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

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**COMMENTS OF THE GOVERNMENT OF GERMANY  
ON THE THIRD OPINION OF THE ADVISORY COMMITTEE ON THE  
IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES  
BY GERMANY**

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(received on 6 December 2010)

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

(Federal Ministry of the Interior, November 2010)

### **1. Preliminary remarks**

Following Germany's Third State Report on the Framework Convention for the Protection of National Minorities (hereinafter referred to as the "Convention") in April 2009, the Advisory Committee visited Germany from 7 to 10 December 2009 and adopted its Third Opinion on (the implementation of the Convention in) Germany.

The report was submitted to Germany on 6 August 2010 via the General Secretariat – Directorate General of Human Rights and Legal Affairs.

In line with the decision of the Committee of Ministers adopted at the 756<sup>th</sup> meeting from 12 to 14 June 2001, Germany was given the opportunity to comment on the report within four months. The present document contains Germany's comments.

The Federal Republic of Germany appreciates the Advisory Committee's efforts in assessing the level of compliance with Germany's obligations arising from the Convention. The members of the Advisory Committee, the federal and state authorities responsible for implementing the Convention and minority representatives were able to continue the open dialogue established already during the two previous evaluation cycles. For Germany, participation of the bodies concerned has always been and always will be an important component of this dialogue. In this respect, federal ministries, state governments responsible for implementing the Convention and the umbrella organizations were asked to submit their comments on the Advisory Committee's Third Opinion.

The comments of the ministries and states and of the Federal Anti-Discrimination Office are summarized in chapter IV; the original comments of organizations and ethnic groups can be found in chapter V. The comments refer to the paragraph numbers (No.) in the report. To avoid duplication, some comments may refer to several similar paragraphs. Please apologize if some paragraphs were accidentally not cited. Page numbers refer to the English version of the Third Opinion.

The Advisory Committee's report and Germany's comments were discussed during the annual implementation meeting on 11 November 2010.

Given difficult financial issues at federal and state level, a new situation has emerged in **Schleswig-Holstein** after the evaluation was completed.

Schleswig-Holstein reports:

On 25 May 2010 the committee on the budget structure convened by the Schleswig-Holstein government presented its recommendations on how to reduce the state's debts of almost € 25 billion. It examined all relevant expenditures of the state budget and gave recommendations on all areas. On the basis of the committee's recommendations, the state government adopted a preliminary budget for 2011 and 2012 and the basic financial parameters for the next years. The draft budget was submitted to the parliament. The first reading took place on 8 September 2010. The second reading and adoption took place during the parliamentary session from 15 to 17 December 2010.

The state government plans to reduce the funding of the Danish Schools Association in South Schleswig from 100 percent of the cost-per-pupil rate granted to public schools to 85 percent. However, funding of Danish minority schools is still higher than funding of German substitute

schools which amounts to 80 percent. According to the state government, the cuts will not threaten the system established by the Danish Schools Association. Even if the funding of Danish schools is reduced, the Schools Association would still receive more state funds than in 2007. In 2011 the Danish minority will receive € 3.5 million in federal funding. At the same time, as of 1 January 2011 the budget for 2011 and 2012 no longer provides for funding of school transport. This measure affects all schools in Schleswig-Holstein.

The state government will continue to pursue an active minority policy, meeting the requirements of the Bonn-Copenhagen Declarations of March 1955 and Art. 5 and 8(4) of the state constitution. Neither these provisions nor any other legislation obliges Schleswig-Holstein to fund schools of the Danish minority with 100 percent of the updated cost-per-pupil rate. The Scientific Service of the Schleswig-Holstein parliament confirmed this assessment in a dedicated report.

We will submit the actual decisions made on the basis of the adopted state and federal budget laws Advisory Committee by the end of the year. Please accept them in late December 2010.

The Federal Government intends to publish the Advisory Committee's Third Opinion together with Germany's comments.

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

## **2. Individual comments**

### **Summary**

- i. p. 2, third paragraph, and No. 42 and No. 199  
Comment by the Federal Anti-Discrimination Office (ADS): The word "both" and the phrase "and the work of the Federal Discrimination Agency" should be deleted because the criticism refers to the beginnings of the Office and the last legislative term. The Office now has a new leadership so that the criticism is no longer valid.
- ii. p. 2, first indent (bold), issues requiring immediate action, and No. 210, first indent (bold)  
Comment by the **Federal Anti-Discrimination Office**: During the current legislative term, the Federal Anti-Discrimination Office focuses on improving support and advice for persons affected by discrimination. To this end, it has launched an initiative for a society without discrimination (*Offensive für eine diskriminierungsfreie Gesellschaft*). The initiative will promote local advisory networks and intensify ties between the advisory offices. In addition, the Federal Anti-Discrimination Office will promote a social change towards a culture of non-discrimination through targeted public campaigns. Moreover, the Federal Anti-Discrimination Office provides multilingual brochures and websites because experience shows that language barriers have a great impact on how people learn about and exercise their rights.

The Federal Anti-Discrimination Office advises persons affected by discrimination and seeks to settle conflicts amicably. Both will be intensified in the future. Some 700 requests referred solely to the ethnic origin as a reason for discrimination, with a focus on labour law and in particular application procedures, although the rules for the protection against ethnic discrimination are stricter than for other forms of discrimination under the federal anti-discrimination act (*Allgemeines Gleichbehandlungsgesetz, AGG*).

Comments of **Saxony**: In line with the funding guidelines for a “Cosmopolitan Saxony for Democracy and Tolerance” (FördRL WOS) Saxony funds projects and actions which promote democracy in Saxony and strengthen the free and democratic basic order. The projects address relevant social issues and are dedicated in particular to promoting tolerance and reducing extremism.

Funding can be provided to projects and actions which

- a) help reduce extremism, in particular racism and anti-Semitism in our society;
- b) strengthen democratic values, promote democratic behaviour and encourage civic engagement,
- c) promote and strengthen tolerance and acceptance of different religious, cultural and ethnic groups, and sexual orientations,
- d) contribute to intercultural and interreligious dialogue,
- e) provide qualified advice and support to victims of violence,
- f) provide basic and advanced training to multipliers and experts and support them in terms of work priorities and methods,
- g) contribute to a local or regional social network involving relevant governmental and non-governmental institutions as well as local stakeholders, and
- h) initiate the sustainable development of innovative concepts by accompanying actions with advice and scientific input.

