



19 May 2004

GVT/COM/INF/OP/I(2004)005

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

**COMMENTS OF THE GOVERNMENT OF POLAND ON THE OPINION OF THE  
ADVISORY COMMITTEE ON THE IMPLEMENTATION OF THE FRAMEWORK  
CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES IN  
POLAND**

## I. EXECUTIVE SUMMARY

Relating to the remarks included in the *Executive Summary*, the following explanations should be given.

Regarding the matter of “The adoption of a comprehensive law on the national minorities”, it should be made clear that on March 17, 2004, the Special Subcommittee for the consideration of a draft law *on the national and ethnic minorities in the Republic of Poland* completed its primary works on the content of a draft of the act. The present title of this draft is: the act *on the national and ethnic minorities and the regional language*. In accordance with the due regulations, the draft was sent for consultation to the national and ethnic minorities organizations. Upon receiving their opinions, the works on the draft of the act will be continued in the parliament.

While appreciating the important role of education in the process of preserving the national or ethnic identity, one should stress the fact, that the existing solutions, (which are referred to in the following parts), allow to maintain the present network of Lithuanian schools and classes. The consultations with the Lithuanian minority regarding this matter are currently carried out. Quite recently, the problems connected with the financing of education of the Lithuanian minority were discussed during the meeting of the Sub-Team on Education of National Minorities, which was held on March 10, 2004 in Puńsk.

As far as the consultations with the Roma community on implementation of the *Programme for the Roma community in Poland* are concerned – the meeting of the Sub-Team for Roma Issues, which is scheduled in April, 2004, will be devoted to this problem.

## II. GENERAL REMARKS

**Point 9.** The statement included in this point saying that “the system for protection of national minorities in Poland appears to be closely linked to bilateral agreements with the neighbouring countries” does not reflect the essence of the system of the legal protection of the national and ethnic minorities in the Republic of Poland, nor the role of the bilateral agreements in it. The system of protection of the national and ethnic minorities in Poland is based – as it is – on the internal legislation. The bilateral agreements are only the completion of the internal system of these rights protection.

## III. THE DETAILED COMMENTS REFERRING TO THE ARTICLES FROM 1 TO 19

### ARTICLE 3

**Point 21.** The Advisory Committee accepted the explanations of the Polish authorities that for now, in the Polish legislation, there is not any special procedure to recognize a group as a national minority. Such a procedure is predicted in a draft law *on the national and ethnic minorities and the regional language*. Article 2, paragraphs 1 and 3, list the criteria which should be met by a group of the Polish citizens to be recognized as a national and ethnic minority. On the other hand, the paragraphs 2 and 4 of this article define the complete list of groups, which meet these criteria. It seems to be understandable that in the circumstances when the works on the act have not been completed yet, and there are no other parliamentary regulations, in the cases, which would require to be settled, it is done on the bases of the court procedure. One cannot interpret such a situation by saying that “some Polish authorities seem to use the registration procedure of the Law on Associations as a means to determine whether or not any group can be considered a national minority”. One should also stress the fact, that only one case was noted when the Polish courts were compelled to give their opinion on the possibility to recognize a group of the Polish citizens as a national minority. This case was under the examination of the European Court of Human Rights in Strasburg, which stated that the actions

of the Polish authorities were rightful.

**Point 23.** Until now, no information on describing the representatives of Russian minorities by the notions “ Orthodox Poles” or “Old-Rite Poles” has reached the Polish authorities. It should be clearly stated that the Polish authorities pay a lot of attention to the fact, that any national questions may not be treated as identical with the denominational matters. In Poland, there are two Orthodox churches: the Polish Autocephalous Orthodox Church and the Eastern Old Believer Church. In the Podlaskie Voivodship, the followers of these Churches include not only the Russians, but also the Belarussians, Ukrainians and Polish. Nevertheless, the opinion of the Advisory Committee regarding this matter, has been passed to the Voivode of the Podlaskie Voivodship, in order to avoid in future, describing the Russians by the notions quoted in the opinion.

**Point 24.** The Advisory Committee has recognized the need to collect data on the minorities and the language, which is used at home, but it has filed some reservations, if the questions regarding these matters should be compulsory. Due to this fact, the following doubts could be demurred:

In the first place – the lack of the obligatory rule to answer these questions could significantly influence the quality of the collected data.

Secondly – it is doubtful if the right not to be treated as a person belonging to the national minority can be extended over the regulations on the census. Both the *Framework Convention*, and the *Explanatory Report*, include the texts on **treating** a person as belonging, or not belonging, to the minority. Whereas during the census the question was **asked** about the nationality, and the answer to this question, due to the census confidentiality, could not have any influence on the way of **treating** the questioned person.

Thirdly – the question asked was on the **nationality** and the language used in the household, and not on belonging to any minority.

In the fourth place – one should explicitly emphasize the fact that the questioned **person** – by himself or herself – decided if he or she would like to declare him or her as a person of the Polish nationality, or if he or she will state another nationality. Thus, such a person had a **free choice**, which is referred to in the *Explanatory Report*.

For the fifth – the kind of answers given to the questions regarding the nationality and language, does not determine the way of treating a respondent as a person belonging, or not belonging, to any national minority. A person may be treated as one belonging to a national minority **exclusively** if he or she moves so – if he or she benefits from the rights to which the national and ethnic minorities are entitled to, **regardless** of the answer given during the census.

These explanations will allow, as the Polish authorities assess it, to call in question the categorical statement included in the *Opinion* that “a compulsory answer to a question on ethnic origin or a question on language used, is not compatible with the principle” included in the article of the *Framework convention*, which is discussed here.

**Point 26.** The explanations regarding the irregularities during the census have been noted in the *Opinion*. One should only stress the fact, that such cases were sporadic and were immediately taken care of, and the census workers explained, that they filled out in pencil the entire form (and not only the questions about the nationality and language), in order to avoid any possible corrections or expurgations in the answers given to the census questions.

**Point 27.** Referring to the doubts called in this point, the following explanations should be given.

For the first – it should be emphasized that the policy towards the national and ethnic minorities, as well as the amount of means transferred for the minorities – have never depended on the number of the individual minority groups. The decisive factors included the real needs and the activity of the minorities themselves. Among the criteria on the bases of which the means are transferred, there is no criterion of the number of people in the individual groups. This situation has not been changed by the results of the census. The fact, that the results of the census do not have and will not have any influence on the amount of means transferred to the minority operations, is further proved by the data regarding the financing of the national and ethnic minorities. In the year 2000, the amount 24,824,000.00 PLN (6,538,000.00 EURO) was transferred from the state budget for the realization of various tasks for the benefit of minorities. In 2003, this amount went up to 38,245,000.00 PLN (8,037,000.00 EURO). The detailed information on the problem of financing in 2003 of the minorities from the means of the state budget is given in the annex.

Secondly – it should be made clear that the persons who did not declare any national belonging, are mostly the persons, who could not be accessed, due to their absence in their place of residence, by the census workers, and whose data, due to this fact, were recorded not on basis of the questionnaire, but on the basis of the administration records (in case of such persons, as the natural consequence, one does not know the answer not only to the question about the nationality, but also to most of the questions).

Thirdly – in the *Opinion*, while comparing the data of the census and the data included in the *Report*, there is the statement on “a drastic fall in the number of persons belonging to national minorities”. In fact, this decrease is not real. It is explicitly noted in the *Report* that the data regarding the number of the national and ethnic minorities are estimated, and the full information on the national structure will be known not earlier than after the publishing of the results of the general census. The data referred to in the *Report* were based on the estimates of the experts and of the organizations of the national and ethnic minorities, and the examples, also from other countries, show that the leaders of these organizations have, what can be understood, some inclinations to overestimate the number of the members of their minorities. In fact, the census data, at first surprised both the experts and the same representatives of the national minorities. However, when it became clear that these data may not have any influence on the relation of the state administration towards the minorities – which fact was many times stressed by the state authorities – the atmosphere calmed down.

To make sure, it should be very clearly stated, that there is no confirmation for the presented in the *Opinion* assumption according to which “such large discrepancies can seriously hamper the ability of the state to target, implement and monitor the measures to ensure the full and effective equality of persons belonging to national minorities”.

