbian minority in official documents.

23. The likelihood of further lignite mining in Saxony and Brandenburg means that the linguistic, cultural and historical heritage of the Sorbian minority risks being weakened or lost if whole villages at the heart of the region traditionally inhabited by the Sorbian minority are relocated.



### **Teaching of and in minority languages**

24. Another Sorbian secondary school has been closed down since the 2<sup>nd</sup> Opinion of the Advisory Committee was adopted. The authorities have, however, committed themselves not to close any more schools in the Sorbian network in the years ahead. Measures have been taken to increase the pool of teachers qualified to work in Sorbian-language schools/classes, though there are serious problems finding nursery school teachers.

25. Regarding the teaching of Frisian, 2008 saw the adoption of a new decree on the teaching of Frisian in the region of North Frisia and on the island of Helgoland, which allows the language to be taught in secondary schools. Teaching of Frisian in schools remains sporadic, however, chiefly due to a lack of qualified teachers. Measures have also been taken to increase the teaching of Sater Frisian, including by introducing this language in a kindergarten.

26. With regard to the teaching of the Romani language and culture, some progress has been made as teaching in some schools has commenced. However, the curriculum content about the Roma and Sinti remains insufficient in counteracting prejudice against and stereotyping of persons belonging to these communities.

### **Participation by minorities**

27. Germany has a number of consultation structures involving national minorities, both federally and at *Land* level, which allow persons belonging to national minorities to participate in a range of ways in decision-making processes of relevance to them. The Secretariat for Minorities, for example, continues to play an important part in communication between national minority organisations and federal institutions.

28. Participation in public life by the Roma and Sinti remains very limited at all levels, however, despite some examples of good communication between the authorities and representatives of these communities, for example in North Rhine-Westphalia. Representatives of the Sorbian minority are also dissatisfied with their level of decision-making power within the Foundation for the Sorbian People.

## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 3 of the Framework Convention

#### Scope of application of the Framework Convention

##### *Recommendations of the two previous monitoring cycles*

29. In the previous monitoring cycles, the Advisory Committee encouraged the authorities to consider the inclusion of persons belonging to other groups, including non-citizens, as appropriate, in the application of the Convention on an article-by-article basis.

##### *Present situation*

30. The Advisory Committee notes that there has been no change since the 2<sup>nd</sup> monitoring cycle in the position of the German authorities concerning the scope of application of the Framework Convention. It has, however, taken note of the requests by certain groups which, according to the Declaration made by Germany when it ratified the Framework Convention,<sup>1</sup> do not currently enjoy the protection of the Framework Convention. The groups in question are, in particular, persons of Polish origin living in Germany, as well as persons belonging to the group of East Frisians, who have expressed their wish to be recognised as persons belonging to a national minority and to benefit from the protection of the Framework Convention.

31. The Advisory Committee understands that persons with links to Polish culture or language<sup>2</sup> now live in Germany as a result of various waves of migration during the last two centuries, especially the 19<sup>th</sup> century.<sup>3</sup> The Advisory Committee also points out that persons of Polish origin have had national minority status in the past.

32. The Advisory Committee further notes that the 1991 Treaty on Good Neighbourly Relations and Friendly Co-operation between Poland and Germany mentions protection for persons belonging to the German minority in Poland, and persons of Polish origin in Germany. The opinion of the representatives of Polish groups whom the Advisory Committee met is that proper implementation of this Treaty would imply that persons of Polish origin should be recognised as having national minority status and should thus enjoy the protection of the Framework Convention. The purpose of this request, according to the representatives of persons of Polish origin, is to ensure the conditions which will contribute to the preservation of the Polish language and culture in Germany and prevent a process of progressive assimilation with the majority population.

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<sup>1</sup> Declaration by Germany in the instrument of ratification, deposited on 10 September 1997: “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.”

<sup>2</sup> Representatives met by the Advisory Committee put the number of persons of Polish origin living in Germany and holding German nationality at around 2 million, though this figure is controversial.

<sup>3</sup> Some Poles also emigrated to the Ruhr area early in the 20<sup>th</sup> century to look for work. Sizeable Polish communities sprang up in the larger cities such as Hamburg and Berlin. Many population groups were also displaced in the wake of border changes after World War II.

33. The Advisory Committee has learned that the federal authorities have had discussions on this with the representatives of persons of Polish origin living in Germany.<sup>4</sup> It also notes with interest that the authorities set aside some EUR 300 000 every year to support the Polish language and culture.

34. Given the growing cultural diversity of German society, the Advisory Committee believes that protection under the Framework Convention might as appropriate be extended to groups that do not currently enjoy the protection of this instrument so that the established criteria do not have the effect of arbitrarily excluding certain groups from the benefits of the provisions of the Framework Convention. While the inclusion of a citizenship requirement is not in violation of any legally-binding international instrument, the Advisory Committee would like to remind the authorities that this criterion is considered as a restrictive element that can have discriminatory effects. Given the considerable number of persons, including Roma, who are affected by this restriction, the Advisory Committee would like to encourage the German authorities to pursue a more inclusive approach and to consider extending the protection of specific articles of the Framework Convention to certain groups. This would be consistent with current efforts at European level to develop a more nuanced approach to the application of the citizenship criterion in the protection of national minorities.<sup>5</sup>

35. In the case of persons belonging to the group of East Frisians, most of whom live in the *Land* of Lower Saxony, the Advisory Committee notes that they are not in principle excluded from the scope of application of the Framework Convention because the German Declaration referred to earlier says that the Framework Convention will apply to the ethnic group of the Frisians, with no further specification mentioned.<sup>6</sup> The representatives of this group say, however, that in order for this protection to be real and to translate into specific measures for their benefit, they should also be recognised as having national minority status by the authorities of the *Land* of Lower Saxony, that have responsibility in many areas of relevance to the protection of national minorities. The Advisory Committee understands that the refusal by the Lower Saxony authorities to recognise persons belonging to the East Frisian group as a national minority covered by the provisions of the Framework Convention stems from the fact that the East Frisians have no language of their own, since in essence they speak Low German. The representatives of the East Frisians, for their part, emphasise their shared perception of belonging to a group which is different from the majority population by virtue of its culture and history, and the need to preserve that culture and history by specific provisions.

#### *Recommendations*

36. The Advisory Committee calls on the authorities to pursue an open and dialogue-based approach in their relations with persons and groups who would like to benefit from the protection of the Framework Convention such as persons of Polish origin, language or culture, and persons belonging to the East Frisian group.

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<sup>4</sup> This issue is being increasingly discussed by the Polish and German authorities.

<sup>5</sup> See also Venice Commission, Report on “non-citizens” and minority rights, CDL-AD(2007)001, 18 January 2007, paragraph 137, adopted by the Venice Commission at its 69<sup>th</sup> plenary session on 15 – 16 December 2006.

<sup>6</sup> Indeed, representatives of the East Frisians take part in the work of a number of bodies which include persons from North Frisia, East Frisia and the Saterland, for example the Frisian Council or Frisian Forum.

37. The Advisory Committee also urges them to review regularly the established criteria of eligibility for protection under the Framework Convention, as applied to requests from persons belonging to these groups, in order to ensure that the criteria do not have the effect of excluding people from the scope of application of this Convention in a way that is arbitrary or discriminatory.

38. Against this background it urges the authorities to take a dialogue-based approach with persons belonging to groups that might, in future, qualify for protection under the Framework Convention. The Advisory Committee also urges the German authorities to draw on the principles of the Framework Convention in their dialogue with other groups (see also remarks in respect of Article 6).

## **Article 4 of the Framework Convention**

### **Combating discrimination**

#### *Recommendations of the two previous monitoring cycles*

39. In the previous monitoring cycles, the Advisory Committee called on the German authorities to take the necessary steps to ensure the swift adoption of comprehensive anti-discrimination legislation, in conjunction with the launch of a public debate on the subject of discrimination.

40. The Advisory Committee also called on the German authorities to address as a matter of priority the disadvantages, resulting from discrimination, encountered by persons belonging to the Roma and Sinti communities and to step up efforts to narrow the gap between persons belonging to these communities and the rest of the population.

#### *Present situation*

41. The Advisory Committee welcomes the adoption, on 18 August 2006, of the General Equal Treatment Act which transposes into German law the EU's Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. This is a major step forward in the fight against discrimination. The Advisory Committee also notes the creation of a new body to monitor compliance with the Act. This is the Federal Anti-Discrimination Agency, which has the duty of disseminating within society information on discrimination and the new law, providing advice and guidance to potential victims of discrimination and making recommendations on ways of countering discrimination.

42. The Advisory Committee notes that both the implementation of the General Equal Treatment Act and the work of the Federal Anti-Discrimination Agency with regard to housing have prompted some criticism.<sup>7</sup> While recognising the legitimacy of creating and maintaining "socially stable resident structures",<sup>8</sup> the Advisory Committee notes with concern that such practice remains controversial, may lead to discrimination based on ethnic origin, and thus may inhibit access of persons belonging to national minorities to social and private sector housing.

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<sup>7</sup> See 4<sup>th</sup> report on Germany of the European Commission against Racism and Intolerance, adopted on 19 December 2008 and published on 26 May 2009, doc (CRI(2009)19.

<sup>8</sup> See State report submitted by the German authorities.

43. Representatives of the Roma and Sinti whom the Committee met deplore the fact that the Act covers only private-law relationships and that, consequently, acts of public bodies, including the police, are not covered by these provisions. As a result, legal redress against potentially discriminatory action on the part of government authorities is based on Article 3 of Germany's Fundamental Law (*GG*) which lays down the principle of equality before the law. The Advisory Committee believes that the anti-discrimination legislation could be expanded to make it applicable between individuals and public authorities.

44. Information received by the Advisory Committee refers to instances of discrimination against persons belonging to national minorities, chiefly the Roma and Sinti. Discrimination is alleged in the field of education (see remarks in respect of Article 12), and in access to housing or employment (see also remarks in respect of Article 15). Cases of access being denied to public places (restaurants, swimming pools, camp sites) have also been reported to the Advisory Committee. A number of persons with whom the Advisory Committee spoke also continue to claim that the Roma and Sinti are still subjected to practices of ethnic profiling. By and large, however, there is very little case-law on instances of discrimination based on ethnic background. Since the General Equal Treatment Act was passed, there have been no reported cases involving persons belonging to one of the four groups protected under the Framework Convention. In this context, the Advisory Committee regrets the lack of any exact statistics on cases brought under the General Equal Treatment Act. This makes it difficult to measure the impact which this law might have on the fight against discrimination based on ethnic origin or belonging to a national minority.

