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

**COMMENTS OF THE GOVERNMENT OF GERMANY  
ON THE SECOND OPINION OF THE ADVISORY COMMITTEE ON THE  
IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES  
IN GERMANY  
(received on 20 July 2006)**



Bundesministerium  
des Innern

## **Comments by the Federal Republic of Germany**

On the Second Opinion

On Germany

Adopted on 1 March 2006

By the

Advisory Committee

On the Framework Convention for the Protection of National Minorities

**Federal Ministry of the Interior**

**July 2006**

## **I Preliminary remarks**

On 1 March 2006, the Advisory Committee set up under the Council of Europe's Framework Convention for the Protection of National Minorities (hereinafter referred to as the "Convention") submitted a second Opinion to the Council of Europe's Committee of Ministers on Germany's implementation of the Convention (hereinafter referred to as "Opinion").

The report was delivered to Germany with the letter by the Director of Human Rights of 24 March 2006.

The Federal Republic of Germany continues to appreciate the activities of the Advisory Committee in the process of monitoring the implementation of the Framework Convention and welcomes the Committee's efforts in assessing the achieved level of compliance with Germany's obligations arising from the Convention. Germany notes that the comments of the Advisory Committee show professional examination of the situation of minorities in Germany and that the Advisory Committee has in fact paid attention to important questions and problems.

*However, the Federal Republic of Germany finds it imperative to refuse the renewed remarks of the Committee aimed at enlarging the scope of application of the Framework Convention, particularly in paras. 10, 24-27 of the Opinion, and asks the Committee to delete these remarks. Germany is of the opinion that it has made proper use of its right to define the scope of application of the Convention and for this reason sees the Committee's remarks aimed at extending the scope of application as an inadmissible interference in this matter. It may be that the Committee wished to extend the scope of application. It must be clear, however, that an ex-post extension of the Convention's scope of application against the will of the contracting state concerned must be restricted to cases of proven arbitrary restrictions, also because otherwise this would have a negative impact on a country's readiness to ratify such agreements. To bring this matter to an end, Germany wishes to point out once again that it does not consider the requested extension of the scope of application necessary, nor will it comply with this request. For more detailed explanations we refer to our remarks in paras. 4-9 of the second State Report on the Framework Convention.*

*Similarly, without going into further details, Germany must reject all the Committee's remarks and recommendations on the acquisition of German citizenship and on integration, as well as on the treatment of third-country nationals under foreigners law, particularly in para. 13, sentence 1-3, paras. 65, 67-70, 72-76, sentence 2, 112, 113, 174, 175, 182, fourth bullet point (second group mentioned), and asks for their deletion. Since the Framework Convention, in accordance with the binding German definition of its scope of application, does not refer to third-country nationals and the Committee is tasked only with reviewing and commenting on the implementation of the Framework*

*Convention within its existing scope of application, the above-mentioned remarks fall outside the Advisory Committee's mandate.*

*(Should the above and the following paragraphs in italics be deleted from the Monitoring Report, this could also be done for the relevant paragraphs and the present paragraph of the comments.)*

Furthermore, concerning the general modalities for the Convention's implementation, Germany wishes to refer to its explanations under II "General remarks" in its second report pursuant to Article 25, para. 2 of the Framework Convention (second State Report). Germany informs the Committee that the Federal Ministry of the Interior, in charge of minority law, has been responsible for drawing up the present comments, which, however, are predominantly based on contributions by the *Federal Länder*, since they are mainly responsible for the implementation of the Convention given the federal structure of the Federal Republic of Germany. Contributions by specific *Länder* have been clearly marked in the text.

The Second Opinion of the Advisory Committee, along with the draft of the following comments, was also forwarded to the following umbrella organizations of national minorities, giving them the opportunity to express their views:

Sydslesvigsk Forening (SSF)/Südschleswigscher Verein (SSV - South Schleswig Association)

Sydslesvigsk Vælgerforening/Südschleswigscher Wählerverband (SSW - South Schleswig Association of Voters)

Domowina – Zwjazk Łužiskich Serbow/Bund Lausitzer Sorben (Domowina - Federation of Lusatian Sorbs)

Friesenrat/Frasche Rädj - Sektion Nord e.V. (Frisian Council, Section North)

Seelter Buund

Zentralrat Deutscher Sinti and Roma (Central Council of German Sinti and Roma)

Sinti Allianz Deutschland (Sinti Alliance Germany)

Comments by participating umbrella organizations have been added in Part VI of the present document. Germany will publish the Opinion of the Advisory Committee together with these comments.

In addition, the Federal Government plans to discuss also the Second Opinion of the Advisory Committee and the Decision of the Committee of Ministers with the national minority organizations on the occasion of the forthcoming Implementation Conference.

Taking the positive statements of the "Opinion on Germany" into account, the Federal Republic of Germany comments on the Committee's remarks in line with the Committee's remit, insofar as this has been possible given the country's federal structure and the limited time available. Additional necessary replies to the "Opinion on

Germany” will be included in the next report pursuant to Article 25, para. 2, of the Framework Convention (the third State Report).

The structure of the following comments corresponds with the structure of the “Opinion on Germany”. Since the following comments are divided into three parts (part I on the main findings of the Advisory Committee on central issues, part II on the remarks related to individual articles of the Framework Convention, and part III as a basis for the remarks intended for the resolution of the Committee of Ministers) and therefore include considerable redundancies, Germany kindly asks the Committee to consider Germany’s comments on individual remarks of the Committee in the light of remarks with a similar wording, if a reference required for such remarks was omitted by mistake.

**The Committee of Ministers is invited to draw its conclusions in the light of these comments.**

(The following paragraphs quoted from the “Opinion on Germany” are printed in “Times New Roman”, the relevant replies by German authorities in “Arial”)

### Executive summary

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

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

Comment on the above executive summary, para. 2, sentence 3:

The Free State of Saxony rejects the accusation of “diminishing support .... notably with regard to the Sorbian minority schools” as inappropriate, referring to its comments in paragraph 135.

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

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SECOND OPINION ON GERMANY

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



## MAIN FINDINGS

### (On the main findings of the Committee): Monitoring process

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

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

#### Ad paragraph 7:

For the Romany language it is not possible to have these documents translated, not least because the Romany of German Sinti only exists as an oral language and the community does not want to share it with the outside world. For the other minorities, it must be pointed out that they speak German, or, for some members of the Frisian minority, speak only poor Frisian (cf. the comments in paras. 20 and 31 in the Second Report on the European Charter for Regional or Minority Languages).

#### General legislative framework

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

#### Scope of the Framework Convention

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

10. *The Advisory Committee has not been informed of specific demands from other groups, particularly those of immigrant origin, to benefit from the protection afforded by the Framework*

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

### **Combating discrimination**

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

Ad paragraph 11:

The Advisory Committee regrets the fact (not only in para. 11, but also in paras. 28 seqq., 176 and 182 of its second Opinion) that the Anti-Discrimination Directive 2000/43/EC still has not been fully implemented in German law and that the *Bundestag* has not adopted a comprehensive anti-discrimination act. The Anti-Racism Directive will soon be fully implemented by comprehensive anti-discrimination legislation. On 1 May 2006 the coalition committee reached a political agreement on how the Directives 2000/43/EC, 2000/78/EC, 2002/73/EC and 2004/113/EC will be implemented. On 10 May 2006 the Federal Government adopted a government draft for a bill implementing the European directives on equal treatment so as to put the principle of equal treatment into practice. This draft of a general act on equal treatment was submitted to the *Bundesrat* as a particularly urgent matter in accordance with Article 76, para. 2, sentence 4 of the Basic Law. On 16 June 2006 the *Bundesrat* already dealt with the draft in a first reading. The *Bundestag* will probably discuss the matter in June 2006. For this reason it is possible for the "General Act on Equal Treatment" to enter into force even before the summer break.

In the areas of work and employment, the government draft corresponds with the requirements of the European directives on equal treatment. Thus, any employee affected by discrimination can file a complaint at the relevant authorities and is entitled to compensation for the material and immaterial damage suffered. Employees can even sue for these individual rights in labour courts or raise the matter with their works councils. In the case of serious violations of the prohibition of discrimination by the employer, the works council or a trade union represented in the relevant company can also file a charge in court.

Also for private law, the government draft fully implements the requirements of the Anti-Racism Directive. Thus, concerning a person's race or ethnic origin, comprehensive protection will be provided also in the area of general civil law. This particularly includes a claim for compensation. An exemption from the prohibition of discrimination for a person's private sphere is in line with the Anti-Racism Directive. It has been clarified that a balanced social mix of tenants is admissible when renting out housing, as provided for by Section 6 of the Housing Assistance Act (*Wohnraumförderungsgesetz*).

This helps to create and maintain stable living quarters and thus implements an active housing policy particularly in urban areas. However, the government draft even goes beyond the requirements of the European directives on equal treatment. For general private law, in the area of bulk business and private insurance, it provides protection against discrimination not only on the grounds of a person's sex, but also in case of discrimination on grounds of disability, age, sexual identity, religion or ideology.

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

Ad paragraph 12:

Given the fact that the Advisory Committee again criticizes the absence of reliable data on minorities (particularly in paras. 12, 33, 38 and 177), Germany refers to its official federal statistics as follows:

1. Ever since the end of World War II, data on members of national minorities have not been collected as part of the official statistics, particularly because of Germany's history and the persecution of minorities during the Nazi regime - as was recognized by the Committee in para. 33. (The fact that some minority representatives spoke out in favour of the collection of such data during a visit is not sufficient in Germany's view to renounce this principle.)
2. Furthermore, there would be many practical and methodological obstacles to overcome to collect such data as part of the federal statistics:
  - The German population statistics and many statistics in the social area (e.g. social benefits, education, public health) are largely based on the evaluation of existing administrative documents. As such records do not contain any information on national minorities, it is not possible to make any relevant evaluations with regard to national minorities.
  - The number of persons belonging to national minorities in Germany is relatively low. This explains why no reliable statistics can be collected on this population segment within the framework of current official sample surveys.

For the above-mentioned reasons, inclusion of data on national minorities in Germany's official statistics would not be possible – or could only be achieved with disproportionate investments of time and effort.

3. Concerning the request for new statistics, it must be pointed out in general that the Federal Government intends to cut red tape and in this context wants to restrict official statistics as far as possible.
4. The Advisory Committee's remarks – e.g. in para 38 – on scientific sociological studies unrelated to official statistics to satisfy any specific need for information is outside the scope and knowledge of official statistics.

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

13. *Between 2000 and 2004, a total of 787,217 foreign nationals acquired German nationality on the basis of the German Nationality Act of 2000. Furthermore, the Immigration Act of 2004 is a major step forward, since it represents the basis for an active policy for the integration of foreigners. The Advisory Committee considers that these changes can in due course contribute to better interethnic relations and tolerance in Germany. They should also enhance the efforts already being made to combat racist manifestations and acts. In this context, the designation in criminal law of racist motives as an aggravating circumstance could also help intensify the efforts undertaken to combat racism and discrimination.*

Ad paragraph 13:

The Advisory Committee is of the opinion that the designation in criminal law of racist motives as an aggravating circumstance could also help intensify the efforts undertaken to combat racism and discrimination (not only in para. 13, but also in paras. 79, 80). Furthermore, the Advisory Committee finds that there is no provision in German criminal law in its present form according to which racist motives are considered an aggravating circumstance, and requests the German authorities to take such an explicit provision into consideration.

Even though German criminal law does not have an explicit provision according to which racist motives are regarded as an aggravating circumstance, racist or other base motives for acts of violence may be considered an aggravating circumstance for determining a punishment for an individual case. Under Section 46, para. 2 of the Criminal Code, the court, when assessing the statutory range of punishment, shall weigh against each other the respective circumstances of the case that either exonerate or incriminate the offender. This includes, amongst others, the motives and aims of the perpetrator as well as the state of mind reflected in the act and the willfulness involved in its commission. This means that the judge, when assessing the range of punishment, must take xenophobic or racist motives of an offence into account. Moreover, in 1962 the Federal Court of Justice decided that racism may be considered a base motive within the meaning of Section 211 on murder of the German Criminal Code. For this reason, an explicit provision proposed by the Advisory Committee is not deemed to be necessary.

Furthermore, the fight against racism and racist discrimination is high on the agenda in the further training programmes provided for judges, public prosecutors and other legal professions. This ensures that current provisions in criminal law are also applied in practice.

The Free State of Saxony also extensively comments on the Committee's idea to introduce a provision in German criminal law according to which racist motives are considered an aggravating circumstance:

“Irrespective of the fact that the motives and objectives of the perpetrator as well as the state of mind reflected in the act and the willfulness involved in its commission can be sufficiently taken into account, when punishment is determined in accordance with Section 46 of the Criminal Code, racism or xenophobia may be considered a base motive and hence constitute one of the characteristics of murder under Section 211 of the Criminal Code. Furthermore, whoever, in a manner that is capable of disturbing the

public peace, incites hatred against segments of the population or calls for violent or arbitrary measures against them or assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population, shall be punished with imprisonment from three months to five years for agitation of the people.

The background of the Advisory Committee's statement seems to be the efforts taken by the Central Council of German Sinti and Roma to ensure the implementation of a draft bill of Brandenburg to improve the fight against extremist acts of violence and other extremist criminal offences.

Brandenburg introduced this bill as BR-Drs. 577/00 in the Bundesrat on 26 September 2000. Among others, this bill intended to introduce a new Section 224a in the Criminal Code – bodily injury for base motives. According to this Section, whoever commits bodily injury for hatred against segments of the population or against a national, racial, religious or ethnic group or for other base motives shall be punished with imprisonment from one year to ten years. In particularly serious cases imprisonment shall be no less than three years. If the offence is committed jointly by several perpetrators by means of a treatment dangerous to life or gross maltreatment of the victim, this shall regularly constitute such a case. Bodily injury for base motives should be included as a ground for arrest in Section 112, para. 3 of the Criminal Code.

German experts were heard on the draft bill and they particularly rejected the introduction of Section 224a of the new draft German Criminal Code. The experts underlined that there was no reason to tighten the current offences of bodily injury, since the existing range of punishment was definitely sufficient. The current offence of bodily injury already comprised the qualifying circumstances of the offence in abstract form, which the draft bill intended to cover by a new section. Any loopholes in criminal law were not evident. Furthermore, the planned provision would lead to contradictions with regard to the range of punishment imposed on dangerous bodily injury, serious bodily injury and bodily injury resulting in death. A more serious punishment for offences directed against certain groups of victims in comparison to the same offence perpetrated against victims who are not part of such groups would be considered as unequal treatment. Bodily injury jointly committed by right-wing extremists in accordance with Section 224a, para. 2 of the new draft Criminal Code would be more severely punished than joint bodily injury against a person who is not a member of a group listed in Section 224a of the draft Criminal Code. Furthermore, German experts have also warned against any counterproductive effects of the planned new provisions. Since it is necessary to establish whether hatred played a role in the offence within the meaning of Section 224a, para. 1 of the draft Criminal Code, the question may arise as to whether this level of rejection was also a motive for the crime committed. There is the risk that the accused and his/her lawyer use this issue for numerous, far-reaching motions to admit evidence. This could not only delay the desired rapid response by the judiciary, but even provide a possible forum for the accused to present his/her attitudes in public.