**Point 28.** The *Framework convention* does not include the definition of the national and ethnic minorities, thus this matter has been left to be decided by the states on the basis of their internal legislation (the Advisory Committee admitted it in point 16 of the *Opinion*). Also, in the *Explanatory Report*, it has been indicated that besides some subjective choice of a given person regarding the belonging to a national minority, the objective criteria should be taken into account too. The Silesians should be rather recognized as the group of people having the strong identification with the defined region, but internally varying as far as the ethnic characteristics are concerned (a part of them have inclinations towards the German culture, most of them to the Polish one, and only some of them identify themselves exclusively with the Silesian identity). The main reason for such a big self-identification of the part of the inhabitants of the Silesia as belonging to a different nation, is the frustration resulting from the bad economic situation in which this region has found itself. At the same time, one should notice that these persons have,

similarly to all other citizens of the Republic of Poland, the full right to express and realize their cultural identity, their political views, interests and other citizens' freedoms guaranteed by the *Constitution* and the entire legal order of the Republic of Poland.

**Point 29.** The catalogue of the national and ethnic minorities recognized by Poland is wide and it covers all these minorities, which can be distinguished on the basis of the objective criteria. These are minorities traditionally inhabiting the territory of the Republic of Poland and generally recognized by the entire society. In point 17 of the *Opinion*, the Advisory Committee notices that on one hand the states-parties of the *Framework convention* have some margin of freedom to assess what groups should be covered by the scope of application of the *Framework convention*, but on the other hand, it gives the correct statement that "this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stress that the implementation of the *Framework convention* should not be a source of arbitrary or unjustified distinctions". Relating to it, it should be very explicitly stated that while making this assessment, the Republic of Poland took into account both the regulations of the *Framework convention*, and the principles mentioned in the *Opinion*. Thus, in this case there can not be any arbitrary acts. Similarly, the *Constitution* of the Republic of Poland does not permit to recognize the persons who are not the Polish citizens, as belonging to the national and ethnic minorities – even when they identify themselves with the same nation as the people belonging to the recognized minority. The Polish government informed about it in the *Interpretative declaration* which was filed during the ratification of the *Framework convention*.

#### ARTICLE 4

**Point 30.** The article 11 § 3 of the *Labour Code* expresses the general rule of the prohibition to discriminate in the labour relations, and within this scope there are not in fact any statistical data regarding the observing of this principle. However, such statistical data are kept in relation to the quantity of court cases regarding the compensations for the prohibited discrimination practices. The right to be compensated for the violation of the rule of the equal treatment in the employment is stipulated by the article 16 § 3d of the *Labour Code*. The cases filed on the basis of this article are recorded by the statistical data of the Ministry of Justice. Recently, the range of data undergoing the statistical elaboration has been widened due to the amendments of the article 18 § 3d of the *Labour Code*, which entered into force on January 1 2004, and for now it covers the information on any signs and forms of the discrimination covered by this regulation.

**Point 35.** The wider data on the social and economic situation of the families of the persons belonging to the national and ethnic minorities will be made available in next few months, and by the end of June 2004 the Central Statistical Office will make public the analyses of the census data, which is to be elaborated, among others, on the basis of results of the control census. It seems that these actions should satisfy the rightful postulates included in point 35.

**Point 36.** Being aware of the particularly difficult situation of the people belonging to the Roma ethnic minority, inhabiting the mountainous areas of the Małopolskie Voivodship, the Government began the programme aid for the Roma community members inhabiting Poland, just from this group.

**Point 37.** One should share the positive assessment of the work of the Roma education assistants formulated by the Advisory Committee and inform, that that their actions are, for now, expanded to other regions of the country, within the all-Poland programme for the Roma community.

**Point 38.** The execution of the approved by the government *Programme for the Roma community in Poland* was started on January 1, 2004.

**Point 39.** For the execution of the *Programme for the Roma community in Poland*, the state budget provides the amount of 6,000,000.00 PLN. The *Programme* itself – during the phase of its constructing, as well as the criteria, on the basis of which the sent up projects were estimated – were consulted with the leaders of the Roma community.

## ARTICLE 5

**Point 40.** Since filing of the *Report*, the Government of the Republic of Poland has adopted numerous regulations on the language rights, among others, in the scope of education (also within teaching and learning in the minority language), because it recognizes the importance of the language for maintaining the national or ethnic identity. On March 18, 2002, the Minister of the Interior and Administration issued the regulation, which makes possible the translation of names and texts placed on the boards of the offices or the institutions of the public use, as well as in the means of the public transportation - into the national and ethnic minorities' languages. The possibilities given by this regulations were first used by the German minority members who placed the boards in their mother language in the town of Lasowice Wielkie in Opolskie Voivodship. One should also notice that on May 12, 2003 Poland undersigned the *European charter for regional or minority languages*. Currently, the ratification process is in preparation, including the discussions with the participation of the national and ethnic minorities over the scope of the provisions of the *Charter*, which should be binding for Poland.

**Point 41.** One should share the position of the Advisory Committee regarding the need to vote the act *on the national and ethnic minorities and the regional language*, resembling what was discussed in the “Explanatory Summary”, that on March 17, 2004, the Special Subcommittee for consideration of the commission draft law *on the national and ethnic minorities in the Republic of Poland*, completed the primary works on the content of the act draft. The completion of this phase of works significantly brings nearer the moment of adopting this act.

**Point 42.** One should pay attention to some misunderstandings connected with the view that allegedly “some authorities” support “the Polish cultural institutions”, and at the same time do not provide such support for the national minorities institutions. The real situation is that pursuant to the act *on organizing and carrying out the cultural activities*, the obligations of the subject donations of the institutions fall on its organizer, and the government administration, year after year, goes away from the model of the institutional managing substituting it by the social activity of the non-public entities. Most of the cultural institutions are supervised by the self-government and they serve both the people belonging to the Polish majority and the persons belonging to the national and ethnic minorities. Sometimes it happens that the self-government manages the cultural institutions serving first of all the minorities. For example, gmina Puńsk manages the House of the Lithuanian Culture.

**Point 43.** Taking into account the necessity of creating institutions supporting the identity of the national and ethnic minorities, just recently the Minister of the Interior and Administration sent up to the projects of the state budget, the proposal to create the goal reserve, which could be destined, among others, for the construction and equipping of the cultural centers of the national and ethnic minorities. Unfortunately, because of the necessity to cut the budget expenses, this reserve has not been placed in the budget yet. Moreover, a draft law *on the national and ethnic minorities and the regional language* includes the regulations which make possible the transfer of means for, among others, the operating of the cultural institutions, reading rooms and the libraries of the national and ethnic minorities.

**Point 44.** The renovation and maintaining of the cemeteries is the obligation of their owners. Nevertheless, one should share the anxiety expressed by the Advisory Committee about the fate of these cemeteries and temples which are located in the areas where as the result of the tragic events connected with the II World War, or with the later, postwar period, there are no believers

who would be able to take care of the cemeteries and temples, or there are too few of them. In this context, it is necessary to give some explanations regarding the Church Fund which operates in Poland. From the means of this Fund, the Polish state co-finances the repairs of the temples which are entered in the memorials' list. Thanks to the support from the Fund, it was possible to overhaul many temples, of which believers include persons belonging to the national and ethnic minorities. The repairs of the temples and cemeteries are also co-financed from the means of self-governments, among others these means were used to fence many post-Lemks cemeteries. In the process of restructuring the forgotten cemeteries of the national and ethnic minorities, the self-government authorities cooperate with the central institutions, with the representatives of churches, national parks and with the representatives of the minorities. The administration is aware of the meaning of the Karaite cemetery in Warsaw for this community. That is why, together with the Warsaw self-government authorities, there have been started the actions to find the appropriate method of collecting the means, which could be transferred for this cemetery renovation.

Unfortunately, as the result of the lack of caution during the communist rule period of the abandoned temples and cemeteries, nowadays the needs are much bigger than the state potential. In saving the heritage of the national and ethnic minorities, the cooperation of many entities seems to be very important.

**Point 45.** One should agree with the assessment of the tragic results of operation "Wisla" as presented by the Advisory Committee, and inform that in 1990 the Senate of the Republic of Poland adopted the resolution condemning operation "Wisla".