45. The Advisory Committee notes that the remit of the Federal Anti-Discrimination Agency is restricted to the provision of advice to potential victims, but that the Agency cannot instigate proceedings itself or gather information on individual cases. This limits its capacity for action. In addition, the Agency does not have regional or local offices. The Advisory Committee also notes with concern that persons most vulnerable to discrimination seem unfamiliar with the Agency's remit and activity. The same applies to the spirit and provisions of the General Equal Treatment Act which, in the view of several of the Advisory Committee's interlocutors, need to be publicised in awareness-raising campaigns aimed at society in general and targeting in particular those groups that are most exposed to discrimination.

46. Information received by the Advisory Committee further indicates that persons belonging to the Roma and Sinti communities who believe that they have suffered discrimination only rarely refer the matter to the Federal Anti-Discrimination Agency and, due to a lack of faith in the legal remedies available to them, do not launch proceedings against alleged discriminatory acts. Against this background the Advisory Committee welcomes the 2005 Framework Agreement between the Government of Rhineland-Palatinate and the *Land* Association of the Central Council of German Sinti and Roma to combat all forms of discrimination against the Roma and Sinti, including through the express prohibition of any information on the ethnic background of criminal suspects being shared by the police with the media.<sup>9</sup> The Advisory Committee expects this agreement to have a positive impact on the fight against discrimination in this *Land*.

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<sup>9</sup> See Article 4 of the *Rahmenvereinbarung zwischen der rheinland-pfälzischen Landesregierung und dem Verband Deutscher Sinti und Roma Landesverband Rheinland-Pfalz e.V.* of 25 July 2005.

47. The Advisory Committee welcomes the fact that the General Equal Treatment Act opens the way for positive measures<sup>10</sup> to prevent discrimination and minimise its undesirable effects. This should significantly reinforce the effectiveness of the fight against discrimination and contribute to the promotion of full and effective equality, as required by Article 4 of the Framework Convention.

48. Against this background, the Advisory Committee notes with concern the position expressed by the German authorities in the State Report that it is not appropriate to implement positive measures and develop an overall strategy to promote full and effective equality for the Roma and Sinti communities. The reasons given are that these individuals would risk increased stigmatisation and that it would be hard to devise measures of this kind in the absence of any hard facts and figures on the group. The Advisory Committee wishes to remind the German authorities, firstly, that under Article 4.3 of the Framework Convention, measures adopted with a view to promoting full and effective equality for persons belonging to a national minority are not to be considered as acts of discrimination. Furthermore, it points to the importance of having reliable data on the situation of national minorities, so that potential discrimination against them can be combated effectively (see remarks in paragraphs 53 - 57). The Advisory Committee also notes with interest that the German authorities, especially at *Land* level, are already putting a number of positive measures in place, in the fields of education or housing, often with the assistance of mediators from the Roma and Sinti communities concerned. It trusts that action of this kind will be continued and intensified in the future, as part of anti-discrimination policies.

#### *Recommendations*

49. The Advisory Committee calls on the German authorities to undertake regular monitoring of compliance with the General Equal Treatment Act. It also encourages them to do more to raise awareness of the Act and the fight against discrimination amongst the population as a whole. It is especially important that persons most vulnerable to discrimination are fully informed of the legal remedies available to them.

50. The Advisory Committee echoes the European Commission against Racism and Intolerance in calling on the authorities to consider broadening the powers of the Federal Anti-Discrimination Agency so that it can act more effectively against discrimination. It is also important to ensure that the Agency has sufficient resources so that it can perform its remit entirely independently and so offer effective support to victims of discrimination.

51. The Advisory Committee calls on the authorities to pursue and develop measures to combat discrimination against the Roma and Sinti communities and promote full and effective equality for them in all areas, including through positive measures and as part of an overall strategy (see also remarks in respect of Articles 12 and 15).

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<sup>10</sup> The Advisory Committee notes that there is a difference in the terminology in this regard, both at international level and in the practice of the State parties. Article 4, paragraph 2 of the Framework Convention refers to “adequate measures”, and paragraph 39 of the explanatory report mentions “special measures”. The Opinions of the Advisory Committee have been trying to follow the different terminology used in the various State parties. In order to unify the language of its opinions and to embrace all different terms used to refer to these measures, the Advisory Committee will use the term “positive measures”, unless explicit reference is made to Article 4, paragraph 2 of the Framework Convention, in which case reference is made to “adequate measures” in accordance with the terminology used in that provision.

52. The Advisory Committee calls on the authorities, when adopting housing policies, to avoid unjustified exclusion, isolation or discriminatory treatment of persons belonging to national minorities in the public and private housing sectors.

### **Gathering of data on ethnic origin**

#### *Recommendations of the two previous monitoring cycles*

53. During the previous monitoring cycles, the Advisory Committee found a persistent lack of reliable statistical data which would be useful in the fight against discrimination based on ethnic grounds and the development of effective measures to promote equal opportunities. It encouraged the authorities to consider gathering data to remedy this deficiency, using methods offering adequate personal data protection.

#### *Present situation*

54. The Advisory Committee appreciates that the German authorities, and many persons belonging to national minorities, are reluctant to gather or disclose sensitive personal data, especially on ethnic origin, given the disastrous use made of such data by the National Socialist regime. While being fully aware of the sensitivities involved, the Advisory Committee notes that the lack of reliable data makes it difficult for the German authorities to ensure full and effective equality for persons belonging to national minorities. The absence of unemployment data, for example, for each national minority leads the authorities to the assumption that, in principle, membership of a national minority has no impact on a person's economic, social or cultural status. Evidence presented to the Advisory Committee, however, indicates that members of the Roma and Sinti communities, in particular, still find it significantly more difficult than the rest of the population to find formal employment.<sup>11</sup>

55. The Advisory Committee considers therefore that the German authorities should identify the most appropriate means of obtaining reliable data related to the minority population, while strictly respecting the principles contained in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes as well as the recommendations of the United Nations Economic Commission for Europe prepared in cooperation with the Statistical Office of the European Communities.<sup>12</sup> It has learned with regret that the 2011 population census will not include a question about ethnic background or language. However, the Advisory Committee notes with interest that it will, for the first time, include questions about the citizenship and the country of origin of migrants.

56. The Advisory Committee notes, however, that some data on persons belonging to national minorities exists. Sources include, for example, the annual report submitted to the Saxony *Landtag* on the situation of persons belonging to the Sorbian minority, data from educational establishments providing teaching in minority languages, and surveys and studies conducted by non-governmental organisations. The authorities could make use of such data

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<sup>11</sup> See the first two Opinions of the Advisory Committee on Germany as well as the 3<sup>rd</sup> and 4<sup>th</sup> ECRI reports on Germany.

<sup>12</sup> See Report of the Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing;  
[http://unstats.un.org/unsd/censuskb/attachments/CES\\_2010\\_Census\\_Recommendations](http://unstats.un.org/unsd/censuskb/attachments/CES_2010_Census_Recommendations).

with due regard for existing standards on personal data protection,<sup>13</sup> to enable them to respond better to the needs expressed by national minorities and remedy any discrimination.

57. The Advisory Committee is pleased to note that some *Länder* and cities (including Berlin, Wiesbaden, Essen and Stuttgart) are in the process of setting up a database which will provide up-to-date data on the integration of persons of foreign origin and any discrimination they encounter. The Committee believes it is important to keep a close eye on how this project proceeds and, if appropriate, to learn lessons from it as to how the situation of national minorities might be similarly assessed.

#### *Recommendation*

58. The Advisory Committee takes note of the authorities' decision to continue using information on the number and situation of persons belonging to national minorities provided by the minorities themselves, in full compliance with international standards on personal data protection. In order to promote the effectiveness of the preparation and monitoring of measures designed to ensure full and effective equality, it encourages the authorities to seek means of obtaining more data on the composition and situation of national minorities, in co-operation with the minorities concerned, and in full respect of the relevant international principles.

### **Gathering of data by the police**

#### *Recommendations of the two previous monitoring cycles*

59. During the previous monitoring cycles, the Advisory Committee called on the authorities to review police methods of gathering data on the ethnic background of criminal suspects and ensure that the use of such procedures not lead to discrimination against persons belonging to certain minority groups.

#### *Present situation*

60. The Advisory Committee welcomes the adoption by the Conference of Interior Ministers of the *Länder*, in October 2007, of recommendations on the use of discriminatory language by police authorities. These state a number of principles designed to stop police forces from using discriminatory language to describe persons belonging to national minorities. These recommendations are in response to the repeated calls made by representatives of the Roma and Sinti for a number of years for stronger action against this kind of practice within the police.

61. The Advisory Committee also welcomes the fact that some *Länder* have now adopted police rules of conduct, in the form of decrees or internal regulations, aimed at ending the use of discriminatory or stigmatising language.<sup>14</sup>

62. The Advisory Committee notes, however, that the recommendations drawn up by the Conference of Interior Ministers and most of the rules adopted by the *Länder* all allow mention to be made of a criminal suspect's ethnic background if this is deemed necessary for a correct understanding of the case in question. The Advisory Committee believes that it is essential to monitor closely implementation of the various provisions on possible references

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<sup>13</sup> See, for example, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the Committee of Ministers' Recommendation Rec(97)18 concerning the protection of personal data collected and processed for statistical purposes.

<sup>14</sup> Information received by the Advisory Committee indicates that seven *Länder* now have such rules: Rhineland-Palatinate, Saxony, Bavaria, Baden-Württemberg, Bremen, Schleswig-Holstein and North Rhine-Westphalia.



to a suspect's ethnic background, to ensure that these do not result in the reintroduction of inappropriate practices (see also remarks in respect of Article 6).