- p. 3, second indent, issues requiring immediate action, and Nos. 97 to 103 and 209

Comment of the **Federal Government**: Following talks and correspondence between the chair of the Central Council of German Sinti and Roma and the Federal Government Commissioner for National Minorities, the Federal Ministry of the Interior asked its subordinate authorities responsible for preventing, investigating and prosecuting right-wing extremist incitement to violence and hatred on the Internet to analyse the current situation and present a report on the results. In spring 2011, this analysis will be used to discuss reasonable further steps with the chair of the Central Council.

On 1 October 2010 the **Federal Government** submitted the “Draft Act implementing the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law and implementing the Additional Protocol of 28 January 2003 to the Council of Europe Convention of 23 November 2001 on cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems” (Bundestag doc. 17/3124) to the parliament for discussion. In line with the Framework Decision and the Additional Protocol, the scope of Section 130(1) of the German Criminal Code will be extended to include also individuals. In this context, Section 130(1) of the Criminal Code will also list separately the groups mentioned in Article 1(1)(a) of the Framework Decision (national, racial, religious group or group defined by its ethnic origin). This reflects that in practice Section 130 of the Criminal Code is an important provision applied in cases of incitement against the groups listed in the Framework Decision. Discussions in parliament are ongoing.

- p. 3, third indent (bold), issues requiring immediate action, and No. 210, third indent (bold)

The **Federal Government** would like to know which precise information supports the Advisory Committee’s conclusion that there is an “unjustified placing of Roma and Sinti pupils in ‘special’ schools”. State authorities are not aware of such information, and also the **Central Council of German Sinti and Roma** did not want to confirm this statement. Please also see the comment of the Sinti Alliance on this issue in chapter V.

## Re I. Main findings

No. 7:

The **Federal Government** has not changed its opinion on this matter. Please also see the comments under No. 0023 of Germany's Third State Report on the European Framework Convention for the Protection of National Minorities.

Nos. 17 and 50:

The **Federal Anti-Discrimination Office** points out that it is an independent body which also acts independently.

No. 21:

Comments of **Schleswig-Holstein**: The Advisory Committee's statement that Roma and Sinti are still not able to obtain public funding for their projects is not true for Schleswig-Holstein. The state association of German Sinti and Roma receives institutional funding (for the advisory office and headquarters of the association) and project funding (for cultural activities) as well as funds from the discretionary fund of Schleswig-Holstein's minister president.

No. 26, No. 139, No. 141 and No. 149

See comments of the **Central Council of German Sinti and Roma** on No. 149 in chapter V. and the comments of the **Sinti Alliance of Germany**.

Comments of **Hesse**: At Marburg University, Hesse set up a cooperation office which incorporates the history of the national minority in university training and initiates information projects even beyond Marburg. In addition, it published teacher handouts and further publications which are intended to provide in-depth information and support classroom instruction on this issue.

On 5 November 2010, the Hessian Ministry of Education and Cultural Affairs and the Office for Teacher Training held a conference on Sinti and Roma in classroom instruction (*Sinti und Roma – (k)ein Thema im Unterricht?*), in particular for teachers of all school types and teachers in preparatory service. The conference was intended to disseminate information about the history and culture of Sinti and Roma in Hesse and encourage dedicated classroom projects.

All pupils in Hesse have equal access to all school types. In Hesse, there are no reports about Roma and Sinti children being disproportionately placed in remedial schools.

## II. Article-by-article findings

No. 31 (footnote 3), No. 32 to No. 34, No. 36 and No. 196

Regarding the number of persons of Polish origin and German nationality living in Germany (footnote 3), the **Federal Government** points out that the figure of two million is likely to cover all immigrants and their offspring, regardless of the immigration date and motivation, their nationality and their fate as expellee, refugee or resettler, which means that the figure is much too high.

Regarding German citizens of Polish origin, the **Federal Government** adds:

In line with Article 20 of the Neighbourhood Treaty, the Polish group has almost the same rights in Germany as the members of the German minority in Poland, e.g. the right of individuals or groups to freely express, preserve and develop their ethnic, cultural, linguistic and religious

identity. Moreover, Art. 20(3) of the Treaty grants members of both the Polish group in Germany and the German minority in Poland rights of freedom and defence against the state. However, the Polish group in Germany cannot invoke the additional rights of national minorities. Unlike the four recognized national minorities in Germany, it does not benefit from Section 6(6), second sentence, of the Federal Electoral Act exempting national minority parties from the 5% threshold required in federal elections.

However, the Treaty on Good Neighbourly Relations and Friendly Cooperation concluded by the Federal Republic of Germany and the Republic of Poland on 17 June 1991 justifies this unequal treatment. Its Article 20(1) distinguishes between “members of the German minority in the Republic of Poland” and “persons of German nationality in the Federal Republic of Germany who are of Polish origin” (the term “polish minority in Germany” is precisely not used as claimed by the Advisory Committee in No. 32). This means that both countries assume that there is a German minority in Poland but not a Polish minority in Germany. They recognize that the respective groups may exercise the rights under the Neighbourhood Treaty but that the broader rights of national minorities may be exercised only by the German minority in Poland.

According to Article 20 citizens of Polish origin in Germany have the right to freely express, preserve and develop their identity individually or in groups without any attempt to assimilate them against their will. In addition, they may exercise their human rights and fundamental freedoms without discrimination and in full equality. They have also the right to freely use their native language in private and public life, to disseminate and exchange information in their language, to found and maintain their own educational, cultural and religious institutions, to profess and practice their religion, to freely establish and maintain contacts among themselves within the country and with citizens in other countries with whom they share a common ethnic or national origin, a common cultural heritage or faith, to use their given and family names in the form of their native language and to participate in international non-governmental organizations.

The Federal Republic of Germany recognized the important role of the Polish-language citizens in Germany for European integration. They are an important link between Germany and Poland because they use the German language, practice their traditions and preserve their rich cultural heritage, thus serving as authentic ambassadors of the Polish culture and way of life and promoting understanding within their communities.