**Points 46 and 47.** As to the problem of returning the properties taken over by the State within operation "Wisla", it should be advised that presently, there are carried out the works on a draft law *on the compensations for taking over by the State of the real estate and some properties*. Until the date of adopting this act, overruling or change of the decrees on the bases of which the properties of the displaced persons were taken over, may take place only in the circumstances if such issued decisions were against the law at that time. The proceedings aiming to verify the rightfulness of the issued decisions are carried out at the request of the interested persons. In case of confirming that a given decision was issued with the violation of the law at that time, it is being annulled, and the consequences include the return of the property or awarding of the compensation.

To find the appropriate solution of the problem of gratification for the injustice suffered by the prisoners of the labour camp in Jaworzno, the victims of operation "Wisla", is now the subject of the works of the government administration – this matter has already involved a lot of meetings and consultations. On March 30, 2003 the problem of compensation for the former prisoners of the labour camp in Jaworzno, the victims of operation "Wisla" was discussed at the Government meeting. However, the final decision has not been accepted yet.

Concerning the question of prosecuting the crimes committed by the communist authorities against the Polish citizens of the Ukrainian nationality placed in the Central Labour Camp in Jaworzno, it should be noted that these matters are being cleared up within the proceedings carried out by the Institute of the National Memory.

## ARTICLE 6

**Point 48.** While sharing the view on harmful effects of announcing the theory about the state national unity, one should object to the attitude presented in the *Opinion* that "the authorities often stress the homogeneity of modern-day Poland". This thesis is not true, harmful for the Polish authorities and it is not supported by any evidence. It is contradicted even by the Polish legislation, in which the matter of protection of the rights of the national and ethnic minorities is given much consideration. Contrary to any fears, also the public discussion on the results of the

census has contributed to the growing interest in the national and ethnic minorities and protecting their rights.

**Points 49 and 50.** While accepting the assumption that the situation of many persons belonging to the Roma ethnic minority is particularly difficult – especially in such fields as: living conditions, health protection or employment – one should however express some doubts, if this situation really results from any discrimination practices applied against them. The well developed legal regulations which prohibit the use of such practices, the activities of the institutions responsible for their monitoring (including, in particular the Commissioner for Civil Rights Protection - the Ombudsman) and at the same time a very little number of any discovered cases of discrimination – prove that the real reasons for the bad situation of the Roma should be found somewhere else. One should also remind the actions undertaken in order to improve this situation, which are to be further supported by the *Programme for the Roma community in Poland*.

In this context, one may not agree with the view presented in the Opinion on “the persistent discrimination” of the Roma, existing in Poland.

Referring to the question of the discrimination within the line of employment, one should note that the amending of the act *on employment and counteracting the unemployment* of 2002, implemented the prohibition of discriminating due to the nationality or the ethnic origin, relating to: the employment intermediaries (also carried out by the private employment agencies and the employment consulting agencies), information of vacancies or professional preparation, training of the unemployed persons, and the professional consulting. The provisions of the act also predict the penal sanctions for the employer who refuses to employ a candidate due to his or her nationality or the ethnic origin, or for the employment agency, which does not follow the discrimination prohibition. Moreover, pursuant to the regulation of the Minister of Labour and the Social Policy of February 9, 2000, there is an obligation to accept by the poviat’s employment office any notification of an employer on a vacant place and the professional preparation vacant place, providing that it does not include any requirements that are discriminating for the candidates because of their, among others, nationality.

The *Labour Code* that entered into force in January 2004 contains the provision prohibiting any direct or indirect discrimination in employment, among others, due to the racial or ethnic origin. Moreover, the *Code* contains another new provision that the employees, among others, with no regard to the racial or ethnic origin, should be treated equally within the scope of entering into and terminating the employment agreement, the employment conditions, promotions and access to training in order to improve their professional skills.

While in agreement with the criticism of the “Roma’ classes” presented in the Opinion, one should state that the view showed in the *Opinion*, that these classes “are being implemented” – is not true. On the contrary – their number constantly decreases, though the process of liquidation of the “Roma’ classes” has not been completed yet. The experiment which was introduced at the beginning of the 1990s, the goal of which was to supplement the pre-school education and leveling other found deficiencies, e.g. in the field of knowledge of the Polish language – is now being replaced by the new system – the additional support for the Roma children in the integrated classes.

**Point 51.** It should be advised that the actions aiming at the change of the xenophobic attitudes have been entered into the *National action plan for counteracting racial discrimination, xenophobia and related intolerance*, which is being prepared within the scope of realizing the provisions of the UN conference in Durban. Just currently, in the education system, the big stress has been put on promoting the intercultural dialogue. In the Polish education system, both the content of teaching, and the educational and methodological actions are directed at shaping the attitudes of openness, dialogue and respect for the cultural differences. It is achieved both by the

possibility to elaborate by any school its own curriculum, and the educating programme satisfying the needs of the social environment, as well as the financing, provided by the government education branch, of the methodological publications and the perfecting courses for the teacher in the range of the above mentioned subjects.

**Point 53.** The negotiating team for the German memorials and boards, which is mentioned in the *Opinion*, for the whole year of 2003, carried out the talks in the gminas of the Opolskie Voivodship, and it performed the inspections of the scene of several tens of memorials and boards commemorating the German soldiers. The goal of the actions of this Team was to find the solutions which would adjust the German memorials to the applicable regulations of law, by the mutual dialogue between all the interested parties. Each time, in these talks there were present: representatives of the voivode, of the territorial self-government, of the local community, the chairmen and members of the local units of the German minority organizations, the priest of the local parishes and the villages' heads of the hamlets (the sołtys offices). The gminas where these suggestions were not executed, were inspected for the second time in December, 2003. The majority of recommendations have been fully implemented. According to the Report, concluding the Team's activities, accepted on 7 April 2004 by the Voivode of the Opolskie Voivodship, the implementation of recommendations has not been initiated only in one case.

**Point 54.** The information included in this point on amending the *Criminal Code* requires more precise elements. The wider scope of the presently applicable provision of the article 256 of the *Criminal Code*, predicts three various legislation initiatives: the deputy's project, the citizens' project and the president's project. Within the scope under discussion, all of them propose the similar solution, based on the implementation of the provision to penalize the acts of preparing, gaining, keeping, transporting, purchasing and selling – in order to propagate – any materials calling for the hatred resulting from the national, ethnic, racial or religious differences or due to the non-denominational. The presidential project, besides introducing the penalties for the defined preparatory acts, also makes possible the judgments of forfeit of the materials and things used for their manufacturing or disseminating, even if they were not owned by the perpetrator. These projects were filed with the Sejm and directed, after the first reading, to the Special Committee for amendments in the penalty codifications.

In order to increase the effectiveness of the executing of laws regarding the prohibition to publish and disseminate the materials of the racial and anti-Semitic content, in May, this year, there will be held the training seminars for the prosecutors, devoted to these problems.

**Point 55, 56, 57.** One cannot agree with the suggestion that the crimes defined in articles 118, 256 and 257 of the *Criminal Code* – by themselves or by following a certain tendency – are treated as ones with insignificant social consequences. It also should be indicated that the circumstances of committing a specific act with the minor social danger are defined on the basis of the criteria resulting from the act (articles 115 §2 of the *Criminal Code*) and each accident of stating the minor social danger of an act, as the circumstances excluding the prosecuting of the perpetrator is assessed very carefully.

## **ARTICLE 8**

**Point 58.** Relating to the positions stated in this point, the commentary to points 28 and 29 should be referred to.

## ARTICLE 9

**Point 61, 62.** With reference to points 61 and 62 of the *Opinion*, one should assure that the Polish authorities are aware of “positive obligations on the state”, resulting from the article 9, paragraph 3 of the *Framework convention*. Referring to the remarks posted in relation to these paragraphs, one should inform on the correspondence regarding the awarding of the frequency between the Social and Cultural Society of Germans in Opolski Silesian region and the National Council of Radio and Television Broadcasting. At first, the Society applied for the frequency, which would enable the programme broadcasting for the entire area of the Opolskie Voivodship, using just one powerful transmitter. Because of the lack of a free frequency, which would enable putting in operation such a big transmitter, the Society sent a new proposal of enabling the programme broadcasting from a few less powerful transmitters, which would cover with their range the poviats of the Opolskie Voivodship inhabited by the German minority. Now, the adjustments of technical parameters are being worked out. It should be emphasized that the problems connected with awarding the frequency result only from the technological reasons. Also, one should add that the Team for the Affairs of the National Minorities, with the consideration and good will, met the postulate of the German minority and such a position was sent to the National Council of Radio and Television Broadcasting.