63. The Advisory Committee also notes with interest that the *Land* of Rhineland-Palatinate dissociated itself from the special recommendation that allows a suspect's ethnic background to be mentioned if this is deemed necessary, claiming that it was not necessary. Moreover, police instructions in this *Land*, laid down in conjunction with the 2005 Framework Agreement for the protection of Roma and Sinti between Rhineland-Palatinate and the respective *Land* Association of the Central Council of German Sinti and Roma, forbid any reference to a suspect's ethnic background. These instructions also deal with the way in which information on the ethnic background of persons suspected of an offence is passed to the press and other media. The Advisory Committee considers it would be useful to assess the practical effects of these provisions of the Framework Agreement on the work of the police and media and to conduct a comparative study of practices in other *Länder*.

#### *Recommendation*

64. The Advisory Committee calls on the authorities to continue their efforts to end the use by police authorities of discriminatory terminology and any transmission of this to the media. It is particularly important that compliance with the rules adopted be routinely monitored, at both federal and *Land* level.

### **Article 5 of the Framework Convention**

#### **Support for the preservation and development of national minority languages and cultures**

#### *Recommendations of the two previous monitoring cycles*

65. During the previous monitoring cycles, the Advisory Committee encouraged the German authorities to simplify and clarify the financial support system for minority languages and cultures, and to ensure that the funding provided was sufficient to allow the work done to be sustainable.

66. The Advisory Committee also called on the authorities to adopt a more flexible approach regarding the distribution of funds to Roma and Sinti organisations in order to encourage the development of activities that fully reflected the diversity within those communities.

#### *Present situation*

67. The Committee notes that the authorities have, at various levels, continued to give support to the preservation and development of national minority languages and cultures. It notes with satisfaction that support for the Sorbian minority has even increased significantly. After protracted negotiations between central government and the two *Länder* concerned (Saxony and Brandenburg), an agreement was concluded in 2009 to increase the respective contributions of the three parties involved in funding the Foundation for the Sorbian People, whereas prior to the agreement it had seemed more likely that the sums earmarked would be cut. According to the agreement, the Foundation will receive EUR 16.8 million a year up to 2013. The representatives of the Sorbian minority believe that this will be enough to ensure that the institutions tasked with preserving the Sorbian language and culture can continue to operate. In the Advisory Committee's view, this step represents significant progress in the protection and development of the Sorbian cultural heritage, in that this official commitment,

for a five-year period, provides the requisite security and stability in which activities can be planned and carried out over the longer term.

68. Regarding support for the Danish minority, the Advisory Committee welcomes the fact that agreement has been reached by all the parties concerned, resolving the question of funding for the transportation costs of pupils attending private Danish-language schools in Schleswig-Holstein (for more details see remarks in respect of Article 13 below).

69. The Advisory Committee notes that persons belonging to the Frisian minority also continue to receive funding for a range of projects on the Frisian language and culture (see also remarks in respect of Article 14). The Saterland Frisians told the Advisory Committee of an increase in 2008-2009 in the funding they received from the authorities of Lower Saxony. However, according to the representatives of the Frisian minority (Sater Frisians and North Frisians), the funding they currently receive from central and *Land* government is not enough to cover all their requirements for Frisian language teaching and for the preservation of their cultural heritage in general.

70. Regarding support for the Roma and Sinti communities, the Advisory Committee again welcomes the 2005 Framework Agreement for the protection of Roma and Sinti between Rhineland-Palatinate and the respective *Land* association of the Central Council of German Sinti and Roma, under which the authorities undertake to give regular structural support to the association representing the Roma and Sinti, so that it can operate on a sustainable basis. The Advisory Committee hopes that this Agreement will serve as a model for other *Länder* and so consequently enable the development and consolidation of measures destined to preserve and promote the cultural heritage of the Roma and Sinti.

71. The Advisory Committee finds it regrettable that, according to the information at its disposal, access to sources of funding continues to be extremely limited for some Roma and Sinti organisations, especially small local organisations that complain that their lack of funding prevents them from successfully carrying out activities and grassroots projects on a sustainable basis. The Advisory Committee naturally welcomes the constant support given by the federal and regional authorities to some Roma and Sinti organisations that play a very important role for these communities, and it trusts that such support will continue in future. However, it restates its view, expressed during the previous monitoring cycles, that the authorities should consider offering regular financial support to other Roma and Sinti organisations in order to take full account of the cultural diversity which exists within these communities. Furthermore, the Advisory Committee wishes to point out that, even if there are several organisations within one and the same minority, sometimes holding different points of view – a situation the Advisory Committee has encountered in a number of State parties to the Convention and within different national minorities – this situation should not be seen as a barrier to the development of support policies for the minority as a whole (see also remarks in respect of Article 15).

72. Some of the persons with whom the Advisory Committee spoke expressed regret that part of the funding given to national minority organisations was given for specific projects and that insufficient funds were available for the structural needs of these associations. According to these representatives, this shortfall in regular funding is a barrier to the viability and sustainability of the institutions representing the national minorities concerned.

73. The Advisory Committee was also told that the arrangements for funding certain activities (see also the remarks in respect of Article 13) are especially complex and opaque. The Advisory Committee is well aware that the system of power-sharing within a federal State can lead to complex arrangements for the allocation of public funds. It believes, however, that in some cases measures could be taken to clarify and simplify these

arrangements, making the funding of national minority activities more predictable and more accessible to persons belonging to the minorities concerned.

#### *Recommendations*

74. The Advisory Committee encourages the authorities to continue their policy of support for the preservation and development of the cultural heritage of national minorities, in close liaison with the persons concerned. With reference to the agreement with the Sorbian minority as a model, it calls on them to pay special attention to the long-term needs of persons belonging to national minorities and, where appropriate, adapt existing support arrangements to those needs, as the preservation and the development of national minority culture and languages require continuous and sustainable action.

75. The Advisory Committee urges the authorities to take full account of the diversity within the Roma and Sinti communities and, as a result, to allow a wider range of organisations representing these communities to benefit from public funding. In addition, special attention should be paid to the needs of local organisations.

### **Institutional framework of support policies for national minorities**

#### *Present situation*

76. Most representatives of minorities to whom the Advisory Committee talked were critical of the way in which responsibility for policy on national minorities was shared between federal government and the *Länder*. They saw a persistent lack of clarity in a number of areas regarding the respective duties and obligations of the different tiers of the Government. It would seem that the same problem arises between certain regional and local authorities. They also point to a lack of co-operation between the different tiers of the Government in some cases. The Advisory Committee is well aware that Germany's federal structure imposes a specific and sometimes complex separation of powers on policy for minorities between central government and the *Länder*, depending on the area under consideration, but it finds that this distribution of powers leads to a system of public funding that sometimes lacks transparency (see remarks in paragraph 73 above).

77. The Advisory Committee notes that responsibility at federal level for matters concerning the Sorbian minority was transferred in December 2009 from the Commissioner for Culture and the Media to the Federal Ministry of the Interior, a change which the Sorbian representatives welcome. They believe it will enable better account to be taken of their needs and prevent Sorbian affairs from being treated solely as cultural issues, since there are issues in numerous other areas too. The representatives of other minorities also expressed the opinion that issues concerning them should be considered as more than just cultural policy issues and that, in general, there be a more coherent approach between the various levels of authority as regards the distribution of the responsibility for protecting national minorities.

78. The Advisory Committee appreciates that the *Länder* in which national minorities have traditionally been settled have prime responsibility for protecting the national minorities concerned. It nevertheless points out that many persons belonging to national minorities, especially the Sorbs, who were traditionally settled in one specific area, are now migrating to other regions of Germany, chiefly for economic reasons. As a result, they can no longer enjoy the protection of their language and culture offered within their *Land* of origin. The representatives of minorities fear that this situation may ultimately mean the loss of their language and culture and their progressive assimilation. The Advisory Committee notes with interest that the German authorities are aware of this risk. It hopes that a discussion on the

ways and means of preserving the languages and cultures of persons belonging to national minorities living outside their traditional areas of settlement will take place and that measures will be envisaged with this objective in mind.

*Recommendations*

79. The Advisory Committee encourages the authorities to continue discussions, in close liaison with the representatives of national minorities, on the distribution of responsibilities for national minority policies, in order that measures to preserve and promote the languages and cultures of these groups be made more effective and more accessible.

80. Special attention should be given to safeguarding the language and culture of persons belonging to national minorities who live outside their areas of traditional settlement.

**Impact of lignite mining on the preservation of Sorbian language and culture**

*Recommendations of the two previous monitoring cycles*

81. During the previous monitoring cycles, the Advisory Committee called on the authorities to take due account of the interests of the Sorbian population if lignite mining in the *Land* of Brandenburg made it necessary to relocate more villages populated chiefly by Sorbs.

*Present situation*

82. The Advisory Committee understands that further population relocations are a possibility in the years ahead, particularly in the Schleife region of Saxony, to make way for lignite mining operations. It notes that this prospect causes conflicts of interest that are hard to reconcile, setting the prospects of economic development from lignite mining against the risk that the linguistic, cultural and historic heritage of the Sorbian minority may be weakened or lost if whole villages in the Sorbian minority heartlands are relocated. It shares the concern felt over this by the Sorbian minority representatives.

83. The Advisory Committee notes that, according to the authorities, the company in charge of the mining operation has said it will take proper account of the interests of the Sorbian minority and of experience with earlier village relocations in the area. It will support various measures to preserve and promote the Sorbian language and culture. Those affected by the relocations will also be consulted in discussion forums, and mediators from the Sorbian minority will be employed. It is essential for the authorities to ensure that the interests of the Sorbian minority, especially the elderly, be properly taken into account by all the actors involved in this process.

*Recommendation*

84. The Advisory Committee urges the authorities to pay close attention to the interests of persons belonging to the Sorbian minority if new relocations of the population are considered. It is essential that the individuals concerned should be closely involved in preparing for such relocations and in seeking solutions to safeguard the language, culture and historical heritage of the Sorbian minority in the affected areas.

## Article 6 of the Framework Convention

### Promotion of tolerance and intercultural dialogue

#### *Recommendations of the two previous monitoring cycles*

85. During the previous monitoring cycles, the Advisory Committee encouraged the German authorities to ensure effective monitoring of the implementation of the new integration policy launched in 2005, in order to be able to evaluate its impact as promptly as possible and, where necessary, make the appropriate adjustments.