The draft bill of Brandenburg was not again put on the agenda of the Bundesrat's legal committee, but was stopped. The bill was again discussed at the meeting of the ministers of justice of the federal *Länder* in which the CDU forms the government in Potsdam on 26 and 27 May 2004. Hamburg, Saxony, Thuringia, Hesse and Saarland expressed their reservations.

Brandenburg then announced that it would no longer pursue its initiative in the Bundesrat."

In the context of the above-mentioned recommendation, Lower Saxony refers to the following activities:

“The *Land* examined the question of whether it is necessary to amend the current provisions under criminal law or criminal procedural law. The last time this was done following a letter of the Central Council of German Sinti and Roma of 30 March 2006 proposing a number of measures to improve the fight against right-wing extremist propaganda against Sinti and Roma, such as a collective right to submit requests in accordance with Section 172 II of the Code of Criminal Procedure and the classification of racist violence as an offence. Lower Saxony does not see the necessity to amend any relevant legislation.

The Central Council of German Sinti and Roma submitted similar proposals to the *Land* government already in 2004. In its reply, the *Land* government referred to the major interpellation on “right-wing extremism and anti-semitism in Lower Saxony” (printed document 15/1241 of the Landtag), which summarizes the comprehensive measures taken by the *Land* government in this area. Furthermore, it was pointed out that the fight against politically motivated crime was a top priority for the *Land* government, and that right-wing extremist offences were consistently prosecuted and rigorously punished by Lower Saxony’s judiciary.

Furthermore, the *Land* government has made additional efforts to fight all forms of racism, anti-semitism and islamophobia. One of the most important measures and initiatives in this area is the project “Aussteigerhilfe Rechts” initiated in 2001 to help right-wing extremists to leave the scene. This project helps protect the population against right-wing extremist offences by offering specific measures to prevent former extremists to relapse into their old scene. The project mainly addresses young people who have come to police notice because of right-wing extremist offences. They are offered comprehensive assistance which effectively helps prevent any repetition of such crimes. Furthermore, there is a clearing house at the *Landespräventionsrat* (*Land* Prevention Council) in Lower Saxony.”

Since the Central Council of German Sinti and Roma in its comments enclosed in the annex to this document also refers to cases which are supposed to confirm the need for specific criminal provisions for racist offences, the Free State of Bavaria comments as follows on one of this examples:

Concerning a letter to the editor by a Bavarian official published in the magazine of the *Bund Deutscher Kriminalbeamter* (BDK, Association of German Detectives) called “Der Kriminalist”, the Bavarian State Ministry of the Interior clearly stated in its press release of 3 November 2005 that the general criminalization of individual groups of society, such as the Sinti and Roma, is in no way acceptable. The matter was immediately submitted to the competent public prosecutor’s office in Neuruppin (Brandenburg), and the relevant disciplinary measures were taken.

14. The Advisory Committee is concerned about unnecessary disclosure by certain media of individuals’ ethnic origin, above all where criminal cases are at issue and where this information is supplied to the press by the police. Therefore it again invites the German authorities to

encourage the media to comply with their own rules of conduct and to ensure that rules imposed on public authorities in this regard be fully complied with.

Ad paragraph 14:

The Federal Government comments as follows on the accusation concerning the disclosure of individuals' ethnic origin by police authorities to the press:

The Federal Criminal Police Office (BKA) does not maintain a database with personal data on ethnic origin. Concerning the Advisory Committee's reference to a matter reported in an article by the magazine "Der Spiegel" in 2004 (there is no explicit reference in its Opinion), Germany replies as follows: The annual BKA report on economic crime for 2002, which is generally available on the Internet and which was quoted in the article, includes a statement that certain currency offences (also referred to as rip deals) were mainly committed by Sinti and Roma of Italian or Yugoslav origin. This paragraph was not taken from the data collection of the BKA, but was based on statements by officials of *Land* police forces in particular, who met within the framework of a police conference on rip deals and had studied this criminal phenomenon and gained relevant experience and intelligence of the matter. In the interest of an effective fight against crime, it is not possible for the police to avoid mentioning relevant group-specific information in the context of certain criminal phenomena. It is necessary for the development of effective strategies to fight and prevent certain forms of crime. However, the Federal Ministry of the Interior has instructed the BKA to thoroughly examine in future, if the use of group-specific names of minorities in publicly available publications of the BKA is necessary for police reasons, and to restrict it to its internal communication as far as possible.

The Free State of Bavaria reports that following the talks with the board of the Central Council of German Sinti and Roma and representatives of the Bavarian association of German Sinti and Roma, the Bavarian State Minister of the Interior underlined in a press release on 18 February 2005 that the *Land* Government would vigorously counteract any form of discrimination of German Sinti and Roma living in Bavaria. Bavaria indicated that for quite some time there have been decrees on the inadmissibility of any special denomination with terms such as "Zigeuner" (gypsies), "Sinti and Roma" or the term "Landfahrer" (travellers) from the time of the Nazi regime or any other term such as "mobile ethnische Minderheit" (mobile ethnic minority) that gives rise to prejudice, and that it will again remind police authorities of the strict observance of this decree. This is also true for the inadmissible transmission of information on the ethnic origin of accused persons in authorities' reports to the press.

In its decree of 3 March 2005 mentioned in para. 43, the Bavarian State Ministry of the Interior instructed the Bavarian police offices to make a considerable contribution to counteracting any form of discrimination of members of the Sinti and Roma minority – including Sinti and Roma from abroad and those who are not resident in Bavaria. It clearly pointed out once again that the term Sinti and/or Roma and any other substitute term may not be collected, registered or used for members of this minority for internal searches, public searches, warnings or in information to the press. If such terminology was found a posteriori, it must be deleted immediately. Information on the non-observance of these instructions would be consistently examined.

The Free State of Bavaria cannot confirm the accusation that relations between Roma/Sinti and law enforcement officers was sometimes tense.

The Free and Hanseatic City of Hamburg comments on the above statements as follows:

“Concerning the statement in the Second Monitoring Report on police action against members of national minorities and the relations between members of national minorities, in particular Roma/Sinti, and the security authorities, it must be said that police measures are not triggered by the fact that a person belongs to a specific ethnic or any other group, but by a person’s behaviour, which may cause any danger or disturbance and/or if there are sufficient suspicious facts for administrative or criminal offences.

Persons are not checked because of any specific ethnic or cultural origin.

Information on the ethnic origin of troublemakers or suspects is not transmitted to the media by the police in Hamburg.

Terms denominating a person’s ethnic origin or substitute terms such as “mobile ethnic minority” are not used by the police in their record systems, a statistical registration of a person’s ethnic origin is not performed in the police crime statistics.

In reports on the criminal situation, the ethnic origin of suspects and victims is generally not mentioned explicitly, because it is irrelevant for police duties and often not known either.

Only for identification purposes, the terms “Sinti” and “Roma” are used to identify and specify “other foreign languages”, if relevant intelligence exists. This is exclusively intended for assistance, if an interpreter is required, but not to stigmatize or discriminate against a person because of his/her ethnic origin.

Currently there is no information available on a “tense relationship” between national minorities and the Hamburg police. Any discord with individual members of national minorities, against whom law enforcement measures had to be taken on the basis of police intelligence, cannot be excluded. Such conflicts, however, may occur with persons affected by police measures irrespective of their ethnic origin.”

Hesse comments on the above statements as follows:

“The accusation by the Monitoring Report concerning the unnecessary disclosure of a suspect’s nationality is generally refuted. Criminal proceedings are registered in relation to the crime committed, but not the persons concerned - as was confirmed by the IT group of the public prosecutor’s office, which is responsible for the whole of Hesse. Thus, it is not possible for the Mesta system to identify or register a person’s ethnic origin.

Any “unnecessary disclosure” of an individual’s ethnic origin in the media cannot be influenced by the public prosecutor’s offices.

In accordance with the guidelines on the transmission of information by the police to the press and to broadcasters of 28 January 2005, the police, when providing information, must take into account the protection of an individual’s right to privacy (of the accused, witnesses and others concerned) required by norms on fundamental rights.



No cases are known in which the police specifically informed the press about the ethnic origin of individuals.”

Rhineland-Palatinate comments on the above statements as follows:

The *Land* Government and the Union of German Sinti and Roma – specifically the association of Rhineland-Palatinate – agreed in a framework convention signed in 2005 to counteract any discrimination of minority members.

This obligation particularly applies to members of ethnic groups such as the Sinti and Roma, who suffered serious injustice by state bodies during the Nazi regime. Out of respect for the victims alone, the police must not discriminate against Sinti and Roma, nor promote or raise any prejudices against them. This particularly includes the designation of accused persons as members of a minority in police reports and in information to third parties, including the press. This voluntary commitment by the police of Rhineland-Palatinate to leave out the denomination or designation of suspects as members of an ethnic minority, has existed since 1992.

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

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

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

Ad paragraphs 15 and 16:

“For Hesse it is also especially important to improve the integration of children belonging to the Sinti and Roma minority into schools and their participation in the education system.

Of course, also in Hesse, this group of pupils has access to all school offers and assistance measures. According to Hesse, additional efforts are also required in future to improve the general educational situation of this group of pupils.

However, in the past few years Hesse made a major effort in order to substantially enhance equal opportunities for children. One of the four strategic aims of the current

legislative period running until 2008 is to reduce the number of children without a school-leaving degree by one third.

A particular priority are language courses for children with a poor command of the German language.

These courses are generally open to all pupils, i.e. also to children belonging to the national Sinti and Roma minority.

In the 2005/2006 academic year, Hesse will provide 965 teachers to teach German in pre-school language courses and intensive courses or courses accompanying regular school instruction so that children and young people can participate successfully in school education.

In addition to financial assistance for the *Land* Association of Sinti and Roma, additional funds are provided such as a grant of €18,000 a year to assist Sinti children in two troubled schools in Bad Hersfeld. A mediator will specifically deal with the difficult relationship between pupils, teachers and parents in order to break through the self-reproducing circle, in which poorly educated parents do not succeed all by themselves to motivate their children to perform better in schools.

Hesse is of the opinion that there is no direct need to take action at university level, because access to universities is mainly determined by a person's previous educational background, and Hesse tries at an early stage to set the course in the right direction."

Rhineland-Palatinate comments on the statements in paras. 15 and 16 as follows:

With its all-day schools Rhineland-Palatinate provides a comprehensive offer to ensure individual assistance for disadvantaged children. Furthermore, Rhineland-Palatinate promotes the language development of pre-school children with a special programme of €8 million aimed at children with language deficits.

In addition, the secretariat of the Association of German Sinti and Roma – *Land* Association of Rhineland-Palatinate has assumed this and other tasks to improve equal opportunities. The office receives institutional funding of €208,000 a year.

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

Ad paragraph 17:

The Federal Government, the Free State of Bavaria, the Free and Hanseatic City of Hamburg and Rhineland-Palatinate refer to their comments on paragraph 14.

The *Land* of Hesse provided the following comments:

“There are no known cases of data collections on the fight against crime, which focus on members of specific minorities. The Mesta system used by public prosecutor’s offices cannot register the ethnic origin of an accused. Such a system would be highly problematic also according to the chief public prosecutor.

In the 1980s it was already pointed out in police briefings that the term “Zigeuner” (gypsies) should not be used. Also the terms “Sinti and Roma” as well as “Landfahrer” (traveller) seemed inappropriate, because they had a negative connotation and were associated with discrimination/stigmatization.

In 1984 a decree on the protection against discrimination specified that Sinti and Roma suspected of a crime must not be referred to as “Zigeuner” or “Landfahrer”. This decree was modified in 1996 to clarify that in public reports of the police the terms “Zigeuner”, “Landfahrer” and “Sinti and Roma” were not to be used. Instead, a detailed and comprehensive physical description should be used. The decree was repealed on 31 December 2000, because it was assumed that this procedure was generally applied even without an administrative decree.

According to Hesse, this, however, does not justify the concern expressed by the Central Council of German Sinti and Roma in its comments in Part IV of the present report that this was a “carte blanche for the discriminating designation of minorities”.

The Central Council rightly criticized one case in which a report in the newspaper “Darmstädter Echo” of 12 May 2006 based on a press release of the South Hessian Police Headquarters of 11 May 2006 concerning a burglary committed at daytime used the term “Angehöriger einer mobilen ethnischen Minderheit” (MeM, member of a mobile ethnic minority).

However, the intention was not to discriminate a person or an ethnic group.

Nevertheless, in a personal interview, the responsible press officer was reminded of the correct wording to be used.

Furthermore, as a consequence of this incident, it was again pointed out to all police offices in Hesse that such terms must be avoided under any circumstance vis-à-vis the public, including public prosecution files.”

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

Ad paragraph 18:

The Federal Government, the Free State of Bavaria, the Free and Hanseatic City of Hamburg and Rhineland-Palatinate refer to their comments on paragraph 14.

## **Policies for supporting national minorities**

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

Ad paragraph 19:

The above statement is refuted by the Free State of Saxony for the following reasons in particular:

"The general statement is inappropriate given the fact that the share provided by the Free State of Saxony to fund the Foundation for the Sorbian People has been the same in percentage points for years. In view of the generally tight public budget and the savings measures taken in many other areas, it is a particular achievement that Saxony's share in funding the Foundation for the Sorbian People has remained the same, which corresponds with the special support required for a national minority. Maintaining the level of Saxony's financial support is a particular achievement also against the background of reductions or intended reductions by the Federal Government and the *Land* of Brandenburg."

In this context the Federal Government, however, refers to its comments on similar statements under para. 51.

Rhineland-Palatinate comments on the statement in para. 19 as follows:

The framework agreement signed between Rhineland-Palatinate and the Association of German Sinti and Roma - *Land* Association of Rhineland-Palatinate in 2005 includes a provision on the amount of funding and the obligation to provide financial assistance to the association's office.

## **Access to the media**

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

Rhineland-Palatinate comments on the above statement as follows:

The *Land* Media Act, which includes a relevant provision to appoint a representative of the Association of German Sinti and Roma – *Land* Association of Rhineland-Palatinate, entered into force on 1 April 2005. Since that time the association has had a seat on the board of the *Landeszentrale für Medien und Kommunikation* (the control body, i.e. the *Land* supervisory authority, for private media). This helps the German Sinti and Roma to make their interests known, and any possible discrimination can be counteracted.

Schleswig-Holstein comments on the above statement as follows:

The amended NDR Inter-State Treaty entered into force on 1 August 2005. As a result of this amendment, the NDR will strengthen its regional coverage. In addition to the regional news (15 minutes) and the Schleswig-Holstein magazine (30 minutes) there will be a 30-minute programme about issues in Northern Germany. The *Land* government estimates that the extended airtime will also benefit the minorities' interests. However, programming responsibility lies with the NDR. Public authorities have no influence whatsoever. Together with the *Land* government, minority representatives should keep in touch with the *Land* Broadcasting Board and the director of the NDR *Land* broadcasting centre in order to constantly remind them of their wish to strengthen the presence of minorities in the programmes.”