**Point 63.** One should inform that to be recognized as a public service broadcaster, the following entities may file their requests with the National Council of Radio and Television Broadcasting: an association, foundation and church or denomination group. The National Council of Radio and Television Broadcasting accepts the encouragement of the Advisory Committee to be more active while contacting the minority organizations. It also accepts the suggestion connected with “design of more proactive policy as regards the access to media for the persons belonging to national minorities”. It should be noted that this postulate is already being executed by creating the broadcasts for the minorities in the programmes of the public television and radio, as well as by the participation of the representatives of the minorities in the programme boards of the public radio and television. As the result of the recent elections to these boards, as many as nine places were taken by the persons designated by the national and ethnic minorities.

Also, one should inform that the amount of means for creating the broadcasts for the national and ethnic minorities is defined at sharing the incomes from the subscription fees between the companies of the regional public radio broadcasting. In 2003, the biggest amount of the these means went to: Radio Białystok (416,000.00 PLN), Radio Opole (143,000.00 PLN), Radio Koszalin (83,000.00 PLN) and Radio Olsztyn (79,000.00 PLN).

**Point 64.** While agreeing with the conclusions of the Advisory Committee posted in this point, one should inform that: the Regional Polish Public Television Programme 3 (TVP3) – by realizing the public television mission – produces and broadcasts the programmes for the national and ethnic minorities. These programmes are broadcast both in the common band, received all over the country, and in the regional bands, received on the territories of the individual voivodship. Unfortunately, for now the TVP3 covers with its range only about 55% of the country area and 75% of the population. The viewers outside the range of TVP3 have difficulties with receiving its programmes (including the minority programmes), however it is sometimes possible by the utilization of other channels of access than the ground broadcasting. The representatives of the minorities and the communities using the regional language indicated that the Ukrainian programme “Telenowyny” (the common band) is not received in some parts of the Warmińsko-Mazurskie and Podkarpackie Voivodships, and the Kaszub programme “Rodno ziemia” (the band of Gdańsk TVP3) is not received in the western part of the Pomorskie Voivodship. With reference to the above, TVP3 initiated the active undertakings for increasing its range. In the Podkarpackie Voivodship however, it is necessary to make adjustments with the neighbouring countries. In 2003, on the territories inhabited by the minorities there were put into operation: seven transmitters in the Zachodniopomorskie Voivodship and one transmitter in the

Podkarpackie Voivodship. Quite recently, TVP3 has also obtained the authorization to put into operation two digital transmitters in Podkarpackie and Silesian Voivodships. Moreover, on January 9, 2004, the broadcasting of the TVP3 programme was stated by the satellite digital platform Cyfra +, which enables the access to the programmes broadcast in the common band via the satellite. In a short time, it is also predicted to put into operation three less powerful transmitters in the Zachodniopomorskie and Warmińsko-Mazurskie Voivodships.

**Point 65.** The idea of the programme described in this pointed and entitled “The ethnic climates” has been based on two main assumptions: firstly, this programme presents in what way the national and ethnic minorities execute their right to preserve their own identity, and secondly – it must be independent. The broadcast is made by the professional journalists, well-educated to do to their job. Among them, there are the representatives of the minorities: Belarussian, Ukrainian, Slovak, Roma and German. This group constantly grows, and the makers of this broadcast do their best to maintain their independence and objectivity.

The important issues regarding the participation of the minorities in the mass media are consulted with the Board of the National and Ethnic Minorities for the Electronic Media, which is an independent organ gathering the representatives of the individual minorities. The Board is the permanent partner of TVP3, the National Board of Radio Broadcasting and Television, and the Team on National Minorities.

In the recent years, the training for the representatives of the national and ethnic minorities in Poland were held by the National Board of Radio Broadcasting and Television. These trainings were held in three phases: for the radio journalists, television journalists and the leaders of the organizations of the national and ethnic minorities who during their everyday work have contacts with mass media. In March, 2004, in the Academy of Television, at the TVP, there was held the first edition of training for the representatives of the minorities. The second edition has been scheduled for the autumn, 2004.

## ARTICLE 10

**Point 66, 67 and 68.** While accepting all the conclusions included in these points, one should say that meeting the postulates of the Advisory Committee regarding the implementation of article 10, paragraph 2 of the *Framework convention* will be possible no sooner than after adopting the act on the national and ethnic minorities and the regional language. For now, the draft of this act is being consulted with the organizations of the national and ethnic minorities. It should be also noted that in the event of adopting this act in the presently suggested version, it will be possible to introduce the auxiliary language in 79 gminas, which means, from the practical point of view, that in these gminas it will be possible to introduce the language of a minority in relations between the persons belonging to the minority and the administration units. In this way, there will be met the postulate posted in the last sentence of point 67, regarding the defining, upon the consultation with the representatives of the national and ethnic minorities, of the regions in which it would be possible to use the languages of minorities in contacts with the administration units.

At the same time, it should be remembered that on May 12, 2003, Poland undersigned the *European charter for regional or minority languages*, and currently the preparations to the ratification procedure are elaborated, including the discussions with the participation of the organizations of the national and ethnic minorities on the scope of provisions of the *Charter*, which should be binding for Poland.

**Point 69.** It should be cleared up that the notion of “a foreign language” is understood in the regulation as “a language other than the official language”, however in the content of the regulation, the particular role of the minority languages is explicitly mentioned by distancing them from other languages. Moreover, it was the only possibility – in the situation when the act *on the national and ethnic minorities and the regional language* was not existent – to introduce, in the offices, the signs in the minority languages. The common feeling of the minorities was that this regulation became a breach in the already existing legislation, which did not permit the minority languages in the offices. During the talks with the authorities, the representatives of the minorities did not share doubts posted by the Advisory Committee, but rather expressed their satisfaction that the government made the appropriate, though in their opinion too short, step towards expending the language rights. However, while accepting the opinion that there is a need for wider information on the possibilities created by the regulation, it should be announced that in the recent period of time such information was given a few times at the conferences on this subject, and during the consultations carried out with the representatives of the minorities, regarding the ways of implementing the provisions of this regulations.

## ARTICLE 11

**Point 70.** While confirming the appropriate interpretation of the act *on the Polish language*, and in particular of its article 2, one should explain again that the minority languages are not treated in the same way as the foreign languages (see the comment on the related matter to article 10 above).

**Points 71 and 72.** A draft law *on the national and ethnic minorities and the regional language* predicts the possibility of using the names referred to in article 11, paragraph 3 of the *Framework convention*. It should be also noted that in the vent of adopting this act in the currently proposed version, in 18 gminas of the Podlaskie Voivodship it will be possible to use the names in the Belarussian language. The draft of the act predicts that the expenses connected with the replacement of the boards containing the names of places or physiographical objects are to be covered by the state budget. It will allow to solve the problem referred to in point 72 of the *Opinion*.

## ARTICLE 12

**Point 73.** In the educational circles there is a constantly growing awareness of the need to give the information on the traditions and culture of the national and ethnic minorities inhabiting Poland, which can be tested by the programmes containing these concepts (in particular, destined for the realization of the educational path entitled “the regional education – the cultural heritage in the region”) and the didactic materials for the teachers. Having in mind the idea of the further propagation of knowledge on the national and ethnic minorities, the education department, together with the Educational television, prepared the film circle presenting the history, tradition, culture and the modern problems of the individual national and ethnic minorities in Poland. Moreover, every year, from the budget of the education department, there are transferred the donations for the undertakings which help to preserve and develop the culture of national and ethnic minorities and propagating it within the Polish society (such as: the school competitions of recitation, music and theatre, the festivals and presentations of the artistic activity of the children and youth, the ethnographic workshops, seminars and conferences for the teachers devoted to the culture of the national and ethnic minorities, and the publishing of the didactic aids and methodological materials). These actions should contribute to the final effect that Poland would not be seen any longer as the country of the ethnic and language uniformity – as suggested in the postulate posted in this point.