During the last months, an intensive dialogue has developed between Germany and Poland, e.g. Parliamentary State Secretary at the Federal Ministry of the Interior and Federal Government Commission for National Minorities Christoph Bergner and State Secretary at the Ministry of Interior and Administration of the Republic of Poland met for two roundtable talks. The aim of these talks is to increase awareness of the groups in the respective countries and to cooperate on medium-term projects.

In addition, three working groups will be established addressing the following issues:

- Studying history and promoting remembrance
- Learning and promoting languages
- Funding

It is intended to include the results of these working groups in a joint declaration on the 20<sup>th</sup> anniversary of the German-Polish Neighbourhood Treaty in June 2011. In this respect, please also see No. 004 et seqq. in Germany’s Third State Report.

**Hesse** adds: The Framework Convention should continue to apply only to the recognized national minorities. For the benefit of the federal states, which must ensure the implementation of protection measures, its scope should not be extended to include further groups.

No. 35:

Comment of the **Federal Government** regarding the recognition of East Frisians as members of a national minority: In Germany, national minorities – protected under the Framework Convention for the Protection of National Minorities – are those groups of German nationals who have their own language, culture and history, different from that of the majority population, i.e. an identity of their own which they seek to preserve, and who are traditionally resident in the Federal Republic of Germany and live in their traditional settlement areas. In addition to the Danish minority, the Sorbian people and the German Sinti and Roma this also includes the Frisian ethnic group in Germany. The Federal Government's bill considers East Frisians part of the Frisian ethnic group (see Bundestag doc. 13/6912, p. 21, 27, 28). According to this legally binding definition, East Frisians are not a separate national minority but part of the Frisian national minority.

East Frisians continue to preserve their East Frisian cultural identity although they no longer use the Frisian language since they chose Low German as their official language as early as in 1500 and by 1800 had adopted it as their language of everyday communication. According to the European Charter for Regional or Minority Languages, also Low German is protected as a regional language. (The Charter aims at protecting and promoting regional or minority languages as an endangered part of the European cultural heritage.) Hence, the language currently used by East Frisians is taken into account also in this context.

Therefore, it is undisputed that East Frisians belong to the Frisian ethnic group and thus to the protected national minorities in Germany.

No. 41:

Comments by **Schleswig-Holstein**: During the 17<sup>th</sup> legislative term of the Schleswig-Holstein parliament, the parliamentary groups of the SPD, Bündnis 90/Die Grünen, Die Linke and SSW proposed an amendment of the Schleswig-Holstein constitution to include the German Sinti and Roma in Art. 5 of the state's constitution in addition to the Danish minority and the Frisian ethnic group (doc. 17/268). The first reading took place on 19 March 2010. The bill was submitted to the committee for European affairs and the committee for home and legal affairs for discussion. A written (June 2010) and an oral hearing (1 September 2010) took place. The Minister-President's Commissioner for Culture Minorities (BMK) made a statement during both hearings. The participants of the hearings generally approved of the initiative. No date has been arranged for the second reading, yet.

The Office for Diversity in the **Hamburg** ministry of justice was established on 1 August 2010 to address equality and anti-discrimination issues. In addition to gender equality, cultural diversity and fighting racism and right-wing extremism, the office helps citizens, businesses and administrations in cases of suspected individual and structural discrimination. It informs the public about the General Equal Treatment Act.

No. 52:

**Hesse** responds as follows: The social housing programmes of the Hessian state government are open to all entitled persons. Entitlement is governed by the income of the household concerned. Municipal authorities are responsible for allocating social housing.

Nos. 55, 56 and 196:

Comment by the **Federal Government**: Regulation (EC) No 763/2008 of the European Parliament and of the Council of 9 July 2008 on population and housing censuses requires all Member States to conduct a census in 2011. The obligatory topics that must be provided to the EU have been laid down in detail. Ethnic minorities, however, will not be recorded. With its 2011 Census Act Germany has implemented the EU requirements almost on a one-to-one basis. There are more detailed questions only on the migration background to ensure more targeted integration policies. Furthermore, information on religious denominations is recorded, as was done in former censuses of the Federal Republic of Germany.

Apart from this, the statements of the past State Reports on the European Framework Convention for the Protection of National Minorities and Germany's comments on the two evaluation reports continue to apply (e.g. third State Report on the Framework Convention, no. 04041 et seqq.).

Please see the comments made by **Domowina** and **Sinti Allianz Deutschland e.V** in Section V.

No. 57:

The **Federal Government** is not aware that such a database will be set up. For this reason, the Advisory Committee is requested to provide further information.

No. 64:

**Lower Saxony** responds as follows: Lower Saxony is currently working on a review of the relevant ordinance for the police. It will also include a provision to protect minorities from discriminatory terminology. This provision is based on the recommendations of the task force of Working Group II – Internal Security of the Standing Conference of the Interior Ministers of the German *Länder* of 2007; the recommendation was taken note of by the Standing Conference in December 2007 (not “adopted in October 2007” as described in No. 60). The circular's publication is expected for early 2011.

Nos. 69 and 74:

**Lower Saxony** responds as follows: Lower Saxony follows the Advisory Committee's recommendation. The funding of the Saterland Frisian language and culture is closely coordinated with the Seelter Buund and the Ministry of Science and Culture, as well as the Oldenburgische Landschaft as a sponsor of culture.

No. 75:

Comments of **Hesse**: In 1980 the *Land* Association of German Sinti and Roma of Hesse was established in Darmstadt as an organization representing the interests of Sinti and Roma living in Hesse. The *Land* Association is a member of the Central Council of German Sinti and Roma. Since its foundation, the work of the *Land* Association has been supported with funds from the *Land* government. Other organizations of Sinti and Roma in Hesse have not yet got in touch with the *Land* government. For this reason the Hessian *Land* Association is the exclusive partner of the Land government concerning the interests of Sinti and Roma in Hesse.

**Rhineland-Palatinate** adds: Since 2009, the registered Sinti Union of Rhineland-Palatinate e.V., a member of Sinti Allianz Deutschland e.V., has been receiving funds for a project to improve the effectiveness and professionalism of existing advising and support services and to expand additional innovative services for Sinti in Rhineland-Palatinate. As part of this support, the chair and other members of the association have regular meetings with the competent staff members of the Ministry of the Interior and Sports of Rhineland-Palatinate. Furthermore, the association can cooperate in specific bodies where it can raise the interests of the Sinti it represents. In this context the registered Sinti Union of Rhineland-Palatinate e.V. and the *Land* Association of



German Sinti and Roma of Rhineland-Palatinate have represented their interests within the framework of a networking process to strengthen anti-discrimination work in Rhineland-Palatinate this year.