## **Education**

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

Ad paragraph 21 of the Monitoring Report:

Hesse comments on Romany language courses as follows:

“In Hesse Romanes is not taught in schools.

The other *Länder* have made similar statements in a poll on a petition against the protection of Romany under the European Charter for Regional or Minority Languages maintaining that Romany of German Sinti would then be taught and thus become familiar to third parties.”

Schleswig-Holstein comments on Danish and Frisian language courses as follows:

“The government draft of an amended school act is currently being heard in parliament (May 2006). A special section in this act will be concerned with the amount of financial assistance accorded to the responsible bodies of Danish minority schools. In line with the proposal drawn up by the joint working group of the *Land* Government and Dansk Skoleforening, the assistance will be adjusted to the development of public cost-per-pupil rates both with regard to the material and personnel costs on the basis of the data of the year before the previous year. According to a decision by the *Land* Government this provision will become effective as from 2008. The outcome of the legislative procedure still remains to be seen.

The question of whether the decision taken for the 2006/2007 academic year will have negative consequences for Frisian language teaching can only be answered at the end of the academic year.”

The Free State of Saxony refutes the above statement that “Sorbian language teaching will be stopped”. On the contrary, with the implementation of the “2 Plus” concept, the share of lessons taught in Sorbian will increase.

22. The Advisory Committee strongly urges the authorities to reconsider the decisions taken with regard to the Sorbian schools and to confer with the representatives of the Sorbian minority on ways of maintaining the historic network of Sorbian schools. It also invites the authorities to bear in mind that equal treatment for minorities in education presupposes active measures, and that a reduction in the support granted to teaching of or in the languages of the minorities will have a very significant impact on such teaching and consequently on preservation of the minorities’ languages and culture.

Ad paragraph 22:

The Free State of Saxony refutes the recommendation on Sorbian schools with the following reason:

“Despite the need to guarantee the offers of Sorbian schools in all locations, the reduction in the number of pupils to less than half within ten years also requires appropriate adjustments of the school network. Schools will remain in all historical school locations.

The active measures mentioned will be implemented.”

## **Participation**

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

Ad paragraph 23:

Hesse adds the following:

The relations with Sinti and Roma in Hesse are organized as follows: The Hessian State Chancellery has set up a coordinating office for such relations to ensure communication with Sinti and Roma. This office has a coordination group consisting of representatives of the State Chancellery, the Ministry of Social Affairs and the Ministry of Education and Cultural Affairs. The representatives of the national minority can also get in touch with the ministries any time. The central competence of the Hessian State Chancellery for basic issues ensures that the protection of minorities in this area is also implemented by the relevant ministries concerned. Furthermore, there are regular discussions at senior political level between Hesse and Sinti and Roma representatives, sometimes even with the participation of the Minister-President.

Rhineland-Palatinate comments as follows:

Rhineland-Palatinate has discussions with the two representative groups in Rhineland-Palatinate, the Union of German Sinti and Roma – specifically the association of Rhineland-Palatinate and the Sinti Union, as the occasion arises.

Schleswig-Holstein adds the following:

“In Schleswig-Holstein the Minister-President’s Commissioner for Minorities and Culture and the division for minority affairs at the State Chancellery are available as contacts for the *Land* Association of German Sinti and Roma.”

## Article by Article Findings

### Article 3 of the Framework Convention

#### Scope of the Framework Convention

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

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

##### *Present situation*

###### *a) Outstanding issues*

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

##### *Recommendations*

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

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

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



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

### **Combating discrimination**

#### *Findings of the first cycle*

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

#### Ad paragraph 28 seqq.

Concerning the Anti-Racism Directive 2000/43/EC addressed by the Advisory Committee (not only in para. 28, but also in paras. 11, 176 and 182 of its second Monitoring Report) Germany refers to its comments on para. 11.

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

#### *Present situation*

##### *a) Positive developments*

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

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

#### Ad paragraph 31:

It would be helpful for any further discussion to know which minorities were in favour of the collection of more accurate socio-economic data on their situation.

##### *b) a) Outstanding issues*

32. The Advisory Committee expresses its strong regret that Directive 43/2000 (Race Directive) has still not been fully transposed into German legislation and that comprehensive anti-discrimination legislation, covering all forms of discrimination, direct and indirect, both from public and private entities, has still not been enacted by the *Bundestag*. The Advisory Committee takes note that the current legislation, despite offering a guarantee of the principles

of equality and non-discrimination<sup>2</sup> at federal level and in the various *Länder*, still does not cover in detail certain key areas such as housing, employment, health and access to goods and services. Finally, the Advisory Committee notes that it appears to be difficult, in practice, to obtain reparation for discriminatory or racist acts committed against persons belonging to national minorities or non-nationals.

33. The Advisory Committee also notes that there continues to be a lack of reliable data to help combat discrimination based on ethnic origin in various sectors and develop effective measures to promote equal opportunities for persons belonging to minorities. It points out that the availability of reliable data on the situation of minorities, broken down according to age, sex and geographical distribution, could lead to a significant improvement in policies to promote equal opportunities in various fields, by making it possible to target more closely the needs of minorities and make the necessary adjustments to the measures relating to them. It is well aware of the opposition in Germany to the gathering of data on ethnic background, given the abuse made of such information in the Nazi period. However, it notes, as already stated in paragraph 31 above, that certain representatives of minorities have, during the visit of the Advisory Committee, come out in favour of the collection of more complete and accurate information on their situation being collected in order to improve policies specific to them.

Ad paragraph 33:

Concerning the Advisory Committee's repeated criticism concerning the lack of statistical data on minorities (also in paras. 34, 38 and 177), Germany refers to its reply to para. 12.

Furthermore, Baden-Wuerttemberg contradicts the Committee's statements in para. 31 pointing out that with regard to the desire expressed by some minorities to collect more accurate socio-economic data on their situation, the resistance displayed by many representatives of Sinti and Roma against the collection of such data must also be taken into account.

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

Ad paragraph 34:

Germany wishes to receive more detailed information on the basis of this statement. As long as this is not available, the above statement is refuted.

Nevertheless, Hesse comments as follows:

"The Hessian *Land* Government wants to provide a comprehensive offer of training places which are also viable for the future, to all young people in Hesse, including Sinti and Roma.

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

This objective is supported by assistance programmes which mainly aim to create new training places. Another objective is to promote labour market access.

These assistance programmes also improve the opportunities of persons belonging to national minorities. The following programme is given as an example:

An increasing number of young people must delay their desired training and reapply for a training place in the following year. Those young people who are disadvantaged on the labour market get the opportunity to find a training place with the help of a programme specifically geared to their needs.”

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

Ad paragraph 35:

Baden-Wuerttemberg expressly refutes these unconfirmed rumours pointing out that there are no known cases in which Sinti and Roma have been refused services in public places.

For this reason it asks the Committee to provide evidence on concrete cases in which people were denied services, because they were Sinti or Roma so that these cases can be investigated, or to avoid making such public reports in future.

Concerning the criticism of data collection on crimes, Baden-Wuerttemberg comments as follows.

“The police of Baden-Wuerttemberg consistently counteract extremist, xenophobic, anti-Semitic and anti-tsiganist tendencies and make every effort to avoid any stigmatization or discrimination on the basis of a person’s adherence to a national minority. Of course, the terms “mobile ethnische Minderheit” (mobile ethnic minority), “Zigeuner” (gypsies), “Landfahrer” (traveller) or Sinti and Roma are not used in public reports of the *Land* police forces.”

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

#### *Recommendations*

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

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

Ad paragraph 38:

Concerning the Advisory Committee's repeated criticism concerning the lack of statistical data on minorities (also in para. 177), Germany refers to its reply to para. 12.

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

Ad paragraph 39:

The German authorities heavily refute any obligation to bridge the gap between a minority's social status and that of the majority population regardless of the efforts already taken and those envisaged for the future paid for by the taxpayer. State measures can only be successful to the extent to which the individual person concerned participates in it. This is particularly true for the regular attendance of pre-schools and regular schools given the assumption that a particularly large number of children of minorities attend general remedial schools.

The efforts already undertaken are described in the comments on paras. 51 to 57 and 111 to 123.

Furthermore, Lower Saxony points out the following:

The Lower Saxon Advice Centre for Sinti and Roma operates throughout the *Land*, offering personal support and advice to Sinti and Roma with the objective of helping them integrate into social, cultural and professional life. The advice centre's activities also comprise comprehensive public relations work to raise the public's awareness for the cultural and social concerns of Sinti and Roma and counteract any social exclusion and discrimination.

School attendance is – as for other children – also compulsory for Roma and Sinti children and youths. Furthermore, there also specific offers for these children, similar to offers for children whose parents travel a lot for professional reasons, which take their specific circumstances especially into account (e.g. school journal and support through mobile teachers responsible for travelling children in a certain region). For different reasons, children of Sinti and Roma at times do not regularly attend schools. This alone results in disadvantages for these children's performance in school and their educational opportunities.

Lower Saxony does not intend to provide separate educational institutions for the teaching of these children. Separate teaching contradicts the objectives of mutual respect, intercultural dialogue and integration and is thus opposed to the Lower Saxon school act. It is necessary to seek mutual confidence, that schools consider the children's special family and cultural background and that parents assume their educational responsibility specifically taking into account their children's educational opportunities.

40. It also believes that the authorities could consider the possibility, already recommended by the European Commission against Racism and Intolerance (ECRI)<sup>3</sup>, of introducing a system of registration in connection with police checks that would enable individuals to document how frequently they are checked, in order to identify possible patterns of direct or indirect racial discrimination.

Ad paragraph 40:

The Free State of Bavaria states as follows:

"If police checks are concluded on the spot without any further consequences for the person concerned, the collection of his/her personal data is inadmissible, since the storage of such data would infringe on the person's right to determine the use of his/her data without any necessity under data protection reasons. Hence, a general registration of police checks is rejected for legal reasons."

The Free and Hanseatic City of Hamburg comments in detail:

The recommendation to consider the introduction of a system of registration in connection with police checks that would enable individuals to document how frequently they are checked, in order to identify possible patterns of direct or indirect racial discrimination is rejected. For the implementation of such a system, it would be necessary to register all persons checked for different reasons and in different ways in a datafile. Such a comprehensive registration faces considerable privacy problems.

For the exclusive registration of people of a certain ethnic background, it would be necessary to ask all checked persons what their ethnic background was or whether they belonged to a national minority, since this is probably not obvious from their appearance or the documents they submitted. Hamburg believes that such questioning is highly problematic.

Such a data system would also need to store comprehensive data on the control situation, because as was mentioned above, more frequent checks on a person are not caused by a person's ethnic origin, but by a person's behaviour that may be dangerous or gives rise to the suspicion of an administrative or criminal offence. The assumption underlying the recommendation is only a hypothesis which does not reflect common experience."

Hesse also explicitly underlined the above opinion that the introduction of such a registration system in connection with police checks to enable individuals to document how frequently they are checked is not possible for data privacy reasons.

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

In addition to the general legal situation, Schleswig-Holstein also referred to a decree opposing the recommendation:

“The prohibition of discrimination of different ethnic groups has also been laid down in a decree for the *Land* police force of Schleswig-Holstein. Current legal facts do not give rise to the need for an additional control instrument in the form of a registration system. Such a registration system concerned with the ethnic origin of individuals would also run the risk of specifically registering people of different ethnic backgrounds and hence discriminate against them.

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

### *Findings of the first cycle*

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

### *Present situation*

#### *a) Positive developments*

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

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

#### *b) a) Outstanding issues*

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

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

*Recommendations*

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

Ad paragraphs 44-46:

The above statements are refuted. A more detailed explanation and evidence would be required.

In this context, the Federal Government, the Free State of Bavaria, the Free and Hanseatic City of Hamburg, Hesse and Rhineland-Palatinate refer to their comments on paragraph 14 and 17.

Hesse adds the following:

“The Hessian authorities are not aware of a person’s registration on the basis of his/her ethnic origin alone.

There are various legal provisions for police checks in Hesse. A selective check on the basis of a person’s ethnic origin alone would not be appropriate.

Concerning the registration of crime-related data of an ethnic nature in para. 41, the Free State of Saxony briefly remarks that for the judiciary such data is not collected. Only the nationality of accused or sentenced persons is registered.”

## Article 5 of the Framework Convention

### Policies for supporting national minorities

#### *Findings of the first cycle*

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

Ad paragraph 47:

“From the point of view of the Free State of Saxony paras. 47 to 60 are partially covered by the comments on para. 19.”

Rhineland-Palatinate comments on the above statements of the Committee as follows:

All applications for financial assistance are thoroughly examined. If necessary, interviews are held with the applicant organizations, such as last time with the Sinti Union.

#### *Present situation*

##### *a) Positive developments*

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

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

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



Ad paragraph 50:

Concerning the above statement Hesse wishes to underline that it has fully recognized the Charter for Languages and thus assumed a positive role model throughout Germany for the relations with Sinti and Roma.

The position of the national minority has been recognized and strengthened with the help of measures already implemented by Hesse.”

b) *Outstanding issues*

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

Ad paragraph 51:

On behalf of the Federal Government the Federal Government Commissioner for Culture and the Media provided the following comments on this point:

“In general it must be said that because of the efforts taken to consolidate the federal budget (to observe the Maastricht criteria; Article 115, para. 1 of the Basic Law) and the solidarity contribution to fund pensions, all allowances have been reduced by 3 percent. In individual cases, the national minorities have been exempt from these reductions - at least in part. Hence, the statement that “subsidies for minorities have in general been reduced in recent years” is not correct. On the contrary, the funding for the Frisian ethnic group and the Danish minority has been fully adjusted in accordance with the relevant requirements. In 2006 the reduction in the funding provided to Sinti and Roma was only 50% of the originally planned reduction. For the funds allocated to the Foundation for the Sorbian People the expert opinion of the Federal Office of Administration was taken as a basis. This expert opinion mentions synergies or a saving potential of €700,000 a year.”

Rhineland-Palatinate comments on the above statements as follows:

The framework agreement signed between Rhineland-Palatinate and the Association of German Sinti and Roma – *Land* Association of Rhineland-Palatinate in 2005 includes a provision on the amount of funding and the obligation to provide financial assistance to the association’s office.

Schleswig-Holstein comments as follows:

“The above assumption of a general reduction in the subsidies for minorities cannot be confirmed for Schleswig-Holstein. In contrast to many other areas, the funds earmarked for minorities remained the same, for the Nordfriisk Instituut it was even increased for the fiscal years of 2004/2005.”

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

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

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

## Ad paragraph 54:

It was reported that the above statements do not apply to Schleswig-Holstein.

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

*Recommendations*

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

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

Ad paragraph 56:

Lower Saxony comments specifically on the above recommendation as follows:

“Since 1983, Lower Saxony has been supporting the Counselling Bureau for Sinti and Roma through annual allocations. Since 2001 institutional funding has been provided within the framework of available budgetary means to ensure funding and planning security for the counselling bureau to keep up its operation.