**Point 74.** One should note the Kaszub language is recognized in Poland as a regional language. The introduction of teaching of this language in the public schools was connected with the growing awareness of the language separateness of the Polish citizens who speak it. The initial difficulties with elaborating the curricula and handbooks for learning the Kaszub language resulted from the problems which were caused by the codification of this language and insufficient number of the adequately trained teachers. For now, there are carried out not only the systematic works on creating the curriculum and handbooks for learning the Kaszub language at the subsequent phases of the school teaching, but also the courses of the Kaszub language for the teachers who run this language classes. The number of children who study the Kaszub language is growing much faster than the number of children learning any other minority language. The teaching of this language in the public schools began in the school year 1992/93. In the school year 1997/98, in the elementary schools, it was taught to 173 pupils, in 1999/2000 – 980, and in 2002/2003 – as many as 3482 pupils. The dynamics of teaching the Kaszub language seems to call in question the theory on the worse educational situation within these languages, which are not supported as the result of the provisions in the bilateral agreements.

**Point 75.** While sharing the anxiety of the Advisory Committee regarding the Roma education, one cannot agree with the assumption that “the Roma minority is not yet guaranteed equal educational opportunities”. On the contrary, being aware of the particular situation of this minority, the state authorities reckon that in order to level the opportunities for the Roma pupils, there should be created some better – as compared with the pupils who do not experience such difficulties – educational conditions. The actions aiming at the creation of such conditions have been taken within the scope of the government programmes – till the end of the last year – the pilot programme, and currently – the governmental *Programme for the Roma community in Poland*.

**Points 76 and 77.** While generally accepting the assessment of the so called “Roma classes”, one should remind that it is an experiment, which is now being radically aborted. There are several “Roma classes” and their number is decreasing systematically, and no new classes are set up. Taking into account that such classes occur only in the elementary schools (six year) and that welfare of the children taking these classes makes it impossible to introduce any radical changes, one may hope that within a few next years these classes cease their activities. As it was rightly pointed out, such classes are replaced by the new model which is being implemented within the governmental programmes. It should be also confirmed that one of the tasks of the all-Poland programme which has been introduced since January 1, 2004 is the integration of the Roma pupils.

While fully agreeing with the last sentence of point 77, in which the Advisory Committee points out the necessity of teaching the language and culture of Roma, one should inform that there is such a possibility in virtue of the applicable provisions of the educational law. However, the system which is obligatory in Poland, assumes the free will in using this possibility, which is in accordance with the applicable European standards and article 3 of the *Framework convention*. As the consequence, despite the encouragements by the administration, the parents of the Roma pupils do not show any interest in this form of maintaining the language and cultural identity of their children. One may hope that this situation will be alternating gradually with the increasing number of young Roma with the university education and pedagogical training.

## **ARTICLE 14**

**Point 80.** The introduction of the “seven pupils criterion” defines the situation, in which organizing the classes of the national or ethnic minority language becomes the school’s obligation. The demographic low which is occurring in Poland results in the fact that in many schools the number of pupils belonging to the minorities, falls below this criterion in the individual classes. The assumptions of the educational policy include the protection and

maintaining of these schools, and in this order, in the algorithm for calculating the part of the general educational subvention, there has been introduced a new coefficient which allows to increase of 50% the grant given for running the small schools for the national and ethnic minorities. It should be also noted that the view presented in point 80 that “the local authorities seem to have a decisive role as regards closure of such classes” is not fully precise. Because in fact, it is not possible to liquidate a school without the positive opinion of the self-government unit’s resolution given, with regard to this matter, by the superintendents of schools who represents the body of the government administration. In practice, the superintendents of schools issue in such cases the negative opinions.

**Points 81 and 82.** While accepting the importance of education in the Lithuanian language for the Lithuanian minority and at the same time taking into account the difficult financial situation of it, one may relieve the anxieties by saying that thanks to the active attitude of the leaders of this minority and the good will of the educational authorities – it was possible to create a mechanism, which allows to provide financial means for the needs of this education. This mechanism predicts the increase of means of 20% or 50%, and in case when these amounts are not sufficient, it also assumes the transfer of the additional financial means from the 1% of the reserve of the educational part of the general subvention, (for example, from this reserve, the Puńsk and Sejny gminas received in 2003 – 1,188,000.00 PLN). It should be noted that this mechanism was entered in *the Strategy of the development of the Lithuanian minority education in Poland*, which is the document prepared together by the government and self-government administration, and the organizations of the Lithuanian minority. So far, such a document has been elaborated only for the Lithuanian minority – which gives a good name to its active operations – and now an analogous document is being elaborated for the German minority.

**Point 84.** Once again it should be pointed out that the biggest obstacle in teaching the Roma language is the lack of interest in this form of maintaining the ethnic identity shown by the parents of Roma children. Also, it should be cleared up that this kind of the parents’ attitude does not result from the lack of adherence to the Roma’ traditions, but on the contrary – it is connected with the fact, that according to these traditions, the right place for teaching the Roma culture – is the family and not a school. Regardless of this – there will be continued the activities aiming to convince the Roma community to this form of maintaining the ethnic identity, as well as creating better conditions for the introduction of the Roma language to schools.

## ARTICLE 15

**Point 89.** The statement included in the content that the representatives of the minorities are invited to the meeting of the Team “from time to time” is not fully true. In fact, the representatives of the minorities participate in all the meetings of the Team, though not always there are the same persons. To some meetings there are invited the representatives of all the minorities, to others – devoted to the specific minority, there are invited the representatives of just one minority. It should be also noted that in practice, the representatives of the minorities are treated as the members of the Team. It happens that they are the source of the ideas for the subjects which are then discussed during the meeting. The meeting of the Team are, in fact, the discussion forum where the representatives of the national and ethnic minorities and the representatives of the government administration can elaborate the opinions and positions for the issues which are important from the minority point of view.

Independently of the above statements, one should accept the recommendations of the Advisory Committee regarding the desired direction of the Team evolution. Also the solution proposed in a draft law *on the national and ethnic minorities and the regional language* has been rightly pointed out. The experience gained during the already performed works of the Team indicates that such solutions are truly correct.

**Point 90.** The *Programme for the Roma community in Poland*, which is currently implemented,

at the stage of its elaborating and finding the criteria of assessment of the sent in motions, was consulted with the Roma community. All the already held meetings of the Sub-Team for Roma Issues were devoted to these matters. One should mention, that the consultation of the Programme execution is carried out all the time. The next meeting of the Sub-Team scheduled in April 2004 will also support this consultation.

## ARTICLE 18

**Point 93.** The conclusions included in this point should be fully accepted.

**Point 94.** It should be noted that the applicable internal regulations in the Republic of Poland do not make the difference between the minorities depending on the fact if their rights are (or are not) guaranteed by the bilateral treaties.

Referring to the allegedly insufficient level of consultation with the national minorities during the process of the bilateral negotiations, one should remember about the specific features and the goal of the negotiations from the viewpoint of the state initiating them. The state does not have to undertake the bilateral negotiations in order to award certain rights to its own citizens. If the state wants to award such rights – it does so by adopting the act of the internal legislation and just then, which is obvious, such consultations are necessary. Concluding, one may say that the necessity of consulting the bilateral documents with the representatives of minorities seems to be disputable.

## IV. THE MAIN CONCLUSIONS AND COMMENTS OF THE ADVISORY COMMITTEE

### Referring to article 3.

**Point 97.** The commentary to point 29 should be referred to where it was stated that the catalogue of the national and ethnic minorities recognized by the state of Poland has the wide range and it covers all of the national minorities, which can be distinguished on the bases of the objective criteria. These are minorities traditionally inhabiting the territory of the Republic of Poland and commonly recognized by the entire society. In point 17 of the *Opinion*, the Advisory Committee notes that on one hand, the states-parties of the *Framework convention* have a certain margin of freedom in assessing what groups should be covered with the range of application of the *Framework convention*, but on the other hand, it states correctly that “this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stress that the implementation of the *Framework convention* should not be a source of arbitrary or unjustified distinctions”. With reference to the above, one should clearly stress the fact that while making such a assessment, the Republic of Poland took into account both the regulations of the *Framework convention*, and the principles defined in the *Opinion*. So in this case no arbitrary attitude ever occurred. Similarly, the *Constitution of the Republic of Poland* makes it impossible to recognize as the persons belonging to the national and ethnic minorities those who are not the Polish citizens – even when they identify themselves with the same nation, as the persons belonging to the recognized minority. The Polish government informed about this fact in the *Interpretative declaration*, which was filed during the ratification of the *Framework convention*.