No. 84 (and also 202):

Comment by **Saxony**: The Sorbian population, just like the German-speaking population, is involved in all processes concerning the use of lignite including necessary resettlement. One example is the Joint Declaration “Aus Verantwortung für die sorbische Bevölkerung in den Bergbauregionen der Lausitz“ (“Responsibility for the Sorbian population in the mining regions of the Lausitz”) concluded between Vattenfall Europe Mining AG and Domowina – Bund Lausitzer Sorben e.V. on 27 November 2007. Representatives of the Sorbian minority are closely integrated in all bodies, councils and in the population in general and actively cooperate to shape the joint future. This is particularly true for the advisory council for the development plan of the municipalities of Trebendorf (Trjebin), Schleife (Slepo) and Groß Düben (Džěwin) with the conditions of long-term lignite mining, which ensures that all those concerned are actively involved in decision-making processes to prepare relocations.

No. 92:

**Rhineland-Palatinate** comments that this statement is rather perplexing, since they are not aware of projects, particularly in the field of education, directed at Roma who do not possess German citizenship.

No. 93:

The **Federal Government** has explicitly and repeatedly pointed out that the group of persons concerned does not have German citizenship and hence is not within the mandate of the Advisory Committee for the Framework Convention. The **Federal Government** continues: Since the entry into force of the German-Kosovar readmission agreement on 1 September 2010 this agreement has been the basis for returns to Kosovo. Germany does not conduct any mass deportation to Kosovo, but implements its successful strategy of gradual return. The number of German readmission requests to Kosovo has been limited to a maximum of 2,500 per year for the time being, with the actual figures of persons returned being clearly below this number.

As regards returns of Roma to Kosovo, the Federal Government and the federal states of Baden-Württemberg, Lower Saxony, North Rhine-Westphalia and Saxony-Anhalt have launched the URA 2 return project which runs a return centre in Pristina offering care and support to all returnees from the federal states, regardless of their ethnicity or the reasons of their return. In addition to initial psychological and social care, the project offers financial and practical support, e.g. help with finding employment and housing, rent and salary allowances and support for starting new businesses. The project staff's support is intended to help returnees overcome initial integration difficulties, thus promoting effective integration into the society of Kosovo. Moreover, Roma who voluntarily return from Germany to Kosovo may receive funding from the REAG/GARP return programmes (implemented by IOM and commissioned by the Federal Ministry of the Interior). In addition to covering travel expenses and providing a transport allowance of 200 euros per adult Roma, the programmes grant additional start-up assistance of 750 euros per adult Roma (children under 12 receive half of these sums). Thus, a four-member Roma family (two adults, two children) may receive 2850 euros, which is roughly equivalent to average annual gross income in Kosovo.

Please see the comments by the **Central Council of German Sinti and Roma** in Section V. below.

No. 95:

**Hesse** comments as follows: With the introduction of education standards the specific requirements on individual topics to be taught as part of school curricula no longer exist. It is now up to teachers to decide which topics and examples they choose to study the issues of "flight and expulsion" or "minorities" with their pupils.

No. 96:

**Hesse** responds as follows: The fight against racism and the exclusion of migrants are issues that play a permanent role in the educational work of the *Land* Agency for Civic Education of Hesse. At the same time there are manifold activities within the framework of programmes and projects promoting integration, diversity and tolerance to improve public knowledge of the language and culture of members of national minorities.

The **Federal Government** points out once again that only German nationals qualify as national minorities, and for this reason statements on groups of persons without German citizenship are unnecessary.

Nos. 97 – 104 (see also p. 2, second item (bold))

The **Federal Government** comments as follows: Analysis of the sport court decisions for the 2009/2010 season in the first through fourth football leagues and the DFB Cup reveals that, out of a total of 1,973 matches during the season, security-relevant incidents of a racist or discriminatory nature that were handled by the sport courts occurred at only five matches, or 2% of total matches. As a result, it is neither appropriate nor reasonable to state that the DFB is unable to control this problem.

**Lower Saxony** comments as follows: Basic and advanced police training in Lower Saxony has long included training on the forms racism may take. In addition, increased recruitment of staff with an immigrant background significantly helps reduce racism, xenophobia and anti-Semitism.

**Hesse** comments as follows: The *Land* government of Hesse is **not** in favour of adopting legislation which punishes racist motivation as an aggravating circumstance in any offence. The open-ended catalogue of circumstances to be taken into account in sentencing given in Section 46 (2) second sentence of the German Criminal Code already directs courts to consider the motives and aims of the offender. In this way, racist and xenophobic motives can and must be taken into consideration. Listing individual motives to be considered therefore seems neither necessary nor helpful for the purpose of criminal prosecution. The system of an open-ended and generally worded catalogue of circumstances to be taken into account in sentencing in Section 46 (2) of the Criminal Code has proved its worth and should not be thrown out of balance by one-sided emphasis of certain aspects. The further recommendation to punish any incitement to and manifestation of racial hatred is already sufficiently covered under Section 130, "Incitement to hatred", of the Criminal Code.

**Lower Saxony** adds: We would like to stress the fact that, as Hesse has already noted, Section 130 of the Criminal Code already covers racism and that current sentencing instruments already allow for taking racist motives into account as an aggravating circumstance.

No. 106:

The **Federal Government** comments as follows: The statement "since the public-service broadcaster *ZDF* allegedly plans to introduce guidelines for radio and TV channels that prohibit statements of a racist or discriminatory nature" is misleading. *ZDF* can introduce guidelines only for itself, in this case for its own television programmes. Provisions to this effect can be found in

the Guidelines for the Programmes and Telemedia Offerings of ZDF of 11 July 1963; the latest version was adopted on 11 December 2009 (before the Third Opinion). These guidelines state, among others:

I (1): “The dignity of the individual, his freedom and autonomy shall be upheld in all programmes and telemedia offerings.”

III (2): “Offerings shall promote understanding between the different political, social and cultural groupings of our population. Ethnic minorities shall be respected. In reporting on criminal offences, the fact that a suspect or offender belongs to a religious, ethnic or other minority shall be mentioned only if there is a reasonable need for such information to properly understand the reported incident. Special attention should be paid to the fact that such mention might foment prejudice.”