Public-service broadcasting is mainly funded by licence fees imposed by the broadcasters, private broadcasting is funded by advertising. Open channels are also mainly funded by licence fees and take minority interests into account by providing room for activities. Examples are “Ems-Vechte-Welle”, “Radio Jade” and “Radio Ostfriesland” specifically transmitting programmes in Sater Frisian or Low German. These broadcasters receive institutional funding of approx. 250,000 Euro each per year by the Lower Saxony *Land* Supervisory Authority for Private Broadcasters (*Niedersächsische Landesmedienanstalt*).”

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

Ad paragraphs 51-57:

Hesse comments on the above statements and recommendations as follows:

“The expenditure of Hesse, just like in other federal *Länder*, is currently taxed to its limits. “The *Land*’s tax revenues depend on the economic development, which also in the coming years will be strongly influenced by considerable economic risks in conjunction with high unemployment. However, Hesse does not intend to reduce funding for the promotion of national minorities in the coming years. This decision, though, is up to the legislator determining the budget within the framework of parliamentary procedures. This is also true for other assistance programmes.

Hesse regularly provides funds to complement federal funds. Each year these funds are allocated to the regional *Land* Association of German Sinti and Roma.

The funds provided to the *Land* Association of German Sinti and Roma in Hesse include institutional funding of €112,278 and funds for two projects amounting to €54,022.

For its institutional funding Hesse takes into account that members of this minority, who depend on the *Land* Association’s support, can only provide little or no money at all to the *Land* Association’s resources because of their own economic difficulties.

The priorities and distribution of funding for the two projects are determined by the *Land* Association of German Sinti and Roma. The projects are concerned with assistance for school education, jobs and the social life of Sinti and Roma on the one hand, and with providing information on the history and culture of Sinti and Roma to the majority society on the other. The second project is intended to overcome prejudices against the minority and to meet “anti-Gypsie” attitudes.

There is agreement between Hesse and the *Land* Association of Sinti and Roma that both projects will only be successful, if they are based on long-term activities.

In addition to financial assistance for the *Land* Association of Sinti and Roma, additional funds are provided such as a grant of €18,000 a year to assist Sinti children in two troubled schools in Bad Hersfeld. A mediator will specifically deal with the difficult relationship between pupils, teachers and parents in order to break through the self-reproducing circle, in which poorly educated parents do not succeed all by themselves to motivate their children to perform better in schools.

Currently Hesse is not aware of any other umbrella organization of national minorities that could be included in the *Land's* assistance programme.

The provision of funds to promote music and regional culture is intended to enable all groups of society in Hesse to participate in arts and culture.

No distinction between different ethnic groups is made for the allocation of funds to associations and institutions concerned with music (association of music schools, choirs and music associations).

Within the framework of project assistance for concerts of individual orchestras, the Philharmonic Association of Sinti and Roma in Frankfurt/Main received special funds of €1,000 in 2004, and budgetary funds allocated for music assistance of €2,000 in 2005.

Furthermore, cultural institutions or projects of Sinti and Roma concerned with theatre and literature in Hesse can receive assistance, if there are any and if they are presented to the competent ministry. The available means of assistance are equally open to such institutions and projects.”

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

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

Ad paragraph 59:

The following comments are made on the above statements:

Concerning the unwritten administrative competences of the Federal Government (including national minorities), the federal budget law conveys the Federal Government a special responsibility for central institutions by virtue of the nature of a matter. Hence, also for reasons of administrative efficiency, the Federal Government Commissioner for Culture and the Media provides funding to the national minorities' umbrella organizations, which transfer these funds to the relevant target organizations. This ensures that public funds are exclusively earmarked for projects which constitute a priority for minorities.

Furthermore, the following must be noted:

A medium or long-term assurance for financial assistance provided to national minorities would require a commitment appropriation in the budget. The Federal Ministry of Finance rejects this measure for general reasons of budgetary law – not only in the case of minorities. Furthermore, to avoid any misunderstanding it is pointed out that federal funds allocated to national minorities are not regarded as subsidies, but as allocations in accordance with Section 23 of the Federal Budget Code. Subsidies are benefits exclusively granted to businesses (e.g. financial assistance, tax breaks). Allocations, on the other hand, are public payments earmarked for a specific purpose provided to institutions outside the federal administration. Prior to the approval of funding, the recipient does not have a legal claim to such funding or the amount of funding, and there is no direct exchange of benefits.

This also applies to the *Länder*. For this reason Schleswig-Holstein specifically pointed out that the term “subsidies” used in various places in the report should not be used in the context of financial assistance. “According to Schleswig-Holstein, assistance for minorities is not a subsidy.”

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

61.

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

*Findings of the first cycle*

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

*Present situation*

*b) Outstanding issues*

63. The Advisory Committee has been informed of the possibility of new relocations, with effect from 2010, affecting Saxon villages where part of the population is Sorbian, because of plans for further lignite quarrying in the region of Schleife/Trebendorf. Such relocations might further undermine possibilities for persons belonging to the Sorbian minority to maintain their culture and their identity and could potentially imply concerns under Article 5 and Article 10.

*Recommendations*

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

Ad paragraphs 63 and 64:

The Free State of Saxony addressed in the above statements and recommendations concerned with relocations caused by lignite quarrying comments as follows:

“Concerning the special needs of the Sorbian people, we refer to the reply to question 3 of the Saxon *Land* parliament publication 4/0999. It says: “Pursuant to Art. 5 of the Saxon Constitution read together with Section 2 para. 3 of the Saxon Sorbs Act the Sorbian people is granted the protection of its traditional homeland. Although the traditional homeland is the historical settlement area - as explicitly stated in the legislative intent regarding Section 2 para. 3 of the Saxon Sorbs Act - the right of homeland does not constitute a defensive right against measures based on other laws, in particular concerning land use planning. However, Article 5 para. 1 of the Saxon Constitution and Section 3 para. 4 of the Saxon Sorbs Act have to be taken into consideration.

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

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

### **Integration and community relations**

#### *Findings of the first cycle*

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

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

The Free State of Bavaria comments on paragraph 66 as follows:

“The efforts for the necessary language and social integration of children at an early stage will be given even greater priority than in the past. This applies to all children of German and foreign nationality regardless of whether they belong to a minority.”

#### *Present situation*

##### *a) Positive developments*

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

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

##### *b) Outstanding issues*

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

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

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

Ad paragraph 71:

The Free State of Bavaria refers to its comments on para. 66.

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

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

#### *Recommendations*

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

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

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

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

#### *Findings of the first cycle*

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

#### *Present situation*

a) Positive developments



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

Ad paragraphs 77 and 78:

Hesse comments as follows:

“The fight against racist, xenophobic and anti-semitic crimes is still a top priority for Hesse. Cooperation in the interministerial working group “Netzwerk gegen Gewalt” (Network against Violence) and “Ausstiegshilfe Rechtsextremismus in Hessen” (initiative to help right-wing extremists to leave the scene), which includes representatives of the Ministry of Justice, the Ministry of Education, the Ministry of Social Affairs and the Ministry of the Interior, works well.”

Rhineland-Palatinate comments as follows:

“Cooperation between the *Land* Government and the Association of German Sinti and Roma – *Land* Association of Rhineland-Palatinate is constructive and based on trust. If necessary, there are discussions between the association and senior levels of the relevant ministries. The fight against xenophobia, racism and right-wing extremism of course also includes anti-tsiganism.”

b) Outstanding issues

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

Ad paragraph 79:

A number of federal *Länder* wish to clarify that the above statements do not apply, i.e. that there is no specific “accumulation” of the mentioned offences on their territory.

*Recommendations*

80. The Advisory Committee urges the German authorities to consider stipulating explicitly that racist motivations constitute an aggravating circumstance for any offence<sup>6</sup>. The Advisory

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<sup>6</sup> As had already been recommended by ECRI in its third report on Germany and in addition to the Advisory Committee’s comments on the need to have a complete legislative framework to combat all forms of discrimination.

Committee further encourages the authorities to step up their efforts to combat all forms of racism, antisemitism and islamophobia.

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

Ad paragraphs 79-81:

Concerning the Advisory Committee's opinion that by designating racist motives as an aggravating circumstance in criminal law it would be possible to intensify the fight against racism and discrimination, reference is made to the comments on para. 13.

### **Media portrayal of minorities**

#### *Findings of the first cycle*

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

#### *Present situation*

##### b) Outstanding issues

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

Ad paragraph 83:

Concerning the accusation that data on a person's ethnic background is transmitted, the Federal Government, the Free State of Bavaria, Hesse and Rhineland-Palatinate refer to their comments on para. 14. Hesse further points out that the accusation of a violation of official secrecy (Section 353b of the Criminal Code), for example, will be thoroughly examined.

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

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

Ad paragraphs 83-85:

Regardless of the explanations on para. 14 it can be concluded from the statement of the Free and Hanseatic City of Hamburg that there is no unauthorized transmission of data on a person's ethnic background:

"The ethnic background of accused persons is transmitted by the public prosecutor's office only in exceptional cases. Judicial authorities do not regularly transmit information on a person's nationality either. The only exception to transmit such information is that it is required to make the reported circumstances understandable."

Hesse adds the following:

"These considerations will be taken up by a press guideline for the remit of the Hessian Ministry of Justice, which is currently being drawn up. Individual cases of major importance have not become known so far."

#### *Recommendations*

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

Ad paragraph 86:

In the context of the above recommendation, the German authorities still hold the position explained in paras. 310 to 317 of the Second Report of the Federal Republic of Germany in accordance with Article 25, para. 2 of the Framework Convention.

Baden-Wuerttemberg remarks accordingly:

"The press publishing houses and editors act within the framework of the freedom of the press and the freedom of opinion protected by the Constitution. It is particularly one of the consequences of the freedom laid down in Article 5 of the Basic Law that editors may freely decide on the question of whether the ethnic background of a suspect or sentenced criminal is mentioned in a report or not. For this reason it is not possible for authorities to issue any instructions. Nevertheless, it is recommended to observe the Press Code drawn up by the German Press Council."

Lower Saxony remarks the following on the possibilities of taking influence that it perceives:

"Section 5, para. 2 of the State Treaty on the Broadcasting Corporation NDR and Section 15, para. 2 of Lower Saxony's Media Act reflect the principle of tolerance towards members of minorities. This obligation is implemented for public broadcasting through

legal supervision. Private broadcasting is subject to the legal supervision of the Lower Saxony *Land* Supervisory Authority for Private Broadcasters (*Niedersächsische Landesmedienanstalt*).

The press is bound by the Lower Saxon Press Act, which defines the public responsibility of the Press (Section 3), the duty of care to be observed by the press (Section 6) and the applicability of the Federal Data Protection Act (Section 19). Paragraph 12 of the Press Code stating that no one must be discriminated against on the grounds of his/her sex, disability or racial, ethnic, religious, social or national background is observed. However, it is not possible to pass instructions on newspaper content to publishing houses. Publishing houses are free to decide on this matter.

Irrespective of the statement above, the *Land* Government will continue to criticize the publication of articles which may give rise to or even reinforce prejudices against minorities - either by addressing the *Verband Nordwestdeutscher Zeitungsverlage* (Association of North West German Newspaper Publishers) or, if possible, the newspaper concerned.”

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

Ad paragraph 87:

Baden-Wuerttemberg informs that further support for journalists’ training programmes aimed at promoting accurate and balanced reporting on minorities is not considered helpful from a cost/benefit point of view.

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

Ad paragraph 88:

In the context of this recommendation it must be clarified that the Federal and *Land* commissioners for data protection are responsible for monitoring compliance with provisions on the protection of personal data and that there is no proof concerning any cases of unauthorized processing of personal data on the ethnic origin of individuals by state authorities.

Nevertheless Lower Saxony specifically remarks the following:

“The *Land* Commissioner for Data Protection of Lower Saxony thoroughly supports the Advisory Committee’s recommendation to authorities to ensure that public and private as well as local authorities fully observe the provisions on the protection of personal data.”

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

### **Access of minorities to the media**

#### *Findings of the first cycle*

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

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

#### *Present situation*

##### a) Positive developments

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

##### b) Outstanding issues

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

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

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

#### *Recommendations*

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

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

#### **Ad paragraph 96:**

In the context of the recommendation above reference is made to the comments on para. 86 and to the statement of Lower Saxony concerning para. 56.

Ad paragraphs 89-96:

Schleswig-Holstein refers to its comments on para. 20 (amended Inter-State Treaty on Norddeutscher Rundfunk (NDR)) and, as a consequence, the improved negotiating position for minority associations by increased regional reporting.

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

Ad paragraphs 89-97:

Baden-Wuerttemberg points out that any increase in programmes dedicated to minority issues in public broadcasting involves higher costs, which must be paid for by all broadcasting licence fee payers. For this reason it is important that any increased commitment by public broadcasters in this area is studied with great care.

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

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

#### *Findings of the first cycle*

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

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

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

#### *Present situation*

##### a) Positive developments

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

Ad paragraph 101:

Schleswig-Holstein comments on the above statements as follows:

A special bill currently discussed by the Parliament of Schleswig-Holstein is not known. The question of Frisian language skills was integrated into Section 2 of the Frisian Act of 13 December 2004:

*“Schleswig-Holstein, Nordfriesland Kreis and its local authorities as well as the island of Helgoland shall take Frisian language skills into account when recruiting personnel for the public service, if such language skills are required for assuming a specific task.”*

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

b) Outstanding issues

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

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

*Recommendations*

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

Ad paragraphs 104-105:

Brandenburg comments on the above recommendations as follows:

“Brandenburg respects the Advisory Committee's position that the proficiency in the Sorbian language as a criterion for the recruitment of public service staff in the areas of traditional settlement of Sorbs would be an incentive to the use of these languages before administrative authorities. This idea, however, is in opposition to the legal right of every German applicant for a public office to be equally eligible according to his aptitude, qualifications, and professional achievements (Article 33 of the Basic Law). It is not admissible to circumvent this right by an arbitrary job description of the vacancy to be filled. Proficiency in the Sorbian language can only be considered a specific characteristic of the vacancy to be filled and thus become a criterion for recruitment, if it is necessary for assuming the public tasks as specified in the relevant job description. It is still possible to ensure that the use of the Sorbian language before administrative

authorities in the traditional Sorbian settlement area is encouraged, even if not all staff members can speak the language. For this reason, taking proficiency in the Sorbian language as a criterion for the recruitment of public service staff throughout Brandenburg would be an unjustified obstacle to civil service access. For this reason, Brandenburg continues to disagree with the Advisory Committee's position on this question."

Ad paragraphs 100, 103 and 105:

The Free State of Saxony replies to some of the statements and recommendations in these paragraphs as follows:

"It must be pointed out once again that the Framework Convention does not require that parties involved in a trial are actively encouraged to use the Sorbian language in the courtroom.

Nevertheless the following must be mentioned:

The "Sächsischer Rechtswegweiser" (as per November 2005), a brochure published by the the Saxon State Ministry of Justice, explicitly mentions the possibility to use the Sorbian language in the Sorbian settlement area.

A specific measure taken in 2004 and 2005 under the lead of the Council for Sorbian Affairs and the patronage of the President of the Saxon Parliament was a competition on "language-friendly municipalities". This competition was concerned with local activities to increase bilingualism. A city or municipality is "language-friendly" if it ensures that bilingualism as an intellectual and cultural heritage is made visible with the help of the Sorbian language and if the awareness for bilingualism is raised and language proficiency is promoted."