**Point 98.** The commentary to point 24 should be referred to where it was stated that the Advisory Committee recognized the necessity of collecting the data regarding the nationality and the language used at home, but it filed the reservations if the questions referring to these matters should be obligatory. With reference to the above, one should post the following doubts. For the first – the lack of the compulsory answer to these questions could significantly influence the quality of the collected data.

Secondly – it is doubtful if the right not to be treated as a person belonging to the minority may be also extended over the regulations on the census. Both in the *Framework convention*, and in the *Explanatory Report*, their content refers to the **treating** of a person as belonging, or not belonging, to a minority. But during the census, the question **asked** referred to the nationality, and the answer to this question, even as the result of the census confidentiality, could not have any influence on the way of **treating** the person being questioned.

Thirdly – the question was about the **nationality** and the language used at home, and not about the belonging to a minority.

For the forth – it should be explicitly stated that the person who was questioned decided by himself if he or she would like to declare himself as a person of the Polish nationality or give another nationality. Thus, such a person had **the free choice**, which is referred to in the *Explanatory Report*.

For the fifth – the kind of answers given to the questions regarding the nationality and language, does not decide on treating the respondent as a person belonging, or not belonging, to a national minority. Such a person may be treated as the one belonging to a minority, **only** if he or she says so – if he or she benefits from the rights of the national and ethnic minorities, **regardless** of the kind of answer given during the census.

The above explanations would allow, as estimated by the Polish authorities, call in question the categorical statement in the *Opinion* that “a compulsory answer to a question on ethnic origin or a question on language used, is not compatible with the principle” included in the article of the *Framework convention*.

**Point 99.** The commentary to point 26 should be referred to where it was stated that the events of some irregularities were sporadic and they immediately were taken care of. And one should wait till the moment of publishing the results of the control census before undermining the reliability of the census results.

As to the matter of the interpretation of the results of *the general census of population and households*, within the context of appropriations for the national and ethnic minorities, the commentary to point 27 should be referred to, where it was stated that the policy towards the national and ethnic minorities and the amounts of means awarded for the minorities – were never dependent on the population of the individual minority groups. The decisive factors included the real needs and the activity of the minorities themselves. Among the criteria on the bases of which the financial means are transferred, there is no criterion of the number of members of the particular groups. This situation was not changed by the results of the general census. The fact that the results of the census do not have, and will not have, any influence on the amounts of means transferred for the activities of the minorities is further proved by the data regarding the financing of the national and ethnic minorities. In 2000, from the state budget, there were transferred for the realization of various tasks for the minorities 24,824,000.00 PLN (6,538,000.00 EURO). In 2003, this amount grew up to 38,245,000.00 PLN (8,037,000.00 EURO).

#### **Referring to article 4.**

**Point 101.** The commentaries to points 36 and 38 should be referred to where it was stated that while realizing the particularly difficult situation of persons belonging to the Roma ethnic minority, inhabiting the mountainous terrains of the Małopolskie Voivodship, just from this group the Government began the programme aid for the Roma inhabiting Poland. And since January 1, 2004, the all-Poland, governmental *Programme for the Roma community in Poland* has been executed.

#### **Referring to article 5.**

**Point 102.** The position of the Advisory Committee should be fully accepted.

**Point 103.** The commentary to point 43 should be referred to where there was given the information on the operations aiming at creating the goal reserve, destined, among others for the construction and equipping of the cultural centers of the national and ethnic minorities, and on the regulations of a draft law *on the national and ethnic minorities and the regional language* which make possible the transfer of means for, among others: the operations of the cultural institutions, reading rooms and libraries of the national and ethnic minorities.

**Point 104.** The commentary to point 44 should be referred to where, while sharing the opinion of the Advisory Committee, there was given the information on the actions undertaken in order to renovate the cemeteries connected to the culture of the national and ethnic minorities.

**Point 105.** The commentary to point 45 should be referred to where there is the acceptance of the assessment of the tragic results of operation “Wisla” made by the Advisory Committee, and there is the information that in 1990, the Senate of the Republic of Poland condemned operation “Wisla”. Also the commentary to points 46 and 47 should be referred to, in which there is a statement that currently, the works are carried out on a draft law *on the compensations for taking over by the State of the real estate and some properties*. Until adopting this act, the overruling or amendment of the decisions on the bases of which the properties of the displaced persons were taken over, may occur only in such circumstances that these decisions were against the applicable law at that time. The proceedings aiming to check the rightness of the issued decisions are carried out on the request of the interested persons. In the event that it is found out that the decision was issued with the breach of the law applicable at that time, it is being annulled, and as the consequence of it, the taken over property is returned or the compensation awarded.

#### **Referring to article 6.**

**Point 106.** One may not agree with such a categorical judgment which was presented in this point. The content of the *Opinion* does not show any bases to present the view by the Advisory Committee that “the Roma are discriminated against in the field of employment and the medical care”. The only place, where the situation of the Roma is mentioned within these fields, is the sentence starting with the point 50 of the *Opinion*, which goes like this: “There are also the reports of discrimination against Roma as regards employment and medical care”. In the footnote there is the reference to point 38 of the *Second Report on Poland* of the European Commission against Racism and Intolerance (ECRI) of 1999. One should note that point 38 of the ECRI report does not include such categorical statements. Moreover, one should also pay attention to the fact that five years passed from the moment of elaborating this report.

Once again then, it should be stated that the authorities are aware of the fact, that in many areas of life, including also the employment and health, the situation of many persons belonging to the Roma minority is very difficult. However, it does not result from the discrimination, but from quite different reasons. One should also present the view that adopting the untrue diagnosis on the discrimination of the Roma, does not support the improvement of their situation.

**Point 107.** While agreeing with the conclusions included in this point (with the commentary that these negative stereotypes are maintained only by a part, and not the entire society), one should remind the commentary to point 51, where it is stated that the actions aiming to change the xenophobic attitudes were entered into the *National action plan for counteracting racial discrimination, xenophobia and related intolerance*, which is being prepared within the scope of fulfilling the decisions of the UN conference in Durban. Just for now, within the educational system, the intercultural dialogue is given a lot of attention. In the Polish educational system, both the contents being taught, and the didactic conduct shaping actions are directed towards shaping the attitudes of openness, dialogue and the respect for cultural differences. It is achieved both by the possibility of elaborating its own curriculum by a school as well as of the educative programme which meets the social environment requirements, and the financing provided by the educational branch of methodological publications and the perfecting courses for teachers within the scope of these subjects.

**Point 108.** One can assure that in accordance with the recommendations of the Advisory Committee, regarding the construction and renovation of the memorials, the Polish authorities apply the means based on the propagation of the constant dialogue, including in this dialogue the representatives of the interested national minorities, and by adopting the non-discrimination attitude, particularly within the scope of the language requirements regarding the inscriptions. The sign of it can be found in the sentence from the point 53 of the *Opinion*, in which “the Advisory Committee appreciates the steps taken by the Polish authorities in connection with the erection and/or renovation of the memorials, by means of promoting a continuing dialogue, including in this dialogue the representatives of the national minorities concerned, and by adopting the non-discriminatory approach, particularly as regards language requirements pertaining to the inscriptions.”