86. It also encouraged them to take a more flexible approach with regard to the Roma residing in Germany but not holding German citizenship and consider, whenever relevant, allowing them to benefit from measures taken in respect of Roma and Sinti who do hold German citizenship.

#### *Present situation*

87. The Advisory Committee notes with satisfaction that the authorities have continued to implement a range of programmes aimed at promoting integration and intercultural dialogue and valuing the diversity which is increasingly a feature of German society.<sup>15</sup> These measures should have a positive effect on relations between ethnic groups and on mutual understanding within society as a whole, contributing to secure genuine implementation of the principles enshrined in Article 6 of the Framework Convention. The Advisory Committee wishes to remind the authorities that the scope of Article 6 is wide and that the State parties to the Framework Convention undertake, in pursuance of this article, to promote respect and mutual understanding among all persons living on their territory, irrespective of their ethnic, cultural, linguistic or religious identity, or their citizenship. The Advisory Committee further notes that the debate surrounding the concept of ‘Leitkultur’ with its connotation of cultural assimilation policies is gradually shifting towards a more inclusive approach.

88. The Advisory Committee notes in particular the launch of a National Integration Plan in 2007, the establishment of a Federal Agency for Civic Education (*BpB*) which seeks to promote respect for diversity and tolerance, and the “Diversity does everyone good”<sup>16</sup> programme which supports projects targeting young people. It also notes the many initiatives by the *Länder* in this field. However, according to information received, shortcomings persist in the current implementation of the integration policy and this situation has triggered a broad debate within society. The Advisory Committee hopes that this debate will lead to an improvement and a stepping up of the policy begun in 2005.

89. The representatives of national minorities informed the Advisory Committee that, despite the many efforts made to introduce information on the various groups living in Germany into the school curriculum and to promote tolerance and fight against racism, the information available on national minorities remains very limited, especially outside their areas of traditional settlement (see also remarks in respect of Article 5 above).

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<sup>15</sup> In 2008 there were 6.73 million non-citizens living in Germany, 1.7 million of them Turks. More than 72% of these individuals have been living in Germany for at least 8 years. A significant number of non-nationals acquired German citizenship following the adoption of a new Citizenship Act (*StAG*) in 2000. Source: Federal Statistical Office (*Statistisches Bundesamt*).

<sup>16</sup> “*Vielfalt tut gut*”, launched in 2007.

90. The Advisory Committee notes the measures taken in a number of *Länder* to make people more familiar with the culture of the Roma and Sinti and above all their history, including their persecution under the Nazi regime (see also remarks in respect of Article 12). It especially welcomes the forthcoming completion of a memorial to the genocide of the Roma and Sinti situated in the very heart of Berlin.

91. The Advisory Committee further notes that use is increasingly being made of mediators from the Roma and Sinti communities to assist with relations between this group and educational authorities, and between the Roma and Sinti and health professionals and institutions. It also understands, however, that the representatives of these communities would like more to be done in this area in order to combat racism and discrimination more effectively.

92. The Advisory Committee notes that several *Länder*, in particular Hessen and Rhineland-Palatinate, are implementing a number of projects to improve the integration of Roma who do not have German citizenship, especially in the field of education. The Advisory Committee welcomes these developments that, as the authorities concerned pointed out, can only assist in the fight against racism and discrimination against the Roma and Sinti generally and promote tolerance and respect in the population as a whole. However, according to information available to the Committee, support for local projects aimed at Roma who do not have German citizenship is often inadequate.

93. The Advisory Committee also notes with concern the difficult situation of many Roma who are non-citizens and, despite having resided for numerous years in Germany or having been born there, are currently threatened with expulsion to Kosovo.<sup>17</sup>

#### *Recommendations*

94. The Advisory Committee encourages the authorities to pursue programmes and policies to encourage integration as well as the promotion of diversity and tolerance. It is important for the impact of these programmes to be regularly monitored.

95. The Advisory Committee calls on the authorities to take new measures to improve public awareness of the language and culture of persons belonging to national minorities, especially through the medium of school curricula. This should also be done outside areas in which national minorities are traditionally settled.

96. The Advisory Committee also calls on the authorities to continue and intensify measures to improve mutual understanding between persons belonging to the Roma and Sinti communities and the rest of the population and to improve public knowledge of the history and culture of the Roma and Sinti. It also encourages the authorities to pursue measures and projects that include Roma who do not hold German citizenship.

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<sup>17</sup> See the remarks made by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, calling for an end to the forcible return of refugees and the immediate evacuation of the lead-contaminated Roma camps. Strasbourg, 15 February 2010. All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

## Fight against racism

### *Recommendations of the two previous monitoring cycles*

97. During the previous monitoring cycles, the Advisory Committee encouraged the authorities to consider making it explicit in law that racist motivations constitute an aggravating circumstance of any offence.

98. It also called on them to pay special attention to manifestations of hostility towards Roma and Sinti and ways of combating such acts.

### *Present situation*

99. The Advisory Committee notes with concern that the number of offences motivated by racism, xenophobia and anti-Semitism has not decreased in recent years.<sup>18</sup> The Roma and Sinti seem to be most targeted by racist violence, whether verbal or physical. The Advisory Committee has also been informed by representatives of these communities that victims of such acts often feel they are not taken seriously enough or adequately protected by the forces of law and order. Isolated cases of hostility towards persons belonging to the Sorbian minority have also been reported to the Committee.

100. The Advisory Committee, like other bodies such as ECRI, considers that the German authorities' view of what constitutes racism is too narrow. The authorities tend to concentrate on combating racism in the context of membership of extreme right-wing movements. It welcomes the fact that the authorities continue to implement numerous programmes aimed at preventing and combating violence by the extreme right. However, it believes that this approach should not prevent the need for action against "general" or institutionalised racism which exists in Germany as in most of the State parties to the Framework Convention and which often allows extremism to spread. It is therefore essential to increase awareness in society as a whole of all the dimensions and manifestations of racism and to take adequate steps to prevent all forms of racism.

101. The Advisory Committee further regrets that the bill put forward in 2007 by the *Bundesrat*, seeking clear and precise inclusion in the Criminal Code of the motivation of racial hatred as an aggravating factor of any offence was ultimately not adopted by the *Bundestag*. The authorities justify this by claiming that the Criminal Code and the system of penalties currently offer sufficient guarantees to the victims of racially-motivated offences. The Advisory Committee regrets the authorities' persistent refusal to consider making racist motivation an aggravating circumstance in criminal offences. It does not share the authorities' fear that a reform of this kind might limit the degree to which the courts take into consideration other possible motives for an offence. On the contrary it believes, like ECRI, that such a reform would go a long way towards improving the effectiveness of policies against racially-motivated violence.<sup>19</sup> The Advisory Committee is also aware of a ruling of August 2009 by the Federal Court of Justice (*BGH*) that the use of Nazi slogans in languages other than German is not necessarily a criminal offence.<sup>20</sup> It will closely observe the follow-up to this ruling, including any legislative action.

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<sup>18</sup> According to the State Report, more than 28 000 offences motivated by extreme right-wing views were committed in 2007, compared with some 29 000 in 2006. The figures for 2007 include 2 800 xenophobic offences, 1 500 anti-Semitic offences and 500 racist offences, compared with equivalent figures of 3 200, 1 600 and 525 for 2006. The authorities report no significant decrease in these figures in 2008.

<sup>19</sup> See also 3<sup>rd</sup> and 4<sup>th</sup> ECRI reports on Germany.

<sup>20</sup> See *Bundesgerichtshof* ruling of 13 August 2009, case 3 StR 228/09.

102. The Advisory Committee is deeply concerned by information suggesting that racism and incitement to racial hatred and violence seem to be increasingly frequent on the Internet. Once again, it is the Roma and Sinti, and other minorities, who are especially targeted. The Advisory Committee notes that the authorities too are concerned by this problem and that a conference on the subject was held in July 2009, attended by Internet service providers. It appreciates that it may be difficult for the authorities to control the growth of this phenomenon and at the same time respect freedom of expression. Nevertheless, it believes that resolute action is needed to halt the spread of racism and racially-motivated hatred on the Internet, in particular by drawing on the principles enshrined in the Additional Protocol to the Council of Europe's Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.<sup>21</sup> Lastly, information received by the Advisory Committee suggests that racial hatred is also apparent in sport, especially at football stadiums, and that the main targets of this violence are Roma and Sinti and other minorities, despite efforts by the German Football Association (*DFB*) and the authorities to counter this problem.

#### *Recommendations*

103. The Advisory Committee calls on the authorities to continue doing everything possible to combat racism, xenophobia and anti-Semitism. Special attention should be given to raising awareness in society as a whole, and among the police and judiciary in particular, of the many dimensions and manifestations of racism. It also encourages them to take further measures to combat the spread of racism on the Internet and in sports stadiums.<sup>22</sup>

104. The Advisory Committee strongly encourages the authorities to reconsider their position and adopt specific legislation which expressly punishes racist motivation as an aggravating circumstance in any offence. It also encourages them generally to punish any incitement to and manifestation of racial hatred as a means of combating these phenomena more effectively.

### **The media and the fight against racism**

#### *Recommendations of the two previous monitoring cycles*

105. During the previous monitoring cycles, the Advisory Committee called on the authorities to encourage the media to abide by their own codes of conduct banning the spread of prejudice against persons belonging to minorities. It also believed that greater support should be given to programmes to raise awareness amongst journalists.

#### *Present situation*

106. The Advisory Committee welcomes the fact that media regulators are increasingly attentive to the problem of racist or xenophobic stereotyping or prejudice being spread via the media, as witnessed by the holding of a national conference in 2009 at which government authorities, the leading public media and media regulators came together to examine this question. It also notes with interest that the German Press Council has begun talks with the Central Council of German Sinti and Roma on the disclosure of the ethnic or national background of persons suspected of an offence. It has also learned of further progress in radio and TV, since the public-service broadcaster *ZDF* allegedly plans to introduce guidelines for radio and TV channels that prohibit statements of a racist or discriminatory nature. The

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<sup>21</sup> ETS No. 189 entered into force at international level in 2006. Signed by Germany in 2003 but not yet ratified.