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

### **Bilingual signposting**

#### *Findings of the first cycle*

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

#### *Present situation*

##### a) Positive developments

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

##### b) Outstanding issues

109. The Advisory Committee notes that, according to the information which it was able to obtain, only limited progress has been made with the introduction of bilingual signs in areas where Sorbian language is spoken, and especially in the *Land* of Brandenburg. Furthermore,



there remain differences of opinion between the authorities and the representatives of the Sorbian minority over the attachment of certain municipalities in Brandenburg to areas where Sorbian language is spoken.

Ad paragraph 109:

Brandenburg comments on the above statement as follows:

“The Advisory Committee’s statement must be corrected, since differences of opinion between the *Land* Government and Sorbian associations over the attachment of certain municipalities to Sorbian settlement areas are not based on factual reasons or differences in the interpretation of legal provisions, but on the desire to change the statutory settlement area, which is not shared by Brandenburg. While according to the current legal situation only those municipalities are part of the Sorbian settlement area in which there is a tradition of Sorbian language and culture, the Sorbian associations want to change the law so as to ensure that also those villages become part of the Sorbian settlement area in which there is a tradition of Sorbian language or culture, i.e. the two conditions no longer apply together. Thus, municipalities could be included, which still have a cultural tradition, but in which no one can speak the Sorbian language anymore. Brandenburg, however, is rather sceptical towards this idea, since language and culture are linked with each other and cannot be considered as two separate entities.”

#### *Recommendations*

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

Ad paragraph 110:

Brandenburg replies the following to the above recommendation:

“The *Land* complies with its obligation to put up bilingual signposts. However, this cannot be done simultaneously in all places. Signposts are successively replaced, once they have been damaged or become too old or if new signposts are necessary because of territorial reforms, which means that in the course of a couple of years all signs will have been replaced. Consequently, bilingualism is guaranteed nearly throughout the whole region and any gaps will be closed in the near future.”

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

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

#### *Findings of the first cycle*

111. The Advisory Committee noted that children of Roma/Sinti (*and of immigrants, see remarks with regard to Article 6*) were over-represented at lower secondary school level and in

special remedial schools, and correspondingly under-represented in intermediate and grammar schools.

*Present situation*

a) Positive developments

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

b) Outstanding issues

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

Concerning the statements in paras. 111 to 113 Baden-Wuerttemberg comments as follows:

“There is no registration of the number of Roma/Sinti children in Baden-Wuerttemberg.

Decisions on a child’s school education always depend on educational considerations and are oriented along the child’s needs. Status-related questions such as immigrant origin, nationality or ethnic origin are not criteria used by teachers to assume their task of choosing an appropriate school in a competent and responsible manner. In Baden-Wuerttemberg the procedure for a child’s transition from primary school to secondary schools has stood the test. In addition to a child’s performance, its development and forecasts about its ability to cope with future school requirements are the basis for any recommendation concerning secondary schools or for a differentiated admission procedure.

Particularly for special remedial schools (*Sonderschulen*), a qualified decision on an appropriate school in the child’s interest is oriented towards the assistance it needs, its performance and disability. This task is performed by special remedial school teachers in Baden-Wuerttemberg in review procedures in a competent, targeted and co-operative manner so as to find out whether it is in the child’s best interest to go to a special remedial school.

It has been found that thanks to the dedication with which teachers assume their educational mandate at lower secondary schools (*Hauptschulen*) and special remedial schools (*Sonderschulen*) of Baden-Wuerttemberg that children and young people have good prospects for their school career and in later life. Irrespective of their origin, pupils receive the basis to plan their future in a responsible way, which they can make use of in accordance with their personal abilities.

In the last few years, Baden-Wuerttemberg initiated, intensified and further developed a series of measures to promote the language skills of children and young people of immigrant families and thus help them to integrate.”

Concerning the statements in paras. 111 to 113 the Free State of Bavaria refers to its comments on para.66.

Other *Länder* remark that they do not understand the reasons for the above statements, and for a further review wish to receive background information.

### *Recommendations*

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

Ad paragraph 114:

Concerning the recommendation in para. 114 the reply of Baden-Wuerttemberg is transmitted as an example of the *Länder*:

"In general, Baden-Wuerttemberg's differentiated educational offer provides the same access possibilities to all children and young people. The understanding of parents/guardians of the above-mentioned target groups of the importance and usefulness of an early and continuous attendance of nursery schools or children's day-care centres is decisive for successful school careers. Social competences and language skills that children learn in these institutions are of fundamental importance for the following school education. The active support of children by their parents is helpful and beneficial. Increasing the parents' awareness of this importance in the interest of children's prospects for the future irrespective of their origin should be included in the recommendation."

Lower Saxony adds the following:

"The *Land* Government has issued a flyer to advertise attendance in nursery schools at an early age. One obstacle may be the fact that contributions are raised for the attendance of a nursery school. However, in many cases such contributions can be paid for by the competent youth welfare offices as part of youth welfare services granted in accordance to a family's social situation. Since there is no obligation to attend nursery schools in Germany, the state is unable to enforce the nursery school attendance of Roma/Sinti children."

Ad paragraphs 113 and 114:

Reference is made to the comments on the Committee's statements in paras. 15, 16, 34, 36, 39, 66, 111.

### **Multicultural curricula**

*Findings of the first cycle*

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

To correct the repeated findings of the first monitoring cycle in para. 115, Baden-Wuerttemberg adds the following, also to complement the following statements of the Advisory Committee in paras. 116 seqq.:

“The curriculum introduced in Baden-Wuerttemberg in the 2004/2005 academic year defines educational standards that specify the abilities, skills and knowledge (competences) pupils should have at a certain point of time in their school career. Teaching is not so much dominated by content, but by competences. For this reason, the curriculum’s content is not so strictly defined as it used to be. Individual issues or content are not explicitly mentioned in the definition of competences, even though they serve as the basis for school lessons.

Of course, national minorities are a basic issue also in the new curricula of Baden-Wuerttemberg. This applies to all types of school and subjects such as religious education, history, social sciences, German and foreign languages. As part of these competences, respect, tolerance and empathy for national minorities are defined and the understanding for the co-existence of different cultures is promoted – already from elementary school onwards. Furthermore, examples from the history of the persecution of minorities and of the life of different groups of society are envisaged.

Hence, Baden-Wuerttemberg fully complies with the request of the Advisory Committee.”

*Present situation*

a)

a) Positive developments

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

b)

c)

b) Outstanding issues

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

Ad paragraph 117:

The Free State of Bavaria points out that numerous aspects of the history and culture of Sinti and Roma are part of the curricula of all Bavarian schools, the teaching material and basic and advanced teacher training.

Rhineland-Palatinate comments on the above statement as follows:

The history, culture and Nazi persecution are part of the social sciences curricula.

Schleswig-Holstein comments on the above statements as follows:

“The culture and history of minorities are included in the curricula of Schleswig-Holstein as an interdisciplinary subject. Specific material on “Intercultural learning in school curricula” has been developed, in which teachers of all school types can find ideas on how to acknowledge and respect the diversity of members of different cultures to promote peaceful co-existence.”

*Recommendations*

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

Baden-Wuerttemberg specifically comments on the recommendation in para. 118:

“The school books are based on the requirements of the curriculum. For this reason, these issues are dealt with in textbooks in various different ways. It has been repeatedly pointed out to publishing houses and school book authors that it is important to refer to the history, culture and traditions of various ethnic groups so that this issue is appropriately taken into account when they draft textbooks. Hence Baden-Wuerttemberg fully agrees with the Advisory Committee’s concern to ensure that this issue is thoroughly prepared and appropriately portrayed in school books.”

Ad paragraphs 111 - 118:

Hesse refers to its efforts described in its comments on para. 51.

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

With regard to the Committee’s recommendation on instruction concerning Roma/Sinti history and culture in para. 119, Baden-Wuerttemberg comments as follows:

Baden-Wuerttemberg pursues the following approach in the curricula of secondary schools:

- In comprehensive schools (*Hauptschule*), it is possible to address the history of Sinti and Roma in the context of the persecution of dissidents and minorities by the Nazi regime when discussing the issue of power and dominance as part of the subject “World – Time – Society” (*Welt-Zeit-Gesellschaft*) taught in grade 9.
- In specialized secondary technical schools (*Werkrealschule*), the curriculum for grade 10 also offers this possibility in the context of “relations with minorities in different societies”.
- In secondary technical schools (*Realschule*), history lessons specifically address Sinti and Roma as part of the topic on the creation of states and their power structures (particularly Germany under Nazi dictatorship) in grades 5 to 10 in the context of the term “persecution of minorities”. Furthermore, to improve children’s musical skills it is possible to study Sinti and Roma culture in music lessons in secondary technical schools.
- History taught in grammar schools (*Gymnasium*) in grade 9 and 10 can include the persecution of Sinti and Roma as part of lessons dealing with the Weimar Republic and the Nazi regime.
- At seminar level, the genocide of Sinti and Roma is an obligatory subject when studying “Germany between democracy and dictatorship”.

Concerning the above recommendation the Free and Hanseatic City of Hamburg remarks the following:

“In Hamburg, aspects of the history and culture of Roma and Sinti are part of the curricula for history/social sciences/economics in grade 9/10 and history in grade 9/10. Concerning the history and culture of Roma and Sinti as part of teacher training in Hamburg, the Authority for Education and Sports informs that the teacher training curricula in the second phase do not concentrate on content, but on competences (competences such as assuming different roles and analytical thinking, planning, didactic and methodical competences)”.

Rhineland-Palatinate adds the following:

The history, culture and Nazi persecution are part of the social sciences curricula.

The Nazi persecution is studied in grade 9 of comprehensive schools (*Hauptschule*) and in grade 10 in secondary technical schools (*Realschule*) and grammar schools (*Gymnasium*) in the context of the Nazi regime together with the issues “consolidation of power through Gleichschaltung and persecution” and “racial ideology and its implementation”.

The first phase of teacher training (university studies) includes obligatory subjects in the course “educational sciences”: Heterogeneity and cultural diversity as conditions in schools and teaching – intercultural differences as a prerequisite for education and learning. This is a statutory subject laid down in the examination code for the first state examination of teachers.

During a teacher’s preparatory service (second phase) the following training aspects provide the possibility to study the subject, particularly in seminars on history, social sciences, German and religious education: Activities related to memorial sites, relations with minorities, cultural diversity.

Schleswig-Holstein comments on the above recommendation as follows:

"School curricula are updated on a continuous basis. Their implementation, however, mainly depends on teachers, who bear the educational responsibility to shape the lessons."

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

Concerning the recommendation in para. 120 Baden-Wuerttemberg comments as follows:

The educational mandate of schools has a special focus on Germany's history. Hence, the schools' task is to teach young people the events of the Third Reich and raise their awareness for the extent of terror in connection with persecution, Holocaust and genocide under the preamble that this must never again happen.

Hesse points out that remembering the events and disseminating information on Nazi crimes still are a top priority of the *Land's* civic education activities. This is also in line with its comments on the statements in para. 51 concerning the assistance for relevant activities of the *Land* association. In this context, it is worth mentioning a book entitled "Flucht – Internierung – Deportation – Vernichtung" (Flight, Internment, Deportation, Extermination) published in 2006 by the *Land* Association of German Sinti and Roma and promoted by Hesse.

Ad paragraphs 118-120:

Concerning the Committee's statements in the above paragraphs Lower Saxony remarks the following:

The culture and history of Sinti and Roma is not explicitly included in any curriculum in Lower Saxony. The main educational concept for the acquisition of competences is based on the idea that students can identify the characteristics of national minorities and deal with them in a responsible manner in accordance with ethical principles. For this reason they must learn about the history and culture of a national minority. It is up to the school to decide which national minority to choose for learning these competences so that the history and culture of Sinti and Roma may be part of lessons in history, political sciences, geography, German, religious education or in music or cultural studies.

The ordinance on the first state examination of teachers in Lower Saxony of 15 April 1998 does not specifically mention any detailed knowledge on this subject for teacher training. Since future history teachers are required to have specific knowledge of certain areas of the most recent history, specifically the history of National Socialism in Germany, they can be expected to have gained an insight into the history and culture of Sinti and Roma. The amended ordinance on successive courses for teachers, which

will replace the former ordinance in the 2007/2008 winter term, will introduce competences and standards future teachers will have to acquire. The relevant contents will then be laid down in a general list.

## **Teacher training**

### *Findings of the first cycle*

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

### *Present situation*

#### a) Positive developments

122. The Advisory Committee notes with satisfaction that positive developments have occurred in the field of teacher training. According to the information obtained, Frisian language training modules have been introduced into teacher training in Schleswig-Holstein. It also appears that in Saxony, Sorbian mother tongue entrants to teacher training in this *Land* have the assurance of obtaining a teaching post in the Sorbian schools or classes.

#### Ad paragraph 122:

The Free State of Saxony adds the following to complement the statement above:

“The Saxon State Ministry of Education and Cultural Affairs agreed that the recruitment of teachers for schools in the Free State of Saxony can be guaranteed, if the graduates of the Sorbian grammar school in Bautzen speak Sorbian as their mother tongue and have successfully completed teacher training (first and second state examination for teachers) in a combination of subjects required by the regional school office in Bautzen.”

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

#### Ad paragraph 123:



Hesse complements the above statement by referring to the special annual grant for the *Land* Association of Sinti and Roma to assist Sinti children in two troubled schools in Bad Hersfeld mentioned in its comments on para. 15.

The following comments of Hesse also refer to paras. 119 and 121 to 123:

“The *Pädagogisches Büro Nationale Minderheiten: Sinti und Roma* (Educational Bureau for National Minorities: Sinti and Roma) at the University of Marburg is a central element of Hesse’s policy to promote the interests of Sinti and Roma. It pursues an interdisciplinary approach. The combination of its continuous activities in teacher training at university level and projects of social dialogue (such as presentations, work with students at school) has been particularly effective, since teachers’ awareness for the situation of Sinti and Roma is raised during their training, who then integrate these aspects in their teaching.

The reason for the establishment of the *Pädagogisches Büro Nationale Minderheiten: Sinti und Roma* in 1998 for the Hessian Ministry of Education and Cultural Affairs was the fact that the national minority of Sinti and Roma is subject to serious discrimination in the Federal Republic of Germany and that this is also a problem of the majority population because they are not familiar with their history and culture, and particularly the persecution of Sinti and Roma. For this reason, the task of the bureau is to raise this issue at schools and universities and initiate a dialogue in society to reduce prejudices among the majority population. The bureau was integrated into the Hessian *Land* Institute for Educational Studies, which still existed at the time, to provide advanced training for teachers. At the same time seminars on the issue were offered at the Philipps University in Marburg in history and cultural studies and in educational studies particularly designed for future teachers. Lectures, film presentations and exhibitions were organized for the general public. Furthermore, Hesse included this issue in school curricula and developed teaching material which can be easily used in school lessons.

After the first few years it became clear that the university seminars were much more successful than the offers for advanced teacher training. For this reason the original structure of the *Pädagogisches Büro Nationale Minderheiten: Sinti und Roma* was changed. In August 2005, 50% of the head of the bureau’s position were assigned to the department of history and cultural sciences at the Philipps University in Marburg to provide more courses for teacher training. Furthermore, a co-operation agreement between the Office for Teacher Training and the Philipps University in Marburg was concluded. This cooperation model is intended to link the first and third phase of teacher training.