It should be also remembered that the negotiation team for the German memorials and boards appointed by the Voivode of the Opolskie Voivodship, for the whole year of 2003 carried on the talks in gminas and locally inspected several tens of memorials and boards commemorating the German soldiers. The goal of this Team activities was to find the solutions to adjust the German memorials to the applicable regulations of law, by the common dialogue among all the interested parties. Each time, the talks included: the representatives of the voivode, of the territorial self-government, of the local community, the chairmen and members of the local units of the German minority organizations, the priests of the local parishes and the heads of the hamlets. In most of the gminas, the recommendations of the Team elaborated during the discussion were executed. The gminas where the recommendations were not fulfilled, were visited again in December 2003. The Report summarizing the operations of the Team will be presented by the Voivode of the Opolskie Voivodship in April, 2004.

**Point 109.** In order to improve the prosecuting of crimes referred to by the Advisory Committee, there have been undertaken the actions aiming at amending article 256 of the *Criminal Code*, which predicts the penalties for preparing, collecting, storing, transporting, purchasing and selling – in order to propagate them – the materials calling to the hatred resulting from the national, ethnic, racial, religious differences, or the ones regarding non-denominational. There are also planned the trainings for the prosecuting attorneys on better execution of the applicable in Poland regulations regarding counteractions of crimes referred to in this point.

**Point 110.** While accepting the conclusion that “criminal provisions on absence of significant social harm should be handled with extreme caution in cases of behaviour insulting to national minorities or incitement to hatred”, the commentary to points 55,56, and 57 should be referred to where there is no acceptance of the suggestion that the crimes connected with the so called “hate speech” – by assumption or according to some tendency – are treated as the ones with the minor social damage. It should be also pointed out that the circumstances of committing a specific act which indicate little social harm are defined on the bases of criteria resulting from the act (article 115 §2 of the *Criminal Code*), and each case of finding of the minor social, as the circumstance

excluding the prosecuting of the perpetrator, is assessed with the extreme caution.

### **Referring to article 9.**

**Point 112.** The commentary to point 61 and 62 should be referred to where there is information on the correspondence regarding the awarding of the frequency between the Social and Cultural Society of Germans in Opolski Silesian region and the National Council of Radio and Television Broadcasting. At first, the Society applied for the frequency, which would enable the programme broadcasting for the entire area of the Opolskie Voivodship, using just one powerful transmitter. Because of the lack of a free frequency, which would enable putting in operation such a big transmitter, the Society sent a new proposal of enabling the programme broadcasting from a few less powerful transmitters, which would cover with their range the poviats of the Opolskie Voivodship inhabited by the German minority. Now, the adjustments of technical parameters are being worked out. It should be emphasized that the problems connected with awarding the frequency result only from the technological reasons. Also, one should add that the Team on National Minorities, with the consideration and good will, met the postulate of the German minority and such a position was sent to the National Council of Radio and Television Broadcasting.

**Point 113.** The commentary to point 64 should be referred to where there is information that: the Regional Polish Public Television Programme 3 (TVP3) – by realizing the public television mission – produces and broadcasts the programmes for the national and ethnic minorities. These programmes are broadcast both in the common band, received all over the country, and in the regional bands, received on the territories of the individual voivodship. Unfortunately, for now the TVP3 covers with its range only about 55% of the country area and 75% of the population. The viewers outside the range of TVP3 have difficulties with receiving its programmes (including the minority programmes), however it is sometimes possible by the utilization of other channels of access than the ground broadcasting. The representatives of the minorities and the communities using the regional language indicated that the Ukrainian programme “Telenowyny” (the common band) is not received in some parts of the Warmińsko-Mazurskie and Podkarpackie Voivodships, and the Kaszub programme “Rodno ziemia” (the band of Gdańsk TVP3) is not received in the western part of the Pomorskie Voivodship. With reference to the above, TVP3 initiated the active undertakings for increasing its range. In the Podkarpackie Voivodship however, it is necessary to make adjustments with the neighbouring countries. In 2003, on the territories inhabited by the minorities there were put into operation: seven transmitters in the Zachodniopomorskie Voivodship and one transmitter in the Podkarpackie Voivodship. Quite recently, TVP3 has also obtained the authorization to put into operation two digital transmitters in Podkarpackie and Silesian Voivodships. Moreover, on January 9, 2004, the broadcasting of the TVP3 programme was stated by the satellite digital platform Cyfra +, which enables the access to the programmes broadcast in the common band via the satellite. In a short time, it is also predicted to put into operation three less powerful transmitters in the Zachodniopomorskie and Warmińsko-Mazurskie Voivodships.

**Point 114.** While accepting the general assumption that the programmes for the minorities should be prepared by persons belonging to this minority, or at least it should be consulted with the minorities, one should note that the following view presented in this point: “although national minorities’ representatives are involved in a number of public radio and television stations’ programmes intended for minorities, other programmes are prepared without significant consultation with minorities” is not entirely true. In fact, it has been approved as the rule, that the programmes for the minorities are prepared by the representatives of the minorities and are consulted with the minorities. However, there are a few exceptions to this rule. One of these exceptions is the programme “The ethnic climates”, which anyway in its assumption, is the programme not only for the minority, but first of all the programme about the minorities, addressed to the general public. Moreover, among the journalists co-creating this programme there are both the journalists of the Polish nationality, and the representatives of the minorities:

Belarussian, Ukrainian, Slovak, Roma and German.

### **Referring to article 10.**

**Point 115.** The commentary to points 66, 67 and 68 should be referred to where while accepting all the conclusions included in these points, it was stated that the fulfillment of the postulates of the Advisory Committee regarding the implementation of article 10, paragraph 2 of the *Framework convention* will be possible no sooner than after adopting the act *on the national and ethnic minorities and the regional language*. For now, the draft of this act is being consulted with the organizations of the national and ethnic minorities. It should be also noted that in the event of adopting this act in the presently suggested version, it will be possible to introduce the auxiliary language in 79 gminas, which means, from the practical point of view, that in these gminas it will be possible to introduce the language of a minority in relations between the persons belonging to the minority and the administration units. In this way, there will be met the postulate posted in the last sentence of point 67, regarding the defining, upon the consultation with the representatives of the national and ethnic minorities, of the regions in which it would be possible to use the languages of minorities in contacts with the administration units.

At the same time, it should be remembered that on May 12, 2003, Poland undersigned *the European charter for regional or minority languages*, and currently the preparations to the ratification procedure are elaborated, including the discussions with the participation of the organizations of the national and ethnic minorities on the scope of provisions of the *Charter*, which should be binding for Poland.

**Point 116.** The commentary to point 69 should be referred to where it was explained that the notion of “a foreign language” is understood in the regulation as “a language other than the official language”, however in the content of the regulation, the particular role of the minority languages is explicitly mentioned by distancing them from other languages. Moreover, it was the only possibility – in the situation when the act *on the national and ethnic minorities and the regional language* was not existent – to introduce, in the offices, the signs in the minority languages. The common feeling of the minorities was that this regulation became a breach in the already existing legislation, which did not permit the minority languages in the offices. During the talks with the authorities, the representatives of the minorities did not share doubts posted by the Advisory Committee, but rather expressed their satisfaction that the government made the appropriate, though in their opinion too short, step towards expanding the language rights.

### **Referring to article 11.**

**Point 117.** The commentary to points 71 and 72 should be referred to where it was stated that the possibility of using the names referred to in article 11, paragraph 3 of the *Framework convention* is included in a draft law *on the national and ethnic minorities and the regional language*. It should be also noted that in the vent of adopting this act in the currently proposed version, in 18 gminas of the Podlaskie Voivodship it will be possible to use the names in the Belarussian language.

### **Referring to article 12.**

**Point 118.** The commentary to points 73 should be referred to where it was stated that in the educational circles there is a constantly growing awareness of the need to give the information on the traditions and culture of the national and ethnic minorities inhabiting Poland, which can be tested by the programmes containing these concepts (in particular, destined for the execution of the educational path entitled the regional education – the cultural heritage in the region) and the didactic materials for the teachers. Having in mind the idea of the further propagation of knowledge on the national and ethnic minorities, the education department, together with the Educational Television, prepared the film circle presenting the history, tradition, culture and the

modern problems of the individual national and ethnic minorities in Poland. Moreover, every year, from the budget of the education department, there are transferred the donations for the undertakings which help to preserve and develop the culture of national and ethnic minorities and propagating it within the Polish society (such as: the school competitions of recitation, music and theatre, the festivals and presentations of the artistic activity of the children and youth, the ethnographic workshops, seminars and conferences for the teachers devoted to the culture of the national and ethnic minorities, and the publishing of the didactic aids and methodological materials). These actions should contribute to the final effect that Poland would not be seen any longer as the country of the ethnic and language uniformity.