Other broadcasters have similar guidelines. In any case, regardless of special provisions for the media, Articles 1, 2, 3 and 4 of the Basic Law prohibit every form of discrimination.

With regard to state measures concerning the media, Article 5 of the Basic Law guarantees the freedom of the media as a crucial element of democracy under the rule of law. This means that the state must refrain from exerting any influence whatsoever on the media. However, the media do not have unlimited freedom; these rights find their limits in the provisions of general laws (such as criminal law), in provisions for the protection of young persons, and in the right to personal honour.

Under the constitutional division of responsibilities, further legislation to prevent discrimination by and in the media are the responsibility of the *Länder*. According to the programming principles in the Interstate Agreement on Broadcasting and Telemedia Services, broadcasters are to respect the dignity of the individual as well as the moral, religious and philosophical convictions of others in their programmes. They are to promote international understanding and social cohesion in unified Germany and work on behalf of a society free of discrimination.

In addition, the Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and Telemedia Services (JMStV) obligates broadcasters and providers of telemedia services to respect human dignity. Without prejudice to any criminal liability, this treaty makes those offerings illegal which incite hatred against segments of the population or against national, racial, religious or cultural groups, or call for violent or arbitrary measures against them, or assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population or the groups mentioned above.

No. 110 (also 205 and the comments of the **Danish minority** under Section V.):

**Schleswig-Holstein** comments as follows: Although Denmark discontinued analogue television broadcasts and switched to entirely digital television on 1 November 2009, nothing has changed for about 90% of those households which previously received DR 1 and TV 2 in Schleswig-Holstein via cable. Reception via rooftop aerial also continues to be possible throughout almost all of the region where it was previously possible to receive DR 1 and TV 2 in this way (e.g. as far as Neumünster, Heide, Büsum, Wacken and Fehmarn). However, households in the area of terrestrial transmission now need a decoder compatible with the new Danish broadcasting technology (MPEG 4). In order to optimize reception beyond this level, Schleswig-Holstein proposed expanding the range using fill-in transmitters located in Flensburg and Schleswig, and provided the Danish side with the necessary broadcasting rights. But Denmark rejected the offer due to the expense of acquiring additional rights and of running the fill-in transmitters. Outside the area of cable and terrestrial transmission, Danish television can be received directly from the Thor satellite. Foreigners are also entitled to purchase the smartcards needed to decode the

Danish satellite signal, A wide variety of Danish programmes are also accessible via the Internet, although the Danish side cannot make its entire programming available internationally on the Internet due to cost considerations, particularly the cost of broadcasting rights. These changes have not affected very high frequency (VHF) radio.

No. 114:

**Lower Saxony** requests the following correction: “It is however pleased to see that radio broadcasts in Sater Frisian are continuing, thanks to funding by the **media authority of Lower Saxony**.”

The **Federal Government** comments as follows:

The Federal Government Commissioner for Culture and the Media supports the joint initiative of the Frisian Council, the private foundation Ferring Stiftung in Alkersum on the island of Föhr and the corporation under public law Schleswig-Holstein Open Channel to establish a Frisian radio station, which began broadcasting on 25 September 2010. In 2010, the Frisian Council contributed €40,000 from its federal funding.

**Schleswig-Holstein** adds: The radio station FriiskFunk on the island of Föhr began broadcasting on 25 September 2010; it will initially broadcast one hour of programming in Frisian per week. In future, two staff members will produce Frisian-language features at a new satellite studio belonging to the Ferring Stiftung. The project is a collaboration between the Schleswig-Holstein/West Coast Open Channel, the Ferring Stiftung and the Frisian Council. The Open Channel is also setting up satellite studios at interested schools so they can transmit live broadcasts. In this way, FriiskFunk intends to enhance media literacy among children and young people as well. The station can be heard in the transmission area of the West Coast Open Channel at 96.7 MHz and on the existing Open Channel frequencies (97.6 MHz in Garding, 98.8 MHz in Husum and 105.2MHz in Heide). FriiskFunk is also available outside the transmission area via the Internet. Every Sunday, the programmes from the previous week can be retrieved for another seven days, allowing an even larger audience to receive Frisian-language programming beyond the traditional settlement area of the North Frisians.

No. 117:

**Lower Saxony** responds as follows: Because of the principle of government non-intervention in broadcasting, state influence on programming is generally not allowed. However, in view of the European Charter for Regional or Minority Languages, the minister-president of Lower Saxony in 2009 wrote to media representatives in Lower Saxony praising their activities and encouraging them to continue and increase them. For example, reporting on the Saterland region and the Sater Frisian language have helped make the implementation of the Charter in the media area more transparent.

Nos. 126 and 206:

The **Free State of Saxony** comments as follows: The agreement on the composition of the *Land* government for the 5th legislative term of the Saxony *Land* parliament states that a plan to stimulate and encourage the use of the Sorbian language in public life within the Sorbian settlement area is to be drawn up and its implementation promoted.

Nos. 129, 22 and 207 as well as the comments by Domowina:

The **Federal Government** sees no violation of Article 11 of the European Framework Convention for the Protection of National Minorities, as the Framework Convention only requires the states parties to recognize the right to use surnames (patronym) and first names in the minority language and the right to official recognition of them, “according to modalities provided for in their legal system”. Because the Framework Convention gives the national

parliaments broad discretion, the Federal Government continues to hold the view that these provisions do not require adapting the handing-down of names and the general structure of names to the customs of the various national minorities contrary to the general provisions of the national legal system. But German law on names makes no provision for suffixes to be added to women's names, as is usual in Slavic languages, nor does it provide for middle names, which are possible in Danish.

So the Act on Name Changes for Minorities (MindNamÄndG) of 22 July 1997 (Federal Law Gazette II, p. 1406) complies with Article 11 of the European Convention for the Protection of National Minorities. Amending this Act with the aim of allowing gender-specific suffixes to names would have to be extended to cover all the national minorities, not only the Sorbian minority. Such an amendment would also have significant impacts on all German law concerning names. Thus it is not likely that such an amendment will be made in the near future.