At the end of each academic year an annual report will be drawn up. Both in the 2005/2006 winter term and the summer term the seminars were a great success testified to by the large number of students attending them. Both seminars pursue an interdisciplinary approach (combination of educational sciences and European ethnology).

At the same time joint advanced teacher training is offered each term, in which the lecturers of the seminars participate (offer of the relevant departments) and in which the issue of Sinti and Roma is an important part of the training.”

Rhineland-Palatinate comments on the Committee’s statements above as follows:

The first phase of teachers' training (university studies) includes obligatory subjects in the course "educational sciences": Heterogeneity and cultural diversity as conditions in schools and teaching – intercultural differences as a prerequisite for education and learning. This is a statutory subject laid down in the examination code for the first state examination of teachers.

During a teacher's preparatory service (second phase) the following training aspects provide the possibility to study the subject, particularly in seminars on history, social sciences, German and religious education: Activities related to memorial sites, relations with minorities, cultural diversity.

b) Outstanding issues

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

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

Ad paragraph 125:

Schleswig-Holstein comments on the above statements as follows:

"The statement is not comprehensible. The University of Flensburg has not taken any decision to close down the Chair of Frisian language. In accordance with the co-operation agreement with the Nordfriisk Instituut (NFI), which has not been terminated, the director of the NFI still works at the University of Flensburg as honorary professor. On the contrary, the Frisian department has been given an additional post (lecturer for special tasks) to ensure teaching in this area.

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

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

Ad paragraphs 121 and 127:

Brandenburg comments on the above statements as follows:

"The *Land* respects the Advisory Committee's reference to concerns of Sorbian associations against the centralization of teacher training at the University of Leipzig.

However, it points out once again that it does not share the assumption that this will reduce the quality of teacher training and that this has not been proven by experience so far.”

The Free State of Saxony adds the following:

The concerns expressed by “certain representatives of the Sorbian minority following the centralisation of further teacher training at the University of Leipzig and of the clear need for the University of Leipzig to provide adequate training in Lower Sorbian as well” are not shared by Saxony.

The *Institut für Sorabistik* of Leipzig University has sufficient staff and resources to offer Sorbian studies (in Upper and Lower Sorbian). There are places for applicants focusing on Lower Sorbian. For all basic teacher training courses there are rules on courses and examinations. Furthermore, advanced teacher training in Upper and Lower Sorbian can be provided.

In the Free State of Saxony advanced training measures in Upper Sorbian for teachers (two years of specialised advanced training) is offered by the regional school authority of Bautzen in cooperation with the University of Leipzig. It would also be possible to organize advanced training measures in Lower Sorbian. The initiative, however, must be taken by the region in which Lower Sorbian is spoken (Lower Lusatia in the *Land* of Brandenburg).”

#### *Recommendations*

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

Ad paragraphs 126 and 128:

Lower Saxony comments on the statements and recommendations in the paragraphs above concerning teacher training in Sater Frisian as follows:

“At the four elementary schools and the *Schulzentrum Saterland* (Saterland School Campus) at secondary level I, four trained teachers give lessons in Sater Frisian. In addition to them, there are two staff members who have not completed teacher training. This number is currently sufficient, since not only the number of teachers, but also the lessons provided are an indicator for the developments in education. In the 2005/2006 academic year the number of lessons was increased by four hours in comparison with the number of the previous year. The statement that the preparation and production of educational material is based on voluntary work is not correct. Since the 2004/2005 academic year until the end of the 2005/2006 academic year, three teachers have one hour per week as a compensation for their review of teaching material.”

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

Ad paragraph 129:

Schleswig-Holstein comments on the above recommendation as follows:

“In Schleswig-Holstein, *Land* resources have been provided for the support of Sinti and Roma children on a continuous basis since 2000. The mediator project at schools in Kiel funded from these resources was awarded the Otto-Pankok prize by the *Ute und Günter Grass Foundation* for the Roma in Lübeck in 2006.”

## Article 13 of the Framework Convention

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

#### *Findings of the first cycle*

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

#### *Present situation*

#### b) Outstanding issues

131. The Advisory Committee takes note of the concerns expressed by persons belonging to the Danish minority with regard to decreasing subsidies for school transportation of pupils attending Danish minority schools. This may impact negatively on the commendable practice of equal funding for all pupils and might threaten the existence of certain Danish minority primary schools. The Advisory Committee reminds the competent authorities of the need to ensure that budgetary restrictions do not affect minorities more than the population at large.

Ad paragraph 131:

Schleswig-Holstein comments on the above statements as follows:

“The provision governing the school transportation of pupils attending public schools is Section 80 of Schleswig-Holstein’s School Act, which, however, does not apply to substitute (private) schools run by voluntary bodies. This also includes the Danish minority schools.

For each pupil, private schools run by voluntary bodies receive a share of the amount which, on average, is spent on material and personnel costs for a pupil at a comparable public school in accordance with Section 63 of the School Act. This average amount (cost-per-pupil rate) includes one third of the costs required for the school transportation of pupils in accordance with Section 80 para. 2 of the School Act. This corresponds with the costs a public school pays towards the transportation of a pupil.

The remaining two thirds of transportation costs of the public school system are paid for by the districts and are not taken into account by the grants provided to private schools in accordance with the current legal situation. Hence, the districts of Nordfriesland,

Schleswig-Flensburg and Rendsburg-Eckernförde have provided voluntary grants for the Danish minority schools for years. The district of Rendsburg-Eckernförde ceased payments in 2006.

In the majority of districts parents of children at public schools also need to contribute towards transportation costs. The parents of children at Danish schools so far do not have to pay towards these costs and are provided a much better transportation offer.”

### *Recommendations*

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

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

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

#### *Findings of the first cycle*

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

#### *Present situation*

##### a) Positive developments

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

##### b) Outstanding issues

135. As in its first Opinion, the Advisory Committee remains deeply concerned about the continued steps to close the Sorbian secondary schools, particularly the 5<sup>th</sup> class of the Radibor secondary school<sup>7</sup>, the threatened closure of the Panschwitz-Kukau school and thus, the reduction of the number of Sorbian schools in the Kamenz district from four to two. Though well aware of the demographic recession affecting the *Land of Saxony*, which is the principal cause of the closure of many schools in the *Land* as a whole, it reminds the authorities that these schools situated in the heart of the Sorbian settlement areas are essential not only for educational reasons but also for the preservation of Sorbian language and culture, which are affected by difficult economic and demographic conditions. It is also of the opinion that the closure of secondary classes and schools could run counter to the significant advances achieved towards revitalisation of Sorbian, particularly under the Witaj schemes.

### **Ad paragraph 135:**

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<sup>7</sup> Note that the decision to close down this class is in abeyance for the time being, pending a judicial ruling in proceedings brought by Radibor pupils' parents.

“The Free State of Saxony comments as follows on the concerns expressed because of the closure of Sorbian secondary schools:

Given the known demographic development, the number of pupils at Sorbian secondary schools has dropped so low that the educational goal of secondary schools, i.e. to provide education resulting in a secondary modern school or secondary technical school degree, could in some cases not be realized anymore – not even to a limited extent. Consequently, the Free State of Saxony withdrew its support for the Sorbian secondary school in Crostwitz on 31 July 2003. Similarly, the Saxon State Ministry of Education and Cultural Affairs does not see any public need to maintain the Sorbian secondary school Panschwitz-Kuckau. In the 2005/2006 academic year there are no grades 5 and 7. Only seven students applied for attending grade 5 of this secondary school. Prognoses do not show any significant increase of students for the next years. The Saxon State Ministry of Education and Cultural Affairs sees a public need to maintain at most two classes of one grade in the administrative community “Am Klosterwasser” – which has the highest number of Sorbian schools in Kamenz *Landkreis* – pursuant to Section 4 para. 4. no. 4 of the School Act. Furthermore, it is only a short distance of a few kilometres to the Sorbian secondary schools in Räckelwitz and Rabitz.

In the long run, there will be a public need to maintain at most three classes of one grade at Sorbian secondary schools in the Bautzen *Landkreis*. It is currently not possible to make any reliable statements about the long-term public need concerning the Sorbian secondary school Radibor. The responsible body was informed by the Saxon State Ministry of Education and Cultural Affairs that the decision concerning this secondary school may be reviewed if a balanced concept on Sorbian secondary schools in the Bautzen *Landkreis* is presented. The Sorbian secondary school in Radibor will be maintained without any restrictions.

All decisions concerning Sorbian education are based on the rights of the Sorbian people as determined in Article 6 para. 1 of the Constitution of the Free State of Saxony and in Section 2 and Section 4a para. 4 no. 4 of the School Act. Even if the Free State of Saxony does no longer provide certain grades at the Sorbian secondary schools in Panschwitz-Kuckau, the maintenance and development of their culture, language and traditions is ensured through the remaining Sorbian secondary schools in the Sorbian settlement area since they can be reached in fair time and offer good quality education.

Before taking the decision, the educational arguments of Sorbian bodies were comprehensively taken into consideration. The evaluation of the concept of the bilingual Sorbian-German school “2plus” (*Witaj* concept), which encompasses all types of schools, will not be affected by the withdrawal of *Land* participation in offering certain grades. This concept is intended to stabilize or even increase the number of students at Sorbian schools.”

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

137. The Advisory Committee also takes note of the wish expressed by several Sorbian representatives to move towards more independent management of the Sorbian schools network, on the same pattern as the network of Danish schools, in order to accommodate to the extent

possible the Sorbian community's educational and linguistic needs, including by means of the establishment of a foundation for Sorbian education.

*Recommendations*

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

Ad paragraphs 136 and 138:

Concerning the statements and recommendations in the paragraphs above the Free State of Saxony comments as follows:

“The number of Sorbian schools will remain at such a level that Sorbian secondary schools can be reached in reasonable time.

This is ensured by the Free State of Saxony through legal provisions in support of the Sorbian people. A reasonable adaptation of the school network, which gives consideration to the obligations under Article 6 of the Constitution of the Free State of Saxony, is necessary to use available resources as effectively as possible. The historic network of Sorbian schools will remain intact even after the closure of the Sorbian secondary school in Panschwitz-Kuckau, since elementary schools are available in all locations concerned.”

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

Ad paragraphs 137 and 139:

Concerning the statements and recommendations in the paragraphs above the Free State of Saxony comments as follows:

“The idea to set up schools run by independent bodies was taken note of in 2002, but not pursued any further.

A new application supported by the bodies responsible for Sorbian schools has not been submitted to the Saxon State Ministry of Education and Cultural Affairs.”

*Findings of the first cycle*

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

*Present situation*

## a) Positive developments

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

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

## b) Outstanding issues

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

## Ad paragraph 143:

Schleswig-Holstein comments on the above statement as follows:

“The intention of the measures was to pool resources and provide more lessons and greater continuity.”

*Recommendations*

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

## Ad paragraph 144:

Schleswig-Holstein remarks the following:

“This hope is shared by the Ministry of Education and Cultural Affairs of Schleswig-Holstein. However, one requirement is that this wish for continuity is also shared by parents and pupils.”



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

Ad paragraph 145:

In the context of Sater Frisian, Lower Saxony comments on the above recommendation as follows:

“Lower Saxony has already increased its efforts to preserve the Sater Frisian language. The number of lessons was increased from 12 in the 2004/2005 academic year to 16 in the 2005/2006 academic year. For 2006/2007 the specific requirement of three additional lessons was approved.

At the *Schulzentrum Saterland* (Saterland School Campus) Saterfrisian was offered as a course to be chosen among optional compulsory subjects for the first time in 2005/2006. Pupils will receive marks for their performance in the course. In the 2006/2007 academic year this course will again be offered.

All the new curricula of Lower Saxony entering into force on 1 August 2006 include a reference that regional affairs should be taken into account in the lessons. For German and English it is specifically pointed out that Low German and Sater Frisian provide an additional impetus for lessons and are intended for linguistic studies and comparisons.”

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

Ad paragraph 146:

This statement is so general and abstract that there seems to be no need for specific action.

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

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

#### *Findings of the first cycle*

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

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

*Present situation*

## a) Positive developments

149. The Advisory Committee welcomes recent developments in the representation and consultation of the officially recognised national minorities at federal level. It refers in particular to the creation of a public position of the Secretariat of Minorities, tasked with representing the minorities which are members of the Minorities Council<sup>8</sup> in their dealings with the federal institutions, and in particular with the Federal Ministry of the Interior. It also highlights the importance of other communication and consultation bodies such as the *Bundestag* parliamentary working panel on minorities and the Federal Commissioner for Repatriates and National Minorities. Finally, it welcomes the regular holding of conferences by the Federal Government on implementation of the Framework Convention, which are an additional means of communication and dialogue with representatives of minorities.

## Ad paragraph 149:

To be precise, the Minority Council is an association of civil society which does not include all minority organizations in the Federal Republic of Germany. The Secretariat of Minorities financed by the Federal Government, on the other hand, is responsible for representing the interests of all national minorities and all their associations in Germany vis-à-vis the government and parliament.

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

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

## b) Outstanding issues

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

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

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<sup>8</sup> An NGO grouping of the organisations of the four officially recognised national minorities, based in Berlin, with the aim, amongst others, of maintaining ongoing contact with the federal institutions.

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

*Recommendations*

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

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

Ad paragraph 156:

The Free State of Saxony comments on the above recommendation as follows:

"Currently it is being considered whether to include *Domowina e.V.* as a partner (together with the Foundation for the Sorbian People) in the *Sorbisches National-Ensemble GmbH* (Sorbian National Ensemble) and the the publishing house *Domowina-Verlag GmbH*. This would also improve the participation of minorities in decision-making processes. However, a final opinion on these changes has not yet been found."

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

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

Ad paragraphs 157 and 158:

Concerning the request to take measures to satisfy the requirements of those concerned, reference is made to the comments on the Committee's statements in paras. 15, 16, 34, 36, 39, 66, 11, 113 and 114.

With regard to the recommendation to set up specific consultation mechanisms, Lower Saxony rightly points out that Sinti and Roma are represented by several organizations and *Land* associations which frequently have different opinions on political and social affairs, for instance on maintaining the cultural identities of the represented tribes and ethnic groups.

Furthermore, the Federal Government points out that the two federal associations of German Sinti and Roma or German Sinti have already participated in the implementation conferences on the Framework Convention at federal level, but have not succeeded in finding a joint position.

For this reason, an advisory committee, similar to those for other national minorities, has not been requested for the German Sinti and Roma.

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

#### *Findings of the first cycle*

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

#### *Present situation*

##### a) Positive developments

160. The Advisory Committee welcomes the Federal Constitutional Court's decision<sup>9</sup> of 2005 refusing to accept the argument that the work of political parties representing national minorities, and which are exempted from the 5% threshold, should be restricted to activities pertaining to national minorities. The Federal Constitutional Court took the view that such political parties could engage in all political issues.

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<sup>9</sup> See Decision of the Federal Constitutional Court of 16 February 2005, 2BvL 1/05.