**Point 119.** The commentary to points 76 and 77 should be referred to where, while generally accepting, presented in the *Opinion*, the assessment of the so called “Roma classes”, it is also stated that it is an experiment, which is now being radically aborted. There are several “Roma classes” and their number is decreasing systematically, and no new classes are set up. Taking into account that such classes occur only in the elementary schools (six year) and that welfare of the children taking these classes makes it impossible to introduce any radical changes, one may hope that within a few next years these classes cease their activities. As it was rightly pointed out, such classes are replaced by the new model which is being implemented within the governmental programmes. It should be also confirmed that one of the tasks of the all-Poland programme which has been introduced since January 1, 2004 is the integration of the Roma pupils.

**Point 120.** One may not agree with the view presented in the *Opinion* that the local authorities play the decisive role at closing the schools. Because in fact, it is not possible to liquidate a school without the positive opinion of the self-government unit’s resolution given, with regard to this matter, by the superintendents of schools who represents the body of the government administration. In practice, the superintendents of schools issue in such cases the negative opinions.

However, with all certainty there are no such situations where, for the financial reasons, or for any other reasons, only the “minority classes” are being closed. Moreover, in case of the schools where most of the children learn in the Polish language classes, and only a part of classes teaches a minority language, the existence of such classes gives the inspector the assumption to issue the negative opinion regarding the liquidation of the school. Nevertheless, one should share the opinion of the Advisory Committee regarding the necessity to monitor by the government administration, of the situations when it may be suspected that the financial situation hinders the functioning of classes or schools which have the minority language classes or the education is in the minority language.

**Point 121.** While sharing the opinion that it is necessary to undertake any possible actions in order to maintain the Lithuanian schools and classes – in accordance with, what was already stated in the commentaries to points 81 and 82 – one may relieve the anxieties by saying that thanks to the active attitude of the leaders of this minority and the good will of the educational authorities it was possible to create a mechanism, which allows to provide financial means for the needs of this education. This mechanism predicts the increase of means of 20% or 50%, and in case when these amounts are not sufficient, it also assumes the transfer of the additional financial means from the 1% of the reserve of the educational part of the general subvention, (for example, from this reserve, the Puńsk and Sejny gminas received in 2003 – 1.188.000,00 PLN). It should be noted that this mechanism was entered in the *Strategy of the development of the Lithuanian minority education in Poland*, which is the document prepared together by the government and self-government administration, and the organizations of the Lithuanian minority.

**Referring to article 15.**

**Point 123.** The election privileges stating that the national minority committees are exempted from the requirement to exceed the 5% electoral threshold are consequently repeated in the subsequent election ordinances to the Parliament. These privileges are also included in the currently applicable act on the *Election Ordinance to the Sejm of the Republic of Poland and the Senate of the Republic of Poland*. However, it should be noted that as the result of the smaller number of votes for the election committee of the German minority, in the nineties the number of the deputies belonging to the minorities fell down. For now, this tendency has been stopped and in the parliaments of the recent terms, the number of deputies and senators belonging to the minorities, generally has not changed.

**Point 124.** With satisfaction, it can be concluded that the recommendations of the Advisory Committee regarding the problem of the recommended evolution of the Team on National Minorities match the conclusions resulting from the Team's experience and the forecast range of the activities of the Joint Committee of the Government and the National and Ethnic Minorities.

#### **Referring to article 18.**

**Point 125.** It should be assured that the rules referred to in this point are known to the Polish government and they are applied by it.

### **V. THE FINAL REMARKS**

**Point 131.** Once again, it should be emphasized that the existing solutions which predict the increase of means for the Lithuanian minority of 20 or 50 % (and in case when these amounts are not sufficient, it also assumes the transfer of the additional financial means from the 1% of the reserve of the educational part of the general subvention), allow to maintain the existing network of the Lithuanian schools and classes. This mechanism was entered in the *Strategy of the development of the Lithuanian minority education in Poland*, which is the document prepared together by the government and self-government administration, and the organizations of the Lithuanian minority. This *Strategy* is being realized in cooperation with the Lithuanian minority and it is estimated on the annual meetings of the Sub-Team on Education of National Minorities, which is held with the participation of the representatives of this minority.

**annex****Financing from the Polish state budget means of the national and ethnic minorities and the community using the regional language in 2003**

	<b>Educational subvention</b>	<b>Handbooks</b>	<b>Other educational</b>	<b>Basic activities</b>	<b>Publishing activities</b>	<b>Activity presentations via</b>	<b>Other</b>	<b>TOTAL</b>
Belarussians	2 089 598	639 919	15 000	235 200	492 000	389 000	0	<b>3 860 717</b>
Kaszub	2 498 478	52 000	0	0	0	0	0	<b>2 550 478</b>
Karaites	0	0	0	5 000	0	0	7 000	<b>12 000</b>
Lithuanians	1 713 351	507 760	32 446	23 000	275 000	128 000	300 000	<b>2 979 557</b>
Lemks	212 734	184 000	18 200	137 000	21 000	77 000	0	<b>649 934</b>
Germans	18 685 225	18 496	40 927	134 000	426 000	241 000	0	<b>19 545 648</b>
Armenians	0	0	0	0	8 000	0	0	<b>8 000</b>
Gypsies	157 447	0	27 450	136 823	180 000	127 000	2 262 000*	<b>2 890 720</b>
Russians	0	0	0	0	0	7 000	0	<b>7 000</b>
Slovaks	322 826	65 922	16 800	53 000	250 000	80 000	0	<b>788 548</b>
Tatars	0	0	0	10 000	60 000	0	0	<b>70 000</b>
Ukrainians	2 997 754	162 130	35 541	315 500	527 000	353 500	0	<b>4 391 425</b>
Jews	28 364	0	0	70 000	355 000	38 000	0	<b>491 364</b>
<b>TOTAL</b>	<b>28 705 777</b>	<b>1 630 227</b>	<b>186 364</b>	<b>1 119 523</b>	<b>2 594 000</b>	<b>1440500</b>	<b>2 569 000</b>	<b>38 245 391</b>

\* The pilot governmental programme for the Roma community in the Małopolskie Voivodship in 2003 :

Goal reserve:	2 000 000
Means of the Ministry of Education and Sport (for the educational activities in Małopolska)	250 000
Means of the Ministry of the Interior and Administration (agreements with the representatives of the Roma community)	12 000



Explanatory notes to the table

Columns:

**A** - the national and ethnic minorities and the community speaking the regional language

**B** - the amount of the educational subvention awarded from the means of the Ministry of National Education and Sport. Calculated according to the scales P15 and P16 (the amounts supplementing the educational part of the general subvention for the organs of the territorial self-government, provided for financing of the education for the ethnic and national minorities, teaching of the regional language and the additional classes for the Roma pupils) along with the additional amount for schools transferred from the 1% of the reserve of the educational part of the general subvention

**C** - the cost of purchase of the school handbooks for the national and ethnic minorities covered by the Minister of the National Education and Sport

**D** - financed by the Ministry of National Education and Sport: editing, printing and distributing of the school certificates in the bilingual version, editing and publishing of the curriculum for the national and ethnic minorities, donations for the ordered tasks, methodological materials for teachers

**E** - the funds from the Ministry of Culture for covering the costs of coaching the artistic groups, organizing the contests and workshops for the youth, expenses for propagation and promotion of the minority culture in mass media

**F** - financed by the Ministry of Culture the publishing of periodicals and other publications issued by the national and ethnic minorities

**G** - the organizational costs of the cultural events, festivals, seminars, dance groups reviews organized by, or for the national and ethnic minorities, covered by the Ministry of Culture

**H** - other expenses, including:

- the means of the Chancellery of the Prime Minister for additional financing of the construction of the House of the Lithuanian Culture in Puńsk
- the means for the *Pilot government programme for the Roma community in the Malopolska Province for the years 2001-2003*
- the means of the Ministry of the Interior and Administration for organizing the conference "The heritage of the Karaites in the contemporary Europe"