The **Free State of Saxony** comments as follows: If the Advisory Committee on the European Framework Convention for the Protection of National Minorities concludes that the Act on Name Changes for Minorities does not comply with Article 11 of the Framework Convention, an amendment should again be considered. The responsible division of Saxony's Ministry of the Interior has forwarded this matter to the responsible division at the Federal Ministry of the Interior. In parallel, the Saxony Ministry of the Interior is examining a legislative proposal of Saxony.

No. 130:

**Schleswig-Holstein** comments as follows: The 2007 statutory instrument of the Schleswig-Holstein *Land* government allowing municipalities to put up multilingual topographical signposting is being implemented for the minority languages of Danish and Frisian with varying degrees of success. So far only the city of Flensburg has put up bilingual (German and Danish) road signs, whereas most road signs in the district of Nordfriesland are bilingual (German and Frisian).

No. 140:

**Hesse** comments as follows: All pupils in Hesse have equal access to all school types. In Hesse, there is no indication that Roma and Sinti children are being disproportionately placed in remedial schools.

No. 142 (and also 149):

Please see the comments by the **Central Council of German Sinti and Roma** on no. 149 in Section V. below.

**Hesse** comments as follows: At Marburg University, Hesse has set up a cooperation office which integrates the history of the national minority in the university curriculum and initiates information projects even beyond Marburg. In addition, it has published teacher handouts and further publications intended to provide in-depth information and support classroom instruction on this issue.

On 5 November 2010, the Hessian Ministry of Education and Cultural Affairs and the Office for Teacher Training held a conference on Sinti and Roma in classroom instruction (*Sinti und Roma – (k)ein Thema im Unterricht?*), in particular for teachers of all school types and teachers in preparatory service. The conference was intended to disseminate information about the history and culture of Sinti and Roma in Hesse and encourage dedicated classroom projects.

No. 148 and 160 – 165:

Please see the comments of the Frisian Council in Section V. below.

No. 171 (and also 52):

**Hesse** comments as follows: The *Land* government is not aware of any discrimination against Sinti and Roma in employment or housing. Further, it should be noted that Hesse's programmes to promote business (in this case directed at individuals, i.e. advising on grant funding, start-up financing, etc.) provide for non-discriminatory access as a matter of course.

No. 183:

Please see the comments of the **Frisian Council** and Domowina in Section V. below.

No. 185:

The **Federal Government** comments as follows: With its decision of 20 November 2008, the Budget Committee of the German Bundestag, in connection with the conclusion of a new financing agreement between the Federal Government (Federal Government Commissioner for Culture and the Media) and the *Länder* of Brandenburg and Saxony to promote the Foundation for the Sorbian People, expressed its expectation that the expert opinions and comments of the Bundesrechnungshof and the Federal Office of Administration as well as an expert opinion commissioned by the Foundation for the Sorbian People would be used to increase the efficiency of all Sorbian institutions through restructuring. Various working groups have been tasked with developing implementation plans for the various Sorbian institutions and priorities, including the working group on administering the Foundation for the Sorbian People. The working groups' initial conclusions are now available and are being discussed in the relevant bodies. The working group conclusions are to be implemented and the restructuring phase is to be completed by 2012/2013.

### **Re III. CONCLUSIONS**

No. 195:

The Free State of **Saxony** states: The Saxony Ministry of Cultural Affairs and Sport notes that the measures are not necessarily new; the term "appropriate measures" would be more fitting.

The Ministry will continue to recruit graduates of the Sorbian upper secondary school in Bautzen to train as teachers. Trainees will be hired to teach in schools in the Free State of Saxony only if they speak Sorbian as their mother tongue and have successfully completed teacher training in a combination of subjects required by the regional school office in Bautzen.

The scientific evaluation of the 2plus strategy will conclude with a conference in Dresden on 30 September 2010. After assessing the results of all examinations, an overall 2plus plan is to be completed for the 2010/2011 school year, including all framework conditions (in terms of content, human resources and school organization) for developing actively bilingual curriculum for all types of schools. At the suggestion of Saxony's Ministry of Cultural Affairs and Sport, the 2plus management group (Sorbian bodies, Saxony's office of education, Saxony's institute of education, Ministry of Cultural Affairs and Sport) recommended confirming the overall 2plus plan in the form of a submission to the Cabinet in 2011.

No. 197:

The Federal Republic of Germany's comments made (most recently) in the Third State Report on the European Framework Convention on the Protection of National Minorities (no. 04041) continue to apply unchanged.

No. 199:

Comment by the **Federal Anti-Discrimination Agency**: The Federal Anti-Discrimination Agency carries out numerous measures to remove and prevent discrimination: An extensive programme to link those involved in anti-discrimination efforts and to establish local advisory networks was launched. Numerous studies and expert reports have encouraged expert dialogue and developed approaches to tackling discrimination. A pilot project is currently under way to evaluate anonymized recruitment procedures; the project is accompanied by scientific analysis and involves five companies, the Federal Ministry for Family Affairs and the Federal Employment Agency. Nation-wide information campaigns and publications help inform and raise public awareness. Persons affected by discrimination and interested businesses can access a multilingual website for more information about their rights and duties under the Act on Equal Treatment (AGG). A contact form offers convenient access to advising from the Federal Anti-Discrimination Agency.

No. 200:

The **Federal Government** comments as follows: According to the distribution of responsibilities within the federal system of the Federal Republic of Germany, culture and education are the responsibility of the *Länder*. As a result, the *Länder* have primary responsibility for implementing the obligations of the Framework Convention on the Protection of National Minorities. The Federal Government may also support national minorities in view of national representation and the promotion of central institutions and events of non-governmental organizations with significance for the nation as a whole. The current practice of support for minorities corresponds to the federal structure of the Federal Republic of Germany and the resulting distribution of responsibilities between the federal, state and local levels. We are not aware of any current problems resulting from this arrangement.

No. 201:

The **Federal Government** comments as follows: Concerning the unwritten administrative competences of the Federal Government (including national minorities), federal budget law assigns 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 reserved for projects which constitute a priority for minorities. Regional or local associations and initiatives may be included by the umbrella organizations and profit indirectly from their funding. In addition, the Federal Government Commissioner for Culture and the Media is willing to fund projects of local and regional initiatives as the budget permits and if all other requirements for funding are met. In the past, this option was used to fund events organized by the association Hildesheimer Sinti e.V., a member of the Sinti-Allianz e.V.