<sup>22</sup> See also ECRI General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport, adopted on 19 March 2009.



information made available to the Advisory Committee also shows that the number of complaints about racist or discriminatory statements about the Roma and Sinti in the print media has declined significantly in recent years.<sup>23</sup>

107. Despite the marked progress described above, the Advisory Committee notes with concern that certain media continue frequently and unnecessarily to mention the ethnic or national background of persons suspected of an offence, thereby contributing to spread prejudice against persons belonging to certain minorities such as the Roma and Sinti and foreigners. It also appears that in so doing they are sometimes relying on information passed to them by the police (see also remarks in respect of Article 3 above).

#### *Recommendation*

108. The Advisory Committee calls on the authorities to encourage and support continued debate on the spread of racism and prejudice through the media. It is essential that the media abide fully by their own codes of conduct, that must be revised or expanded as necessary.

### **Article 9 of the Framework Convention**

#### **Access of persons belonging to the Danish and Frisian minorities to the media**

##### *Recommendations of the two previous monitoring cycles*

109. During the previous monitoring cycles, the Advisory Committee called on the authorities to take better account of the needs of the Danish and Frisian minorities as regards the broadcasting of programmes in their respective languages, in particular via public-service TV broadcasts.

110. It also called on the authorities to ensure that advances in digitalization of the media did not restrict the ability of persons belonging to the Danish minority to receive media in their language.

##### *Present situation*

111. The Advisory Committee notes with concern that, since radio and TV broadcasting in Denmark went digital in November 2009, persons belonging to the Danish minority and living in Schleswig-Holstein can no longer receive radio and TV broadcasts from Denmark and now have only very limited access to Danish-language programmes (chiefly on the radio).

112. The Advisory Committee welcomes the efforts being made by the various parties to resolve this problem. It is pleased to see that these have produced an agreement between the German and Danish cable operators to provide cover in Schleswig-Holstein. It also notes that persons belonging to the Danish minority may buy a decoder in Denmark which will in principle enable them to receive Danish TV programmes broadcast by satellite.

113. The Advisory Committee is keen to reiterate here the views it expressed during the previous monitoring cycles. It believes that locally produced Danish language programmes would better meet the needs of the Danish minority and would also avoid the possibility of persons belonging to this minority losing access to media in their own language as a result of technological advances.

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<sup>23</sup> According to the Central Council of German Sinti and Roma, the number of complaints has fallen from 50-60 a year in the 1990s to 15-30 in the last two years.

114. Regarding radio and TV broadcasts in Frisian, the Advisory Committee finds it regrettable that the situation has changed little since its previous Opinion. It is however pleased to see that radio broadcasts in Sater Frisian are continuing, thanks to funding by the *Land* of Lower Saxony. Nevertheless, according to the information at its disposal, there are virtually no radio or TV broadcasts in North Frisian within Schleswig-Holstein.<sup>24</sup> It understands there are plans, from the spring of 2010, to broadcast programmes in Frisian via a community radio station on some of the islands where Frisian is widely spoken. According to representatives of the Frisian minority, however, funding for the programmes in question has yet to be found.

115. The Advisory Committee is well aware that the authorities have a duty to respect fully the freedom of the media. However, it believes that they should give as much support as possible to increasing the media presence of minorities and their languages, especially in the output of public-service broadcasters that have a duty to reflect the cultural diversity existing within society. Indeed, without official support it is sometimes difficult for minority groups to make their requests heard and secure backing for their projects in the highly competitive media sector. In this context, the authorities might also consider the creation of incentives for private media providers (through funding and allocation of frequencies, for instance) to increase access to and presence in the media of numerically-smaller minorities and their languages. The Advisory Committee also thinks it should be possible to raise the question of the portrayal of national minorities in the media and implementation of the principles of Article 9 of the Framework Convention, without breaching the principle of editorial freedom in the media. These issues might be dealt with in agreements between the *Länder* that regulate the organisation of the media in Germany and are adopted by the *Land* parliaments.

#### *Recommendations*

116. The Advisory Committee calls on the authorities to ensure that persons belonging to the Danish minority continue to have sufficient access to radio and TV programmes in their language that are broadcast from Denmark. It again encourages them to consider supporting the development of Danish language radio and TV programmes produced in Germany, in order to meet more effectively the needs of persons belonging to this minority.

117. The Advisory Committee encourages the authorities to give greater support to requests for the development of Frisian-language programmes, in particular those produced by public-service broadcasters, in order to provide a more appropriate response to the needs expressed by persons belonging to this minority, and to consider favourably the creation of incentives for private media providers to increase access in particular of numerically-smaller minorities to the media.

### **Representation of minorities in media regulatory bodies**

#### *Present situation*

118. The Advisory Committee welcomes the fact that the Danish minority has secured a seat in the body which regulates the media in Hamburg and Schleswig-Holstein. It also notes with satisfaction that the framework agreement between the authorities of Rhineland-Palatinate and the association of Roma and Sinti in that *Land* explicitly provides for the Roma and Sinti to be represented in the *Land's* regulatory body. These developments should

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<sup>24</sup> According to information available to the Advisory Committee, Schleswig-Holstein public radio currently broadcasts in Frisian for three minutes a week, at around 9 pm. Programmes by the Frisian Radio Association, heard on some islands, can also be received via the Internet. There are no TV broadcasts in Frisian.

contribute to ensuring better accommodation of the interests of persons belonging to national minorities in the radio and TV programmes of the *Länder* concerned.

119. The Advisory Committee regrets that in 2009 the Sorbian minority lost its seat in the media regulatory body for the *Land* of Saxony. It further notes that, despite repeated demands, the Frisian minority has still not managed to secure representation in the regulatory body for Schleswig-Holstein.

#### *Recommendation*

120. The Advisory Committee 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.

### **Article 10 of the Framework Convention**

#### **Use of minority languages in dealings with local administrative authorities**

#### *Recommendations of the two previous monitoring cycles*

121. During the previous monitoring cycles, the Advisory Committee encouraged the authorities to continue their efforts to increase the use made of minority languages in dealings with the local authorities, especially in the case of Sorbian, in order to ensure the full and effective implementation of the existing legislation.

#### *Present situation*

122. The Advisory Committee again notes with regret that, according to information received, the Sorbian language is little used in dealings with the administrative authorities in the areas of Sorbian settlement. Moreover, the law allows the Sorbian language to be used in these areas both in dealings with the administrative authorities and before the courts. Representatives of the Sorbian minority with whom the Committee spoke say that written communication in Sorbian with the administrative authorities poses no problems in practice. Even so, according to the representatives, use of the Sorbian language in public life is not actively encouraged and supported. They make the particular point that if people use the opportunities afforded by the law regarding language use before a court or in dealings with the local authorities, this means that the individuals concerned will face a number of obstacles and sometimes find themselves in awkward situations, since the authorities generally assume that they speak German. The Advisory Committee has also been told that in some municipalities in areas of Sorbian settlement there are no local government personnel who speak Sorbian.

123. The Advisory Committee believes that whilst the legal framework allowing use of the Sorbian language in dealings with local administrative authorities is in place, this is not enough to develop and support the use of this language. The Advisory Committee notes that, in this context, the authorities also express concern at the threat to the survival of the Sorbian language. Yet the use of minority languages in public life, especially in dealings with the Government, is an essential way of enabling persons belonging to national minorities to preserve their linguistic identity. In fact, confining the use of minority languages to the private sphere does not encourage persons belonging to these minorities to preserve and develop their languages. Furthermore, using these languages in public and in official situations also raises their profile within the majority population.

124. The Advisory Committee notes that the representatives of the Danish and Frisian minorities are also requesting the adoption of additional measures in order to promote the use of their minority languages in public life. The Frisian representatives, for example, suggest that a knowledge of Frisian should be a skill taken into account by employment agencies in Schleswig-Holstein, as it is in Saxony.

125. Against this background, the Advisory Committee welcomes current efforts in Saxony and Brandenburg to promote bilingualism, in particular through the *Witaj* project.<sup>25</sup> Nevertheless, it believes that more determined incentives and support, plus greater awareness-raising amongst the general public, are needed to create a framework that will contribute to the preservation and development of this language and encourage persons belonging to the Sorbian minority to use it in public life and in official situations.

#### *Recommendation*

126. The Advisory Committee calls on the German authorities to adopt effective measures which will create an environment in which use of the Sorbian, Danish and Frisian languages in dealings with local administrative authorities can more easily be promoted. They should in particular ensure that the legislation in force is fully implemented in the traditional areas of Sorbian settlement.

### **Article 11 of the Framework Convention**

#### **Use of minority languages for surnames**

#### *Present situation*

127. The Advisory Committee notes the recent decision of the Amtsgericht Cottbus, arguing that current German law (§.1 *Minderheitennamen-Änderungsgesetz*)<sup>26</sup> does not allow the addition of the suffix “- owa” to the name of a female person belonging to the Sorbian minority in official documents. This, according to information received by the Advisory Committee, contradicts the traditional Sorbian practice concerning gender declension of names.

128. The Advisory Committee considers this situation not in line with Article 11 paragraph 1 and the overall principle of inclusive interpretation of the Framework Convention. While reiterating its opinion that nothing in the Framework Convention prevents State parties and their judiciary from considering its substantive provisions as directly applicable, the Advisory Committee encourages the German authorities to take the necessary steps to bring German legislation fully in line with Article 11 of the Framework Convention.

#### *Recommendation*

129. The Advisory Committee encourages the authorities to amend the law on translating/transcribing names and first names into a minority language in a way which as far as possible accommodates the needs expressed by persons belonging to national minorities, in accordance with the principles set out in Article 11 of the Framework Convention.

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<sup>25</sup> The *Witaj* project, operational for a number of years now in Saxony and Brandenburg, is a programme of nursery-level total immersion education aimed at promoting bilingualism from an early age.

<sup>26</sup> See the Minorities' Name Changes Act (*MindNamÄG*) of 22 July 1997, as amended on 19 February 2007 (BGBl.I, page 122), Article 2.

## **Bilingual topographical signposting and indications**

### *Recommendations of the two previous monitoring cycles*

130. During the previous monitoring cycles, the Advisory Committee encouraged the authorities to ensure that bilingual signposting was fully implemented in Sorbian-speaking areas.

### *Present situation*

131. The Advisory Committee welcomes the adoption by Schleswig-Holstein, in June 2007, of a decree allowing municipalities to put in place topographical indications in multiple languages including the minority languages in use in this region. It hopes that municipalities in Schleswig-Holstein will make wide use of this new legal provision, in order to increase the visibility of the minority languages concerned.