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

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

#### *Findings of the first cycle*

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

#### *Present situation*

##### b) Outstanding issues

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

#### Ad paragraph 162:

Brandenburg, which is home to part of the Sorbian settlement area and at the same time pursues lignite mining, replies the following to the question above:

“Currently, Brandenburg does not plan to extend lignite quarrying to other Sorbian settlement areas. However, it cannot be excluded that this question will come up again in the future. Should this become the case, the question of whether a community is part of the traditional settlement area of the Sorbian people must be specifically taken into account, a situation the Advisory Committee was already informed of by the first State Report. Using the area of these villages for lignite quarrying is subject to much stricter prerequisites than in the case of non-Sorbian villages. However, if lignite quarrying becomes inevitable, it must be ensured that all of the the population is resettled within the traditional settlement area to avoid the loss of Sorbian structures.”

#### *Recommendations*

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

#### Ad paragraphs 162 and 163:

The addressed Free State of Saxony refers to its comments on paras. 63 and 64.

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

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

#### *Findings of the first cycle*

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

#### *Present situation*

##### a) Positive developments

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

#### *Recommendations*

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

## CONCLUDING REMARKS

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

### Positive developments

168. Following the adoption of the first Opinion of the Advisory Committee on 1 March 2002 and the corresponding Committee of Ministers' Resolution of 15 January 2003, Germany has taken a number of steps to improve the implementation of the Framework Convention. This resulted in a number of legal and practical changes.

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

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

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

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

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

### Ad paragraphs 168-173:

The Free and Hanseatic City of Hamburg informs that the positive developments found by the Advisory Committee also include the common practice to employ Roma and Sinti as teachers and social workers with permanent contracts in Hamburg schools, a practice that has existed since 1993. Currently this comprises eight Sinti and Roma; they receive further training in addition to their activities in schools and develop teaching material specifically tailored to the needs of Roma and Sinti pupils.

**Issues of concern**

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

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

176. Germany still has not adopted a comprehensive anti-discrimination act providing comprehensive legal remedies to victims of discrimination. This is an obstacle to the manifold measures taken to fight discrimination and racism. It is of concern that in spite of several attempts in the *Bundestag* to pass a law on anti-discrimination, which would also transpose the European Council Directive 43/2000 (Race Directive), progress has not yet been made on this matter.

**Ad paragraph 176:**

With regard to the Anti-Racism Directive 2000/43/EC, reference is made to the comments on para. 11.

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

**Ad paragraph 177:**

Concerning the Advisory Committee's repeated criticism concerning the lack of statistical data on minorities Germany refers to its reply to para. 12.

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

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



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

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

### **Recommendations**

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

- Enact comprehensive anti-discrimination legislation, guaranteeing wide scope of protection and effective remedies;
- Ensure that the gathering of personal data by the police does not entail or lead to any discrimination against or stigmatisation of persons belonging to certain groups based on their ethnic origin;

Ad paragraph 182, second bullet point:

This recommendation no longer applies. There is no evidence for any violation of police authorities in the processing of personal data. Furthermore, there are specific bodies in Germany responsible for monitoring the processing of personal data.

- Adopt a strategy to improve substantially the situation of the Roma/Sinti in all fields, which also pays particular emphasis to women and children. Continue to take a firm stand against the racism and discrimination to which they may be exposed. Continue to raise public awareness of the history and culture of the Roma/Sinti. Improve the mechanisms for consulting the Roma/Sinti, with due regard for their diversity in order to increase participation of persons belonging to the Roma/Sinti minority in public life;

Ad paragraph 182, third bullet point:

German authorities do not see the need for a specific strategy to fight racism perpetrated against Sinti and Roma. Regardless of the necessary and already implemented awareness-raising activities on the historical fate of Sinti and Roma and the threats posed by totalitarian systems, a comprehensive information approach independent of any groups seems to promise greater success. Furthermore, when providing information on individual groups, a positive description of their cultural strengths and achievements seems to be more promising.

- Urgently address the problem of the over-representation of Roma/Sinti and *immigrants* children in special schools for under-achievers (*Sonderschulen*) and their low level of participation in secondary and university education;

Ad paragraph 182, fourth bullet point:

According to German authorities it should at least be stated that “the efforts to improve the integration of young Sinti and Roma into the existing education systems should be continued” (concerning current efforts, reference is made to the comments on paras. 15-16, 34, 36, 39, 66, 111, 113 and 114).

- Ensure compliance with the principle of equal treatment and guarantee more long-term support for national minorities, including in the field of education. In this respect, ensure that the historical network of Sorbian schools is able to continue to operate;

Ad paragraph 182, fifth bullet point:

The recommendation should say, “Continued efforts to ensure the equal and clear support for national minorities in Germany”. (There is no evidence for any arbitrary unequal treatment.)

- Ensure that the legal provisions in force are fully implemented with regard to the use of minority languages in the public sphere and in bilingual signs;

Ad paragraph 182, sixth bullet point:

In recognition of the measures already taken, this recommendation should run as follows:

“Timely continuation of measures to ensure the full implementation of ...”

- Improve the access to and representation in the media of persons belonging to national minorities, particularly in the public service media;

Ad paragraph 182, seventh bullet point:

Taking the limited possibilities into account because of the freedom of broadcasting and the freedom of the press guaranteed by the constitutions of the Federal Republic of Germany and its *Länder*, this recommendation should run as follows according to German authorities:

“Continue efforts to improve the access to.... within the framework of the freedom of broadcasting and the freedom of the press guaranteed by the constitution.”

- Continue to strengthen the mechanisms for consultation and participation of persons belonging to national minorities.

**IV Comments by the organisations of national minorities and ethnic groups traditionally resident in Germany to which the Framework Convention applies pursuant to the Declaration notified by the Federal Republic at the time of signature on the Second Opinion of the Advisory Committee on the Report of the implementation of the Framework Convention for the Protection of National Minorities.**

(The comments by these organisations are included in the present report irrespective of the views held by the Federal Ministry of the Interior which has editorial responsibility for the report.)

**Comments by the Danish minority**

30 May 2006

*Sydslesvigsk Forening (SSF) / Südschleswigscher Verein* [South Schleswig Association], *Sydslesvigsk Vælgerforening / Südschleswigscher Wählerverband (SSW)* [South Schleswig Voters' Association] and *Dansk Skoleforening for Sydslesvig / Dänischer Schulverein für Südschleswig* [Danish Schools Association for South Schleswig] express their thanks for the transmission of the Second Opinion of the Advisory Committee on the Report of the implementation of the Framework Convention for the Protection of National Minorities in the Federal Republic of Germany. The comments are submitted by the SSF, SSW and Skoleforeningen on behalf of the Danish minority.

In general, we agree with the report and the recommendations of the Advisory Committee with regard to the Danish minority. However, we wish to specify some paragraphs concerning the situation of the Danish minority, which we believe are important:

**1. Other ethnic groups**

The Advisory Committee recommends that the authorities consider the possibility of including other groups in addition to the recognized national minorities to benefit from the Framework Convention.

The Danish minority supports all ethnic groups wishing to retain their language, culture, identity and specific characteristics as unique assets. However, the reason why the four recognized national minorities are mixed up with migrants is not clear. In accordance with the Framework Convention for the Protection of National Minorities, the Government of the Federal Republic of Germany recognized the four national minorities as autochthonous minorities. These minorities have traditionally settled in Germany and live in their home country. The Framework Convention does not include minorities who have emigrated or sought refuge in Europe.

## **2. Statistical data**

The Advisory Committee calls upon authorities to consider the possibility of collecting socio-economic and other data. The Committee points out that it would be desirable to have reliable data on the situation of minorities broken down according to age, sex and geographical distribution. We would like to point out that as a consequence of the Bonn-Copenhagen Declarations people are free to declare their commitment to the Danish minority and culture, which must not be contested or examined by public authorities. For this reason there is no basis for statistical data collection on minorities, nor would it be desirable.

## **3. No subsidies**

Concerning the financial situation of the Danish minority, the Advisory Committee uses the term "subsidies" several times in the context of financial support. We strongly refute this term. Also with regard to the discussions on the initiative taken by two (former) Minister-Presidents, Roland Koch and Peer Steinbrück, we would like to underline that recognized national minorities are guaranteed equal treatment by law and are not considered a group receiving subsidies.

## **4. Schools**

SSF, SSW and Skoleforeningen welcome the principle that minorities must not suffer more drastic reductions in the budget than the population as a whole. Since this principle has not been observed in the case of cost-per-pupil rates nor for the transportation of pupils, the Danish minority believes that equal treatment with regard to the funding of Danish schools including the transportation of pupils, which is guaranteed by law, is the only acceptable solution.

In 2005 the district of Rendsburg-Eckernförde completely ceased any payments, the district of Schleswig-Flensburg uses a new calculation basis as a transitional solution until 2008, and the district of Nordfriesland has also announced that there will be an amendment to current legislation soon. The financial situation concerning the transportation of pupils has steadily worsened since the final communiqué of the interministerial working group on Danish schools and assistance for the Danish minority was approved on 24 November 2004. For this reason the Danish minority expects the new amendments to the School Act to ensure general equal treatment also in this area.

## **5. The media**

We explicitly welcome the possibility for minorities to have access to electronic media. The Danish minority strongly advocates a practicable and appropriate space for the Danish language and culture in the media.

Concerning the digitization of media, it is important to point out the following: The technical development, the precise definitions in copy-right agreements and the increasing liberalization of the media landscape bear some risks for the transmission of Danish TV programmes in the region of South Schleswig. So far, South Schleswig has received mainly analogue terrestrial programmes. Until 2009 Denmark will replace analogue terrestrial transmission by digital transmission (DVB-T), which reduces the reach of programmes to a maximum of 30 km south of the border. While the northern

part of the minority receives an additional channel thanks to digitisation (DR2), the southern part would be disconnected from any transmissions via antenna.

The other transmission routes do not offer any reliable alternative. Currently, it is possible to receive two Danish programmes via cable network. However, given the increasing demand for free frequencies in the cable network it seems doubtful whether a private cable network operator would be willing to reserve the relevant frequencies for Danish programmes also in the future, which hardly generate any profits. The ULR as the supervisory body would not have any right to force the operator to reserve channels for Danish programmes and refers to the right of ownership of the private companies involved. Another problem is that households in rural areas and on the west coast often are not connected to the cable network.

Satellite transmission is not a satisfactory alternative either, since Danish broadcasting stations encrypt their signals for copyright reasons. A decoding card is only available, if the total amount of the Danish broadcasting licence fee is paid. For members of the minority this would be a considerable double burden, since they already pay German licence fees.

#### **6. Reduced funds for cultural activities**

We wish to point out that the latest political statements of the *Land* Government in Kiel seem to imply a reduction of cultural grants in 2008 and 2009. Should this become reality, this would reduce the financial resources of the Danish minority even further. Furthermore, the global grants of the *Land* have never been indexed to the development of wage costs and prices over the past 14-15 years. This means that there has not been any institutional adaptation for an unacceptably long period.

The Danish minority fully understands that the Government of Schleswig-Holstein is obliged to pursue very restrictive financial policies because of the difficult budget situation. However, it is not appropriate to save money to the detriment of minorities, if the majority population does not suffer cuts of equal dimensions. This is currently not the case.

#### **7. The Minority Council and its objectives**

The four umbrella organizations of recognized autochthonous minorities in Germany (Frisians, Danes, Sorbs and German Sinti and Roma), who agreed to set up a Minority Council in late 2004 to improve their position to implement joint minority interests, welcome the fact that it was possible in the past few years to set up a Parliamentary Working Party for Minority Issues at the German Bundestag and an independent Secretariat for Minorities at the Federal Ministry of the Interior.

The following short- and long-term objectives are on the minority policy agenda:

- Including a general article on minorities in the Basic Law to protect and assist the four recognized national minorities;
- Taking national minorities into account in the institutional implementation of the Anti-Discrimination Directive of the European Union in Germany;

- Taking the culture of autochthonous national minorities into account in the clause on culture as a national objective in the Basic Law;
- Getting assurances from the Federal Government that the necessary means for answering basic cultural needs, including infrastructure for the cultural education of autochthonous national minorities, will be included in the upcoming reform of the federal state structure.
- Continuing and increasing sustainable and targeted federal funding for autochthonous national minorities;
- Operating the Secretariat for Minorities for the four autochthonous minorities (with a full-time employee instead of a part-time one as to date) on a permanent basis.

The Danish minority is looking forward to future cooperation with the Federal Government and the Bundestag to improve consultation and participation mechanisms for members of national minorities.

### **Comments**

**by the *Friesenrat/Frasche Rädj - Sektion Nord e.V.* (Frisian Council, Section North)**

25.06.2006

#### Ad I, paragraph 20 "Access to the media"

The Frisian Council shares the opinion of Schleswig-Holstein and requests the Advisory Committee to get in touch directly with the NDR to ensure that the Frisian Council gets a say in the *Land* Broadcasting Board.

#### Ad I, paragraph 21 "Education"

The Frisian Council does not agree with the following comment by Schleswig-Holstein: "The question of whether the decision taken for the 2006/2007 academic year will have negative consequences for Frisian language teaching can only be answered at the end of the academic year." The measures envisaged by the school authority do not fully comply with the specific requirements of the Frisian language and may lead to a situation in which Frisian will no longer be offered at elementary schools. The proposal by the Frisian Council to apply the plan on the total number of lessons per year envisaged by the new School Act already in the next academic year was rejected by the school authority.

#### Ad II paragraph 51:

In this context the Frisian Council points out that the *Nordfriisk Instituut* – founded in 1965 – is the only central scientific institution in Nordfriesland to cultivate, foster and conduct research into the Frisian language, history and culture. It is an independent institution within the responsibility of the association *Verein Nordfriesisches Institut*. Unfortunately, the Federal Republic of Germany so far has not been in a position to support this unique institution.

**Comments  
by the association *Saterland - Seelter Buund -e.V.***

Saterland, 29 May 2006

We would like to point out that Lower Saxony rejected the application for institutional funding submitted by Seelter Buund.

Seelter Buund is the only linguistic minority in Germany which actively contributes to the European Convention but does not receive institutional funding.

→ Reference/Quote from the comments of the Council of Europe, Part B, Article 1, paras. 67, 68.

To ensure continuous and constructive work also in the future, Seelter Bund believes it is decisive that Lower Saxony will provide institutional funding.

**Comments  
by Domowina - Bund Lausitzer Sorben e.V.**

24 May 2006

**Ad paragraph 9:**

Domowina as the recognized representative of the interests of the Sorbian people supports the practice of German authorities to differentiate between autochthonous minorities, whose members are German nationals and have traditionally settled on German territory, and immigrant minorities.

Furthermore, unlike the other national minorities, the Sorbian people as a recognized national autochthonous minority do not have a “country of origin” or “home country”, which they could ask for protection and assistance in addition to German authorities.

For this reason, the Federal Republic of Germany bears a special responsibility towards the Sorbian people.

**Ad paragraph 12:**

The collection of reliable data on the situation of minorities is considered problematic because of the legally protected freedom of individuals to declare their commitment to the Sorbian people and the mixed population in the Sorbian settlement area. It is of fundamental importance for us to ensure that the implementation of obligations resulting from the Framework Convention is not linked to statistical data.