No. 203:

The **Free State of Saxony** comments as follows: The Saxony Ministry of Justice and for Europe notes that the sentence "There has been no decrease in the number of racist, xenophobic or anti-Semitic offences perpetrated in recent years" is not entirely true of Saxony. Apart from a spike in 2008, the number of racist, xenophobic or anti-Semitic offences in Saxony has declined since 2005. Specifically, police statistics record the following numbers of offences (violent offences in brackets):

2005: 2254 (93)

2006: 2064 (78)

2007: 2154 (90)

2008: 2425 (126)

2009: 1972 (84).

“Other recommendations”, item 7:

See the detailed comments regarding no. 09025 in the Third Report of the Federal Republic of Germany on the Framework Convention, as well as no. 01104 ff. in the Fourth State Report on the European Charter for Regional or Minority Languages.



## **Comments by the organizations 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**

(The comments by these organizations 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. The individual reports are preceded by summaries by the individual organizations and ethnic groups, some of which refer to more recent developments following the period under review.)

### **Summaries**

The **Danish minority** points out the planned cuts in educational and cultural activities announced by Schleswig-Holstein. The principle of equal treatment with public schools, which was introduced in 1985, repeatedly suspended between 1997 and 2007 by means of budget support acts, included in the new Schools Act of 2007 after several years of intensive negotiations and put into practice for the first time in the 2008 financial year, is now to be done away with once and for all, and the 100% subsidy for cost-per-pupil rates is to be reduced to 85%. This constitutes a violation of equality for minorities as laid down in Section 124 of Schleswig-Holstein's Schools Act of 24 January 2007.

The *Land* government's proposed cuts fundamentally contradict the Bonn-Copenhagen Declarations of 29 March 1955 and the obligations entered into under the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The most recent policy development indicates that the Federal Government has intervened in this matter and has given Schleswig-Holstein the possibility to maintain equality in education at 100% by approving a subsidy. In this context, we refer to the comments of the Danish minority of 4 October 2010 and in particular to nos. 21, 68, 151, 152 and 153 in the Third Opinion on Germany (adopted on 27 May 2010) of the Advisory Committee on the Framework Convention for the Protection of National Minorities. As far as we are able to judge, the model of federal financing is not a viable solution over the long term, and thus 100% quality is not guaranteed.

In its comments, **Domowina – Bund Lausitzer Sorben e.V.** largely shares the assessment of the Advisory Committee. We especially welcome the list of deficits identified in the practical application of obligations entered into by the *Länder*. Diverging interpretations and/or additions made by us are given in our separate comments on the specific items. Special emphasis is placed on the positive developments concerning the application of the law on equality in the Free State of Saxony and Brandenburg. Domowina also contributed in the form of concrete project cooperation with other organizations.

In its comments, the **Central Council of German Sinti and Roma** provides additional information concerning nos. 102 (racism in sport, on the Internet, etc.), 108 (media), 149 (curriculum) and 93/94 (Kosovo refugees).

### **Comments by the Danish minority**

(4 October 2010 – Danish Secretariat General (Dansk Generalsekretariat) with additions of 15 November 2010)

*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) are grateful for the transmission of the Third Opinion on the Framework Convention for the Protection of National Minorities. Our comments are as follows:

#### **Financial support for the schools of the Danish minority**

As the providing body for Danish nursery schools and schools in the Schleswig region, *Dansk Skoleforening for Sydslesvig* fulfils public tasks deriving from both the Schleswig-Holstein *Land* constitution and various international instruments, e.g. the Bonn-Copenhagen Declarations, the Framework Convention for the Protection of National Minorities, and the European Charter for Regional or Minority Languages. On the basis of the provisions of the Schleswig-Holstein *Land* constitution alone, the public sector would be obliged to provide a school system for the Danish minority if *Dansk Skoleforening for Sydslesvig* did not already provide such a system. The *Land* government's draft budget legislation for 2011/12 entirely ignores this obligation. The planned budget cuts will cause the Danish minority irreparable harm.

The principle of equal treatment with public schools, which was included in the new Schools Act of 2007 after several years of intensive negotiations and put into practice for the first time for the 2008 financial year, is now to be done away with again, and the 100% subsidy for cost-per-pupil rates is to be reduced to 85%. This planned change contradicts the principle of equality between the majority and minority and represents an asymmetrical burden for the minority. The current 100% subsidy means that all economic changes in public education are carried out two years later in the schools of the minority. Additional cuts of 15% represent a special burden.

The planned additional burden for the minority, which will amount to approximately €4.5 million per year according to the *Land* government, touches the nerve of the Danish school system and is incompatible with the minority's right to protection and promotion granted by the constitution of Schleswig-Holstein. One consequence of the planned budget cuts will be school closures, which will undermine the minority over the long term.

The draft budget also calls for cutting all *Land* funding for transport to schools of the Danish minority. This plan to end *Land* support for the cost of transporting pupils fans the flames of a problem that has been smouldering for years. It is feared that the district governments will not come up with the €510,000 originally budgeted by the *Land*, as they did up to 2009, but instead will follow the *Land's* example and also cut these "voluntary" benefits. We will have to wait and see what the districts decided to do; in the worst case, they will also cut funding.

Expenses not defined in the Schools Act will still not be taken into account, such as costs for school inspection, school psychological care and other services which *Land* or local authorities pick up in the case of public schools. To sum up, the 100% funding of school fees was only a first step towards ensuring equality for the minority; major deficits remain in the area of school transport and investment, however, so that true equality is still a long way off. The budget cuts planned by the *Land* government shift the burden to the schools of the Danish minority, thereby violating the principle of equality and endangering the minority's existence.

**Problems with the reception of Danish radio and television in Schleswig-Holstein: Developments since the last comments in November 2008**

Since Denmark switched to digital-only radio and television broadcasting on 1 November, an agreement between Danmarks Radio and Kabel Deutschland ensures that the Danish television broadcasters DR 1 and TV 2 in Schleswig-Holstein can still be received over the analogue cable network in South Schleswig.

However, an optimal solution for terrestrial reception still needs to be found, as current coverage is only about 75%. Reception will therefore remain a focus with regard to the new technical and media-policy options in the German-Danish border area.