132. The Advisory Committee has been told that the work of putting in place bilingual road signs and topographical indications has continued in the traditional areas of settlement of the Sorbian minority in Saxony and Brandenburg.<sup>27</sup> The representatives of the Sorbian minority report, however, that on many signs the Sorbian names are in smaller letters than the German names, making the Sorbian text less visible. They are also dissatisfied that signs and topographical indications are being replaced only gradually, due to budget constraints.

133. A difference of opinion remains between the Brandenburg authorities and the Sorbian representatives concerning demarcation of the areas of traditional Sorbian settlement within that *Land*. The authorities have a statutory duty to fund the display of bilingual signs only in those areas. The Sorbian representatives believe that some municipalities which no longer speak Sorbian but claim a Sorbian culture should be included in the traditional area of settlement, so that they can better resist the progressive assimilation brought about by migration away from traditional areas and thus preserve the Sorbian cultural heritage more effectively. The Advisory Committee believes it is important to maintain dialogue with the individuals affected by this issue in order not to apply unduly rigid criteria when defining the areas in question.

134. The Advisory Committee notes with satisfaction that measures are being taken to raise the profile of Sorbian language and history in school textbooks and maps. Indeed, for a decade or so now schools have been able to use bilingual atlases in Saxony, Brandenburg and Schleswig-Holstein. It also welcomes the fact that maps for geography teaching are being prepared which show the areas of historical importance to the Sorbian minority and mark the place names in Sorbian.

### *Recommendations*

135. The Advisory Committee calls on the authorities to pursue as quickly as possible the display of topographical indications and other bilingual and/or multilingual signs, in order to increase the visibility of minority languages.

136. It also encourages them, especially in the *Land* of Brandenburg, to take a flexible approach over the demarcation of the areas in which bilingual topographical indications may be displayed, in order to create an environment as conducive as possible to the preservation of the Sorbian language, culture and historical heritage.

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<sup>27</sup> According to the Brandenburg *Land* authorities, 75% of road signs and 95% of topographical indications in the Spree-Neisse region are now bilingual.

## **Article 12 of the Framework Convention**

### **Roma and Sinti in the education system**

#### *Recommendations of the two previous monitoring cycles*

137. During the previous monitoring cycles, the Advisory Committee urged the authorities to adopt measures to improve participation of Roma and Sinti children in the education system, on an equal footing with other pupils.

138. It also encouraged the authorities to support plans for Roma and Sinti assistants and mediators and to ensure that these persons received high-quality training.

#### *Present situation*

139. Information available to the Advisory Committee indicates continuing problems with the schooling of Roma and Sinti children. In addition to the problems of absenteeism and drop-out that are still common, the Advisory Committee has learned from various sources that these children continue to be over-represented in “special” schools and classes. Some Roma and Sinti representatives say that frequent assignment to a “special” school is partly due to poor communication between teaching staff and Roma and Sinti parents, and to persistent prejudice against the Roma and Sinti within the education system. The Advisory Committee finds this situation a matter for serious concern and incompatible with the principles of Article 12 of the Framework Convention.

140. The Advisory Committee notes with satisfaction that a number of *Länder* have taken measures to overcome these difficulties. It notes in particular that in Baden-Württemberg it is planned that, in future, the decision to place a child in a “special” class or school will be a matter for the parents rather than the educational authorities. The Advisory Committee hopes that this reform will lead to better co-operation between Roma and Sinti parents and teaching staff and that parents will be given all the assistance they need in reaching a reasoned and fully informed decision. It also welcomes the fact that a number of local projects involving Roma and Sinti school mediators continue to be implemented.<sup>28</sup> These are designed to improve school attendance by Roma and Sinti children. It is important that these programmes should be sustainable and that the positive experience gained from them should be better known and replicated in other *Länder*.

#### *Recommendation*

141. The Advisory Committee urges the German authorities to continue and intensify measures aimed at promoting equal opportunities for Roma and Sinti pupils in the educational system. Resolute action should be taken without delay to end unjustified placing of these children in “special” schools.

### **Teacher training and school curricula**

#### *Recommendations of the two previous monitoring cycles*

142. During the previous monitoring cycles, the Advisory Committee called on the authorities to continue with the development of training for teachers working with persons belonging to national minorities.

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<sup>28</sup> In Hamburg and Kiel, for example (see State Report).

143. It also took the view that the teaching of Roma and Sinti history and culture should feature more prominently in school curricula and teacher training syllabuses. It encouraged the authorities to continue their efforts to have more information on the history and culture of national minorities included in school curricula, also in areas outside their traditional areas of settlement.

*Present situation*

144. Several of the representatives of national minorities whom the Advisory Committee met emphasised that in their view there was still not enough information about national minority history and culture in school curricula and textbooks, especially in areas outside the national minorities' traditional areas of settlement. The Advisory Committee believes that the heritage of national minorities should be seen as an integral part of the wealth and cultural diversity of the country as a whole, not just the areas in which minorities are traditionally settled. Moreover, the value of disseminating knowledge of national minorities more widely throughout the country is made all the greater by the fact that persons belonging to minority groups are now migrating away from their traditional areas of settlement (see also remarks in respect of Article 5 and 6 above).

145. The Advisory Committee is pleased to note that a number of projects that train teachers to work with Roma and Sinti pupils are under way, for example in Marburg (Hessen), Mannheim and Stuttgart, where training specifically for primary school teachers has been organised in close liaison with the Documentation and Cultural Centre of German Sinti and Roma. It also welcomes the fact that in Hessen, Roma and Sinti history and culture are now an integral part of the school curriculum. However, it regrets that, despite these efforts, various sources report that curriculum content about the Roma and Sinti remains sporadic and insufficient in counteracting prejudice against and stereotyping of persons belonging to these communities.

146. Regarding teacher training in the Sorbian language, the Advisory Committee welcomes the abolition, from 2009-2010, of quota for the number of persons studying Sorbian at the University of Leipzig. This measure, together with the job guarantee offered by the Saxony authorities to students of the Sorbian language at the University of Leipzig, is designed to attract a sufficient number of people to study this subject. It should therefore contribute to increase the availability of teachers qualified to work in Sorbian-language schools or classes.

147. The Advisory Committee notes, however, that the situation regarding the training of teachers for Sorbian-language nursery schools is far from satisfactory. In fact, access to this training is capped by strict quota that enable only a very limited number of students to take part in such programmes. According to information available to the Advisory Committee, the shortage of trained nursery school teachers poses a very serious threat to the continuation of the *Witaj* project both in Saxony and in Brandenburg.

148. Regarding the Frisian language, the Committee is pleased to note that teachers are now being trained in Sater Frisian, with support from the *Land* of Lower Saxony, to teach this language in nursery classes. It also welcomes the fact that the Schleswig-Holstein authorities are supporting a similar training project for nursery teacher training in Frisian. Despite these advances, it notes that, in the view of the representatives of the Frisian minority, there are still nowhere near enough teachers in Schleswig-Holstein able to teach in Frisian. These

representatives are particularly dissatisfied that, due to the reform of the higher education system, fewer and fewer students are opting to train as Frisian-language teachers.<sup>29</sup>

#### *Recommendations*

149. It is important for the authorities to take further steps to ensure that teachers and pupils generally have a better knowledge of the culture and history of national minorities, including in areas that are not areas of traditional minority settlement. The Advisory Committee especially calls on the authorities to press ahead with and further develop projects designed to impart a better awareness of Roma and Sinti history and culture while, for instance, making use of the Curriculum Framework for Romani as developed by the Council of Europe in co-operation with the European Roma and Travellers Forum.<sup>30</sup>

150. The Advisory Committee calls on the authorities to pursue and increase measures in order to raise the availability of teachers qualified to teach in minority languages, at all levels of the educational system.

### **Article 13 of the Framework Convention**

#### **Network of Danish minority schools**

##### *Recommendations of the two previous monitoring cycles*

151. During the previous monitoring cycles, the Advisory Committee called on the authorities to pursue dialogue with the Danish minority on the funding of its school network, to guarantee equal opportunities for persons belonging to this minority in their access to education.

##### *Present situation*

152. The Advisory Committee welcomes the fact that an agreement has been reached between the *Land* authorities of Schleswig-Holstein, the municipalities concerned and the representatives of the Danish minority on the transportation costs of pupils attending private Danish language schools (see also remarks in respect of Article 5 above). For the 2009-2010 academic year, these costs will be split 50-50 between the *Land* and the municipalities in which these schools are located, placing their pupils on an equal footing with pupils at State schools in terms of financial support.

153. The Advisory Committee understands, however, that the basic problem will remain in years to come since, in principle, municipalities can cover two thirds of transport costs (compared with one third for the *Land*) but are under no legal obligation to do so for private schools. In this context, the Advisory Committee again points out that private Danish language schools are the only option open to children belonging to the Danish minority wishing to receive education in their own language. It is thus important that they should continue to have access to these schools on an equal footing with pupils from the majority population.

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<sup>29</sup> Frisian is no longer offered as a full subject for study in its own right in the teacher training programme but is now merely included in the German language training programme.

<sup>30</sup> See *A Curriculum Framework for Romani*, Council of Europe Language Policy Division 2008, [www.coe.int/lang](http://www.coe.int/lang).



*Recommendation*

154. The Advisory Committee encourages the authorities to continue discussion with all the parties concerned in order to find a satisfactory and lasting solution to the question of how the costs of transporting pupils to Danish schools in Schleswig-Holstein can be funded in the years ahead.

**Article 14 of the Framework Convention****Teaching in Sorbian***Recommendations of the two previous monitoring cycles*

155. During the previous monitoring cycles, the Advisory Committee encouraged the authorities to reconsider decisions to close down Sorbian classes or schools and to seek ways of securing the long-term future of the historic network of Sorbian schools.

*Present situation*

156. The Advisory Committee regrets the fact that the Sorbian secondary school in Panschwitz-Kuckau, under threat of closure at the time of its last visit in 2006, was closed down permanently in 2007. In addition, the closure in 2003 of the secondary school in Crostwitz was confirmed in 2006, after the parents of pupils at this school lost their case on appeal. In the view of the Sorbian minority representatives, this new closure is a severe blow to the continuity of Sorbian language teaching beyond primary level, even though the costs of transporting pupils to other Sorbian language secondary schools have been met by the authorities. Against this background the Advisory Committee notes with interest that the authorities have promised not to close any more Sorbian schools in the years ahead.