**Ad paragraph 13:**

The question for us is whether policies for the integration of foreigners are directly connected with the Framework Convention.

**Ad paragraph 19:**

The reservation voiced by the Free State of Saxony is shared by Domowina. The reductions by the Federal Government and Brandenburg threaten the continuous and sustainable implementation of projects in support of the Sorbian minority.

**Ad paragraph 51:**

Domowina points out that the synergies or saving potential of 700,000 Euro mentioned by the Federal Office of Administration are unclear and were corrected to 311,000 Euro in the comments by the Foundation's Governing Board. This correction was approved by the Bundestag's budget committee. In addition to these savings, there was another reduction of €281,000 in comparison with the previous year.

### **Ad paragraph 97:**

This recommendation should refer to all recognized national minorities and should focus not on "hampering" but "supporting" access.

The text could be amended as follows:

*The Advisory Committee invites the competent authorities to ensure that the developments linked with digitalisation of the media supports access of persons belonging to recognized national minorities to media in their own language.*

Ad paragraphs 103, 104 and 105:

Domowina e.V. explicitly supports the statements of the Advisory Committee. We believe that the active support for the use of minority languages in relations with administrative authorities is an essential factor to implement the basic principles of the Framework Convention. A language policy and practice inviting and encouraging the use of minority languages is of fundamental importance for the status of minority languages in all social areas (education, media, tolerant relations between the majority and minority population).

The reservation of Brandenburg in this context that taking proficiency in Sorbian into account when recruiting staff in bilingual areas would not ensure equal access for "German applicants" is refuted. Article 33 of the Basic Law refers to German nationals, not to ethnicity and hence also includes all "Sorbian applicants". A refusal to take Sorbian applicants into account would also constitute a violation of the legal claim to access to public offices. For an ethnically mixed and bilingual region, bilingual public officials cannot be restricted to certain fields of activity only, since they may change in the course of their careers. For this reason we believe that it is justified and appropriate to take proficiency in Sorbian as a special qualification into account, if all other requirements are equally fulfilled. This position is supported by the fact that both in Brandenburg and Saxony all those interested may learn Sorbian at the educational institutes in the minority's settlement area, regardless of their parents' mother tongue.

## **Comments**

**by the Zentralrat Deutscher Sinti and Roma (Central Council of German Sinti and Roma)**

### **A. General**

The Central Council of German Sinti and Roma welcomes the Advisory Committee's Second Opinion on Germany. It includes important and specific statements on the situation of Sinti and Roma in Germany and calls for appropriate steps in those cases that give rise to concern, particularly with regard to the issues mentioned in paras. 13



and 79 of the Committee's Opinion (improved fight against racist criminal acts) and paras. 14 and 80 (discriminating practices against Sinti and Roma by authorities and the media).

The Central Council wishes to thank the Committee for their visit to the Documentation Centre of German Sinti and Roma in Heidelberg on 10 January 2006.

## **B. Ad paragraphs 13 and 80 of the Opinion**

On 30 March 2006, the Central Council of German Sinti and Roma submitted the following initiative to the Federal Government and the *Länder*:

### ***To the Federal Minister of Justice, Ms. Brigitte Zypries, and the Conference of Ministers of Justice (JUMIKO)***

#### ***Legislative initiative to improve the fight against racist and right-wing extremist propaganda (also via Internet) and racist crime***

##### ***1. Fight against racist propaganda directed against Sinti and Roma***

*For a number of years racist propaganda against Sinti and Roma has increased in public without any commensurate action to counteract such activities taken by the state. In the stadiums of football, handball and ice hockey leagues, racist chanting such as "Zick Zack Zigeunerpack" (defaming Sinti and Roma as vagabond gypsies, e.g. in an international football match of Germany vs. the Slovak Republic in September 2005) have become standard insults, in Baden-Wuerttemberg this slogan was used on a carnival float without the police or judiciary taking any action.*

*In the October 2005 edition of the magazine of the Bund Deutscher Kriminalbeamter (BdK, Association of German Detectives) called "Der Kriminalist" (The Detective), the deputy head of the BdK in Bavaria generally accused all Sinti and Roma of feeling like "parasites abusing the welfare society of the Federal Republic of Germany" and claimed that "they justify any theft, fraud and social abuse with the persecution during the Third Reich without having any bad conscience".*

*On the Internet there are public fora of right-wing extremists (e.g. "Free Your Mind Forum") inciting hatred against Sinti and Roma with terms such as "stealing mob", "dirty vagabonds", "bloody gypsies" and similar abusive terms, threatening them with slogans such as: "We should go out on the streets to fight those gypsies, the blood on the street is red. Only with the force of arms something would change!" or "What are Roma, gypsies? Germans stand up against these bloody Jews, send them before the firing squad!!" "Bloody gypsies, these vagabonds, these subhuman beings, the only solution is the final solution!!" The hate song of the band "Landser" entitled "Zigeunerfahrt" (gypsy trip) with the refrain "Zigeunerpack" (bloody gypsies) is available on the Internet. So far it has not been possible to take action against the perpetrators, nor the servers or providers.*

*For this reason **more effective legal instruments** must be created to combat such incitement to hatred **on the Internet**, placing responsibility also on the servers and providers to prevent the dissemination of this material at an early stage.*

*In the case of such incitement to hatred directed against the minority as a whole, an individual minority member cannot be expected to file a complaint all on his own and then be subjected to open discrimination in the neighbourhood or the place of residence or to threats or other disadvantages. For this reason, the **right to file a complaint for representative organizations of minorities** (“segments of the population” within the meaning of Section 130 of the Criminal Code) to initiate proceedings to compel public charges (**in accordance with Section 172, para. 2 of the Code of Criminal Procedure**) for incitement to hatred is necessary.*

*In a decision of 5 August 2005 the Upper Regional Court of Stuttgart, for example, rejected the complaint by the Central Council to get a court decision (in accordance with Section 172 of the Code of Criminal Procedure) because of a crime of incitement to hatred perpetrated against Sinti and Roma (“Zack Zack Zigeunerpack”) stating that this was not admissible, because the Central Council as an institution does not have the right to file a complaint in this case. The court explained that the Central Council as the complainant was not a “victim” to the crime of incitement to hatred in its capacity of a legal person, but was only affected “indirectly”. In general, this decision is unacceptable.*

*With the refusal of granting recognized representative organizations of Sinti and Roma in Germany the right to file a complaint in court, the affected minority is refused sufficient protection under criminal law against racist and inflammatory attacks. This violates the right to legal protection of human dignity, particularly against the background of the Nazi genocide against Sinti and Roma and the specific purpose to provide protection to all segments of society, which is why incitement to hatred was made a criminal offence. **The Minister of Justice** of Baden-Wuerttemberg, **Prof. Dr. Goll**, informed the Central Council in a meeting on 22 September 2005 that he was in favour of an initiative for a possible legal amendment.*

## **2. Improved prosecution of racist violence as “crimes”**

*It has been repeatedly documented (most recently in the documentary series “Kontraste” broadcast by ARD on 23 March 2006) that right-wing extremist offenders who have repeatedly committed acts of violence and severely injured victims are released from custody and only receive suspended sentences even though it is clear that they would commit such crimes again. For this reason, the **bill of Land Brandenburg of 2000 (BR-Drs. 577/00)** qualifying dangerous and racist offences of bodily injury, such as those often committed by right-wing extremist offenders, as specific “crimes” in the Criminal Code (so far only regarded as “less serious criminal offences”), laying down specific “grounds for arrest” in the case of such crimes was of major importance. A legal definition of the criterion “racist act of violence” which takes the ideological and organizational background of these acts into account must be added to this bill.*

*The “European Commission against Racism and Intolerance” (ECRI) and the Geneva-based UN Committee monitoring the “International Convention on the Elimination of all Forms of Racial Discrimination”, in their reports on implementation in Germany (i.e. ECRI’s Second Report on Germany, doc. ECRI/2001/36, and UN doc. CERD/C/304, ADD 24, respectively), urged governmental authorities to make “intensified efforts” to penalize, “explicitly by virtue of a law”, any racist act of violence. Brandenburg’s bill was also in line with the demand of the 157th meeting of the Standing Conference of the Interior Ministers of the Länder in Dresden on 11 June 1999.*

There was a meeting between the Parliamentary State Secretary at the Federal Ministry of Justice, Alfred Hartenbach, and the Chairman of the Central Council,

Romani Rose, in Berlin on 9 May 2006 to discuss the Central Council's proposal. Despite the Ministry's general position that current law was sufficient, the State Secretary specifically referred to the Opinion of the Advisory Committee on the Report of the implementation of the Framework Convention for the Protection of National Minorities and promised to consider a legal amendment to designate racist motives as an aggravating circumstance in criminal law. Furthermore, with reference to a decision of the UN Committee on the Elimination of Racial Discrimination (CERD) of 15 August 2005 against Norway (CERD/C/67/D/30/2003), the Ministry would also consider in criminal law the right of complaint for organizations representing segments in society affected by offences of incitement to hatred.

With regard to racist propaganda in sport stadiums, the Parliamentary State Secretary at the Federal Ministry of the Interior, Peter Altmaier, underlined the dangerous nature of such Neonazi practices in a discussion with the Central Council on 9 May 2006. He explained that the Ministry had only just started together with sports associations to study once again the current dimension of racist propaganda, particularly with terms such as "gypsies" and "Jews" in the stadiums. As soon as this overview was available, additional steps would be considered in public and the talks with the Central Council would continue.

### **C. Ad paragraphs 44 and 45 of the Opinion**

The substitute term for Sinti and Roma, "mobile ethnic minority", and the relevant abbreviation "MEM" are systematically used by police authorities and passed on to the media as a discriminating term for accused Sinti and Roma despite any statements to the contrary by responsible politicians. The most recent example is taken from an article in the newspaper "Darmstädter Echo" in Hesse of 12 May 2006. This article said that "according to the police" the accused was "a member of a travelling family or mobile ethnic minority (MEM), as the police call them". At the end of the article, the police is quoted using the absurd term "MEM scene", which is understood in public as a synonym for the minority.

In para. 44 the Advisory Committee expressed its concern about the unjustified use by the media of substitute descriptions to identify the ethnic origin of suspects or perpetrators. This recommendation of the Advisory Committee is still violated. The competent Ministry of the Interior of Hesse (current example) only recently repealed a decree prohibiting the use of terms designating minorities reasoning that the decree was superfluous since such violations by the police no longer occurred. Current practice proves the contrary. Repealing the decree in Hesse is considered by police authorities as a "carte blanche for the discriminating designation of minorities". For this reason the Central Council has been advocating for a legal ban on discrimination since 1993.

### **Comments**

#### **by the Sinti Allianz Deutschland e.V. (Sinti Alliance Germany)**

The Sinti Alliance Germany, the umbrella organization of German Sinti, welcomes the fact that the Advisory Committee for the Framework Convention for the Protection of

National Minorities thoroughly studied the situation of Sinti and Roma in Germany and informed Germany on its findings, described problems and gave recommendations in its Second Opinion on Germany of 1 March 2006. The Sinti Alliance Germany will comment on some of the issues mentioned in the following paragraphs. The Advisory Committee underlined the great diversity among Sinti and Roma in several paragraphs of its Opinion. This diversity is the reason why not all statements by the Advisory Committee reflect the situation of the whole ethnic group or its vast majority, but only refer to the situation of individual groups of foreign Roma in Germany. This circumstance will be further explained in the following comments on individual issues.

**On discrimination:**

Sinti Alliance Germany underlines that their members and associated organizations have not communicated any complaints about discrimination in social or economic life or in their environment. Furthermore, no cases of discriminating treatment of German Sinti by German authorities have become known. However, some authorities should take cultural taboos, which Sinti have traditionally been required to observe and which apply to housing and work, more thoroughly into account. This is an area in which the Sinti Alliance Germany and its associated *Land* organizations have to provide more information to raise the awareness for this issue among authorities' staff.

**On the importance of equal opportunities in education and work:**

The Sinti Alliance Germany believes that equal opportunities in education are fully guaranteed in Germany. The indisputable fact that currently Roma and Sinti are not appropriately represented in superior secondary schools is rather due to the circumstance that in gypsie communities school education has traditionally been considered secondary to musical or handicraft skills or work in family. This is an important task for organizations representing this ethnic group and representatives who are convinced of the importance of good school education and vocational training for children. They have to convince their families and greater community of this importance. State measures directly focussing on Sinti and Roma would only increase suspicion among families towards compulsory school attendance. Deficits in job opportunities of some Sinti or Roma are usually not caused by lacking opportunities in Germany, but by poor education and lacking job qualifications.

**On communication channels, possibilities of participation and consultative bodies:**

The Sinti Alliance Germany also regrets the fact that the Federal Government and the *Länder* still have not created a consultative body, in which a regular exchange of opinions on matters of German Sinti and Roma between the Government and all the umbrella organizations of this ethnic group is possible. The implementation conferences so far have been focussing on reports on issues concerning all national minorities and ethnic groups protected in Germany. They have not offered an opportunity to discuss specific issues in depth and to look for solutions. Sinti Alliance Germany is generally willing to cooperate in such a body together with other association of this ethnic group.

With regard to participation it must be pointed out that the Sinti Alliance Germany so far has not had the possibility to cooperate in the Minority Council mentioned by the Opinion in para. 149, because another umbrella organization of this group have

continued to prevent this. In this context, the Sinti Alliance Germany wishes to point out once again that neither the Sinti Alliance nor its associated *Land* organizations and clubs nor their members have had an opportunity to co-operate in the Documentation and Cultural Centre of German Sinti and Roma. Even though the Federal Government – together with Baden-Wuerttemberg – fully funds this institution and has been aware of this discriminating situation for years, the German Sinti represented by clubs and organizations of the Sinti Alliance are excluded by the organizing body and are kept apart from this state funded possibility to actively participate in the work for this ethnic group.

**On financial support for minorities provided by the state:**

In its concluding remarks on Germany in para. 171, the Advisory Committee notes that authorities will continue to grant recognized national minorities financial support, from both federal and *Länder* level sources. In para. 54, however, it remarked that “all of the federal funds for the Roma/Sinti are allocated via one umbrella organisation” and expresses its opinion in para. 59 that the authorities “should take fully into account the diversity of the Roma/Sinti communities” with regard to federal funding. The Sinti Alliance Germany fully supports this principle. To clarify matters it must be pointed out that federal funds are not allocated via one umbrella organization, but allocated exclusively to one umbrella organization.

The Sinti Alliance Germany so far has been excluded from this funding. Its *Land* organizations do not receive any state funding either. Any discussions on project funding so far have not led to any practical results, because the prerequisite for project funding is a contribution of a minimum of 50% the *Land* organizations have to provide themselves. These resources are not available and cannot be obtained from membership fees or donations either. In this context it must be pointed out that current work – exclusively on an honorary basis – is funded from private resources. There is no appropriate state core funding for ethnic community work, such as other associations receive on the basis of the Framework Convention for the Protection of National Minorities. The Sinti Alliance Germany regards this as an unjustified unequal treatment which severely limits the possibilities to work on issues of German Sinti.