157. The Advisory Committee notes with interest that an in-depth analysis of all Sorbian schools in Saxony was conducted in 2008 in order to assess their functioning and needs in the period up to 2015-2020. It expects therefore that appropriate measures will be taken to ensure that existing needs be accommodated as fully as possible. In this context, it notes here that the representatives of the Sorbian minority deplore the lack of continuity in Sorbian language teaching, especially in the *Land* of Brandenburg. It notes too that the representatives continue to express a desire for closer involvement in decision-making with regard to the network of Sorbian schools.

*Recommendations*

158. The Advisory Committee urges the authorities to pursue and intensify without delay measures to maintain a sound and sustainable network of Sorbian language schools in the area of traditional Sorbian settlement, at all levels of the educational system.

159. It also calls on them to involve more closely representatives of the Sorbian minority in decision-making concerning the Sorbian school network.

**Teaching of Frisian***Recommendations of the two previous monitoring cycles*

160. During the previous monitoring cycles, the Advisory Committee encouraged the authorities to find ways of ensuring continuity in the teaching of Frisian beyond the early years of schooling.

161. It also called on the authorities concerned to take account of the educational needs of the Saterland Frisians.

*Present situation*

162. The Advisory Committee welcomes the adoption in October 2008 of a new decree on the teaching of Frisian in the region of North Frisia and the island of Helgoland, under which schools must inform pupils' parents that they can ask for Frisian to be taught at secondary level. Frisian language courses are optional or compulsory depending on the class concerned. The Advisory Committee notes with satisfaction that, according to the authorities, 67 Frisian language groups have been formed in 20 schools throughout the region for the year 2009-2010. It hopes that implementation of this measure will make up for the shortcomings reported by the Frisian minority representatives who complain of a persistent lack of formal structures for the teaching of Frisian (which often takes place outside normal school hours), and a generally inadequate availability of educational facilities, following the closure or merger of some village schools in which the Frisian language was taught.

163. The Advisory Committee notes with satisfaction that additional measures have been taken to boost the teaching of Sater Frisian, in particular the introduction of this language in a nursery school (see also remarks in respect of Article 12 above). The number of teaching hours of this language in schools in Lower Saxony has also increased in recent years.<sup>31</sup> The Advisory Committee notes the wish of the representatives of the Saterland Frisians for a number of bilingual classes.

*Recommendations*

164. The Advisory Committee calls on the authorities to continue the adoption of measures aimed at providing persons belonging to the Frisian minority with appropriate teaching of their language, in close liaison with these minority representatives.

165. The Advisory Committee encourages the authorities to continue their efforts to preserve the culture and language of the Saterland Frisians by having the language taught as part of the compulsory school curriculum.

## **Teaching of Romani**

*Present situation*

166. The Advisory Committee is pleased to note the information brought to its attention concerning the teaching of the Romani language in some schools,<sup>32</sup> in an attempt to further the integration of Roma children into the education system. It appreciates that this is offered in response to local demand and aims generally at preserving and developing the culture and language of this community.

*Recommendation*

167. The Advisory Committee encourages the authorities concerned to monitor and review regularly the demand for teaching Romani, as well as Romani language teaching projects and their impact on academic achievement by Roma children, in the interests of furthering good practice in this field. The authorities should ensure the effective participation of representatives of the Roma community in these monitoring and evaluation procedures.

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<sup>31</sup> 18 hours of Sater Frisian teaching were offered for the 2008-2009 academic year.

<sup>32</sup> See information provided in the State Report.

## Article 15 of the Framework Convention

### Participation in social and economic life by the Roma and Sinti

#### *Recommendations of the two previous monitoring cycles*

168. In the previous monitoring cycles, the Advisory Committee urged the authorities to develop a comprehensive strategy to meet the needs of the Roma and Sinti communities and promote full and equal participation by the latter in all fields.

#### *Present situation*

169. Information received by the Advisory Committee suggests that participation in social and economic life by persons belonging to the Roma and Sinti communities is limited. Whilst there is limited reliable data on this, it would appear that prejudice and discrimination still make it difficult for Roma and Sinti to access the labour market on equal terms with the rest of the population (see also the remarks in respect of Article 4 above). The Advisory Committee has also been told of alleged discrimination in the housing market. Moreover, the small number of encampments available for use by the - very few - Roma who still lead a nomadic way of life reportedly often fail to provide these individuals with an adequate standard of accommodation.

170. The Advisory Committee notes with satisfaction that a number of housing projects have been carried out to improve the living conditions of Roma and Sinti and facilitate relations between various groups at local level. There is, for example, the *Maro Temm* housing project in Kiel, an initiative of the local Sinti community. It is important to monitor and assess this type of project, and ensure that it can be replicated in other localities if necessary.

#### *Recommendation*

171. The Advisory Committee calls on the authorities to promote and support projects and initiatives aimed at improving participation by the Roma and Sinti in social and economic life, especially in employment and housing. It calls on them generally to take more specific measures to combat the prejudice and discrimination which the Roma and Sinti face in the employment and housing markets (see also the remarks in respect of Article 4 above).

### Consultation of national minorities at federal level

#### *Recommendations of the two previous monitoring cycles*

172. During the previous monitoring cycles, the Advisory Committee encouraged the authorities to pursue their efforts to improve the participation of minorities in the decision-making process.

173. The Advisory Committee deemed it important to set up specific institutional mechanisms for regular consultation with the Roma and Sinti which showed due regard for the diversity found within these groups.

#### *Present situation*

174. The Advisory Committee is pleased to learn that national minorities continue to have access to a range of opportunities for effective participation in the process of decision-making on matters of relevance to them. The regular conferences held to monitor implementation of the Framework Convention and the European Charter for Regional or Minority Languages are

an especially effective means of ensuring that the representatives of national minorities are actively and routinely involved in the process of monitoring and dialogue with the authorities which was initiated as part of the implementation of these international instruments. The continued existence of a *Bundestag* “working group on national minorities” also means that issues affecting Germany’s national minorities can be kept firmly on the agenda of political decision-makers. The Advisory Committee also notes with satisfaction that the work of the federal consultative councils for the Danish, Sorbian and Frisian minorities has continued. These councils provide a platform for regular discussions between, on the one hand, the representatives of the minorities concerned and, on the other hand, representatives of the Ministry of the Interior and members of parliament.

175. The Advisory Committee understands that funding for the Secretariat for Minorities should rise shortly from EUR 40,000 to EUR 60,000 per year. This is a welcome development. The Secretariat plays an essential role in communication and co-operation between organisations representing the national minorities and the federal authorities.

176. The Advisory Committee finds it a matter of deep regret, however, that no consultative council has yet been put in place at federal level for the Roma and Sinti communities, on the grounds that there are irreconcilable differences of opinion within these groups. The Advisory Committee wishes to point out that the existence of differing views and disagreements within a particular community is no excuse for the lack of any appropriate consultation mechanism (see also remarks in respect of Article 5 above).

177. The Advisory Committee is also concerned to note that, by and large, participation in public life by persons belonging to the Roma and Sinti communities is still very limited, though some progress has been made in this respect. The Central Council of German Sinti and Roma, for example, is a member of the Advisory Board of the Federal Anti-Discrimination Agency. Examples of successful co-operation between the authorities of certain *Länder* and groups representing the Roma and Sinti communities have also been reported to the Advisory Committee. The Advisory Committee believes, however, that more determined action is needed in order to bring about a significant improvement in the participation of Roma and Sinti in public life, with due regard for the cultural diversity found within these groups.

#### *Recommendations*

178. The Advisory Committee calls upon the authorities to maintain their approach of encouraging persons belonging to national minorities to play a greater part not only in the areas of public life relevant to them, but also in society generally, through institutional arrangements provided at federal level.

179. The Advisory Committee urges the authorities to take more resolute action to improve the participation of Roma and Sinti in public life, with due regard for the cultural diversity found within these groups.

### **Participation at regional and local level by persons belonging to the Sorbian and the Frisian minorities**

#### *Recommendations of the two previous monitoring cycles*

180. During the previous monitoring cycles, the Advisory Committee encouraged the authorities to strengthen the representation of the Sorbian minority in the Foundation for the Sorbian People.

*Present situation*

181. The representatives of the Sorbian minority have again told the Advisory Committee that they would like to have more of a role on the directing board of the Foundation for the Sorbian People. They feel that the current composition of the board limits their ability to play an effective part in decision-making within this body. The authorities believe that the public institutions represented on the board, that are also the main providers of funding for the Foundation, should not have anything less than a majority of voting rights. The Advisory Committee opines that the authorities should seek an equitable solution to the question of the Sorbian minority's representation. It finds it regrettable that the 2006 proposal to have representatives of two Sorbian cultural institutions<sup>33</sup> as members of the Foundation's directing board was ultimately abandoned.

182. Representatives of the Sorbian minority met by the Advisory Committee expressed the desire for the Sorbian minority to have greater cultural autonomy. Moreover, in connection with negotiation of the financial agreement referred to under Article 5 above, an evaluation report on the functioning of the Foundation for the Sorbian People and the various Sorbian institutions has been drawn up, which recommends a number of reforms to the way these institutions operate. When the report's findings are considered in detail and during any discussions on the future of the Sorbian minority's institutions, it is important that the authorities maintain a constant dialogue with the Sorbian representatives.

183. The Advisory Committee notes that there is at present no political party representing the Sorbian minority, although a group of Sorbian candidates stood in the 2008 local elections in the district of Bautzen. It also notes that if such a party were to materialise, it would be exempt in Saxony and Brandenburg from the 5% threshold required for seats in the *Landtag*, as is the case in Schleswig-Holstein for parties representing the Frisian and Danish minorities, and at federal level. In addition to these incentives for persons belonging to minorities to take part in elected bodies, the Advisory Committee notes that political parties regularly include representatives of the Sorbian minority on their list of candidates. Consultative councils for the Sorbians have also been set up in the Saxony and Brandenburg parliaments, and in some municipalities in the area of traditional Sorbian settlement. Whilst recognising that the creation of these bodies adds to the degree of participation in public life by persons belonging to national minorities, the Advisory Committee notes that the decision-making powers of these councils are limited and that their members do not have the right to speak in the *Landtag*.

184. The Advisory Committee welcomes the establishment of a consultative council for the Frisian minority within the *Landtag* of Schleswig-Holstein. According to the representatives of this minority, the council has already been able to address matters of importance to this minority to the *Landtag* and the *Land* authorities.

*Recommendations*

185. The Advisory Committee calls on the authorities to pursue discussions on the Sorbian minority's representation within the Foundation for the Sorbian People, in order to find an equitable solution which will allow Sorbian representatives to participate effectively in decision-making processes.

186. The authorities should also take steps to ensure that the consultation procedures set up at regional and local level allow persons belonging to national minorities to participate effectively in public life.

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<sup>33</sup> Sorbian National Ensemble and the publishing house *Domowina-Verlag*.

## **Article 18 of the Framework Convention**

### **Co-operation with neighbouring countries**

#### *Present situation*

187. The Advisory Committee welcomes the signing in June 2007 of a new partnership agreement between Schleswig-Holstein and the Danish South Jutland region, which underlines the importance of the role played by national minorities in the development of co-operation between the two countries.

188. It also notes the existence of various forms of co-operation involving persons belonging to the Sorbian minority between Germany, the Czech Republic and Poland. The Ems-Dollart Region along the Dutch-Lower Saxony border has also developed close co-operation, as a euro-region linking the German area in question and the Dutch province of Friesland, between the Frisian minorities on both sides of the border. The Advisory Committee also notes the role played in cross-border co-operation by the Interfrisian Council, which brings together persons belonging to the North Frisian, Saterland Frisian and East Frisian minorities, plus the Frisian minority in the Netherlands.

#### *Recommendation*

189. The Advisory Committee encourages the authorities to pursue and where necessary intensify international co-operation to protect national minorities, especially in border regions where substantial numbers of national minorities reside, as required by Article 18, paragraph 2 of the Framework Convention.

### III. CONCLUSIONS

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

#### **Positive developments at the end of the two previous monitoring cycles**

191. In 2006, Germany adopted the General Equal Treatment Act which will contribute to the stepping up of the fight against discrimination. Against this background, it has also set up a Federal Anti-Discrimination Agency. Measures against racism and racial violence have continued to be adopted, including action to halt the spread of racist ideas on the Internet. A range of programmes aimed at promoting cultural diversity and encouraging tolerance and intercultural dialogue, chiefly through educational curricula, are in operation.

192. Measures have been taken by both central government and a number of *Länder* to end the use of discriminatory or stigmatising language within the police force. Rules have been adopted against the communication of information to the media on the ethnic background of persons suspected of criminal offences.

193. The authorities have continued to give support to the preservation and development of the languages and cultures of persons belonging to national minorities. Financial support for the Foundation for the Sorbian People, in particular, has been substantially increased for the period 2009-2013. An agreement has also been reached for the 2009-2010 academic year on funding to cover the transport costs of pupils attending private Danish language schools in Schleswig-Holstein.

194. Schleswig-Holstein adopted a decree in 2007 providing for the display of multilingual topographical indications. Measures have been taken to increase the use in schools of textbooks and maps that show topographical indications in the minority languages.

195. A decree on the teaching of Frisian in the region of North Frisia and on the island of Helgoland was adopted in 2008, which should encourage the teaching of Frisian at secondary level. A number of projects on the teaching of Sater Frisian continue to receive support from the authorities. New measures have been taken to increase the availability of teachers qualified to work in Sorbian language schools/classes.

196. Persons belonging to national minorities have a range of mechanisms at their disposal that enable them to participate in the taking of decisions of relevance to them, both at federal level and in the *Länder* where they are traditionally resident. The authorities have maintained their support for the Secretariat for Minorities, which plays an essential role in communication between the organisations representing the national minorities and the federal institutions.

#### **Issues of concern at the end of the two monitoring cycles**

197. While welcoming the ongoing dialogue between the German authorities and groups currently not covered by the protection of the Framework Convention, notably the Polish community, there has been no progress as regards an extension of the scope of application and the citizenship requirement which restrict access of considerable numbers of persons to the protection offered by the Framework Convention.

198. Data on the situation of persons belonging to national minorities in a range of areas remains limited, making it difficult for the German authorities to ensure full and effective equality of persons belonging to national minorities.

199. Both implementation of the General Equal Treatment Act and the work of the Federal Anti-Discrimination Agency have attracted some criticism. It seems that potential victims of discrimination are generally still unfamiliar with the Act's provisions and that too little use is made of these provisions in cases of ethnically-motivated discrimination. The Agency is limited to providing advice to potential victims and does not have regional or local offices.

200. A certain lack of clarity persists in the distribution of responsibilities between federal government, the *Länder* and sometimes local authorities concerning the protection of national minorities. This results in public funding arrangements that are sometimes complex and confusing.

201. Some Roma and Sinti representatives deplore the fact that they are still unable to obtain public funding for their projects. Participation in public life by the Roma and Sinti also remains very low at all levels.

202. The likelihood of further lignite mining in Saxony and Brandenburg means that the linguistic, cultural and historical heritage of the Sorbian minority risks being weakened if entire villages are relocated at a distance from the district where the Sorbian minority is traditionally settled.

203. There has been no decrease in the number of racist, xenophobic or anti-Semitic offences perpetrated in recent years, despite measures taken by the authorities taken to fight this problem. These measures are concentrated essentially on combating racism in the context of extreme right-wing movements but do not provide an adequate response to the many dimensions and manifestations of racism. Prejudice against and stereotyping of the Roma and Sinti and other minorities continue to be spread by some media, that often disclose the ethnic background of persons suspected of offences. A bill put forward in 2007 seeking inclusion in the Criminal Code of the motivation of racial hatred as an aggravating factor of any offence was, regrettably, not adopted.

204. The provision, by the media and in school curricula, of information on the history and cultural heritage of persons belonging to national minorities remains limited, especially outside the traditional areas of minority settlement.

205. Persons belonging to the Danish minority have lost the ability to receive Danish language broadcasts in 2009 after radio and TV in Denmark went digital. They still have no programmes produced locally in Danish. The media presence of Frisian is very limited, including in the programming of public-service broadcasters.

206. An environment more likely to stimulate the use of minority languages in public life should be created, in order to encourage full implementation of the legislation allowing the use of minority languages in public life in a number of regions.

207. Current legislation regarding the changing of minority names does not allow for the addition of the suffix “-owa” to the name of female persons belonging to the Sorbian minority in official documents, which is not in line with Article 11 of the Framework Convention.

208. Cases of discrimination against the Roma and Sinti in the education system, and of their over-representation in ‘special’ schools, continue to be reported. Persons belonging to these communities also suffer discrimination in other areas and there are instances of their being denied access to public places as well as persistent allegations of ethnic profiling by the



police. Although some positive measures have been introduced in a number of cities or *Länder* to promote equal opportunities for the Roma and Sinti, there is still no overall official policy in this domain.

209. Another Sorbian secondary school was closed down permanently in 2007. There are serious difficulties in training sufficient nursery school teachers qualified to teach in Sorbian. There is also a shortage of Frisian teachers in the educational system.

### **Recommendations**

210. 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:

#### **Issues requiring immediate action<sup>34</sup>**

- **Intensify measures to raise public awareness of the General Equal Treatment Act, and ensure that compliance with the Act is regularly monitored; take additional measures to ensure that persons most vulnerable to discrimination be fully informed of the legal remedies available to them;**
- **Continue resolutely to combat racism in its many dimensions and manifestations; adopt targeted measures to prevent the spread of prejudice and racist language through certain media, on the Internet, and in sports stadiums; adopt specific legislation that expressly punishes racist motivation as an aggravating factor of any offence;**
- **Take measures to bring about a significant increase in participation in public life by the Roma and Sinti, with due regard for the cultural diversity found within these groups; promote and support projects and initiatives which will contribute to improving their participation in social and political life, and take resolute action without delay to end the unjustified placing of Roma and Sinti pupils in ‘special’ schools;**

#### **Other recommendations<sup>35</sup>**

- **Develop the use of data on the situation of persons belonging to national minorities, obtained from the national minorities themselves and from other sources, in order to better tailor measures aimed at protecting minorities to their real needs;**
- **Pursue an open and dialogue-based approach in their relations with persons belonging to groups that are currently not covered by the Framework Convention, including non-citizens, with a view to extending the protection of specific articles of the Convention to persons belonging to these groups as appropriate;**

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<sup>34</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

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- **Continue the policy of support for the preservation and development of the cultural heritage of national minorities, in close liaison with the individuals concerned, and paying special attention to the long-term needs of persons belonging to national minorities;**
- **Continue the debate, in liaison with the representatives of national minorities, on the distribution of responsibilities in the field of national minority protection policies, so that measures to preserve and promote their languages and cultures can be made more effective and more accessible;**
- **Pay all the requisite attention to the interests of persons belonging to the Sorbian minority if new relocations of the population are considered to make way for lignite mining operations, and ensure that the individuals concerned be closely involved in decision-making processes and the preparation for such relocations;**
- **Take new measures to improve the general public's awareness of the language and culture of persons belonging to national minorities, in particular outside the traditional areas of minority settlement;**
- **Provide greater support for the development and transmission of radio and TV programmes in the national minority languages, especially by the public-service media but also through the creation of relevant incentives for private media;**
- **Take the necessary steps to bring German legislation concerning the changes of minority names fully in conformity with Article 11 of the Framework Convention;**
- **Take additional measures to create an environment in which use of the Sorbian, Danish and Frisian languages in dealings with local administrative authorities can be promoted more effectively;**
- **Continue and intensify measures to increase the availability of teachers qualified to teach in the minority languages, at all levels of the educational system; continue, in close liaison with the representatives of the minorities concerned, to develop teaching of or in these languages;**
- **Maintain the approach of encouraging persons belonging to national minorities to participate more actively in public life, through institutional arrangements provided at federal level; take steps to ensure that consultation procedures set up at regional and local level enable persons belonging to national minorities to participate effectively in public affairs.**