**Cost-cutting in the cultural area**

The *Land* government in Kiel also provides a cultural subsidy for the Danish minority via *Sydslesvigsk Forening*. In the last 25-30 years, SSF received €456,000 without any significant price indexing.

From 2010, this funding will be cut by 5%, with further cuts of 15% in both 2011 and 2012, amounting to a total cut of about €150,000.

Another important area of cultural activity is the library system of the Danish minority. The *Land* government has announced a funding cut of €27,000 for the *Dansk Centralbibliotek for Sydslesvig* by 2012.

Further, the local authorities provide funding on a voluntary basis. Thus legislation will continue to be needed to ensure equality in this matter.

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

### Preliminary remarks:

The scope of the Charter is not clearly defined and remains subject to debate. The continuing discussion, as expressed also in No. 34 of the present Opinion, clearly shows that little distinction is made at European level between autochthonous national minorities and allochthonous groups (new minorities made up of migrant groups). We clearly expressed our view of our identity in our comments on the Third Report of the Federal Republic of Germany. In this respect, Domowina still agrees with the position of the Federal Republic of Germany as expressed in no. 005 of the Third State Report. This interpretation also corresponds to the view of the Federal Union of European Nationalities.

### **Our comments on individual items in the present Opinion**

#### II. Article-by-article findings

##### *Article 4 of the Framework Convention on the gathering of data on ethnic origin, nos. 54 – 58*

Under German law, which recognizes the right of free self-identification with a minority, gathering data on ethnic origin cannot be carried out in this form. Statistics, such as the number of pupils in Sorbian language instruction, are not reliable indicators of ethnic origin. The recommendation in no. 58 is based on cooperation with the minorities concerned and remains limited to generally available statistics.

##### *Article 5, no. 67*

The representatives of the Sorbian people do not agree with the Advisory Committee's assessment that funding for the Foundation for the Sorbian People has increased under the 2009 financing agreement between the Federal Government and the *Länder* of Saxony and Brandenburg. For years before the new financing agreement, funding was cut or stagnated at the same level; the funding increase in 2009 was enough to meet the needs for the current financial year. The Sorbs themselves will have to find funding to cover all additional cost increases until 2013 or else make structural cuts, especially to institutions. A shortfall of €800,000 has already been identified for the 2011 financial year, to be made up through budget cuts (laying off permanent employees). The additional one-off expense for severance pay will then burden budgets in the subsequent years, so that significant cuts in the institutional area are expected by 2013. In general, we believe that long-term agreements provide effective protection for minorities, stability and predictability only when they provide for inflation-based budget increases. No minority is capable of covering rising costs over the long term on its own without making substantial cuts.

*The recommendations in no. 74* are appropriate only if the long-term needs of persons belonging to national minorities are recognized and underpinned accordingly by funding programmes annually adjusted for costs.

*The recommendations in nos. 79 and 80* receive our express support.

*No. 84* – This recommendation too is especially important for us and is usually carried out in practice in ongoing planning projects.

*Article 10 of the Framework Convention - Use of minority languages in dealings with local administrative authorities – no. 126*

This recommendation should be emphasized. The renewed competition “Sprachenfreundliche Kommune” (language-friendly municipality) is intended to recognize practical examples of the full implementation of current law in the traditional Sorbian settlement area.

*Article 11 of the Framework Convention – nos. 127 - 128*

We agree with the Advisory Committee that the decision referred to in no. 127 constitutes a violation of Article 11 (1) of the Framework Convention. Domowina supports the complaint filed by the person affected. The aim is to amend the *Land* laws on the translation of given names and surnames so that the Upper and Lower Sorbian languages have the same status as German.

*Article 12 of the Framework Convention – no. 150*

We expressly support this recommendation. It should also meet the growing need for sufficiently qualified teachers for instruction in the minority language; see the development via the WITAJ model project.

*Article 14 of the Framework Convention – nos. 158 and 159*

We expressly support both recommendations, which we have long called for. The existing network of Sorbian primary, middle and secondary schools should be maintained and expanded over the longer term. The participation of representatives of the Sorbian people in decisions concerning the Sorbian school network should be ensured.

*Article 15 of the Framework Convention – nos. 182 and 183*

Representation of Sorbian political interests is once again being discussed in working groups with representatives of the Sorbs and the federal and *Länder* governments. Founding a separate minority party is not practical in view of the demographic structure in both *Länder*; even if the five-percent threshold were lifted, it would still be impossible to achieve the minimum number of votes needed to win a seat at *Land* level. In order to ensure the basic right to political participation for minorities, some of the new EU member states reserve seats for them. This solution would be appropriate and effective for the Sorbian/Wendish people in Saxony and Brandenburg and at federal level. This is the only way the Sorbs would have the chance to found a minority party that could participate successfully in free elections. It is necessary to correct the statement that the chair of the *Sorbenrat* does not have a voice in the Brandenburg *Landtag*; the chair now does have a voice, and the same should apply to the chair of the *Sorbenrat* in the Free State of Saxony.

Bautzen, 12 November 2010

## **Comments by the Frisian Council (Friesenrat, Sektion Nord)**

The Frisian Council is grateful for the receipt of the third Opinion of the Advisory Committee on the European Framework Convention on the Protection of National Minorities.

With regard to the third Opinion, we would like to note the following:

### **Support for preserving and developing the language and culture of national minorities**

The already low *Land* subsidies for the Frisian organizations are being cut further. This makes it difficult to implement and maintain Frisian projects. Schleswig-Holstein is cutting a total of €83,000 euros from the 2010 level (as of mid-November 2010). At the same time, needs arising from the growing tasks are increasing. The funds at the disposal of the Frisian Council and the Frisian institutions and associations are not sufficient to preserve Frisian cultural heritage. For years, the archiving and documentation of Frisian life has been conducted in hit-or-miss fashion and is thus entirely inadequate. As the number of Frisian speakers in Nordfriesland shrinks, part of our heritage is being lost forever.

### **Frisian language instruction**

The Frisian Council again emphasizes its demand for supply-based and compulsory Frisian language instruction throughout the entire language area. In fact, however, the trend is towards a clear reduction rather than expansion of Frisian language instruction. The Frisian Council is extremely concerned about the worsening supply of Frisian language instruction throughout the entire district of Nordfriesland. Closing small schools, in particular the school in Fahretoft, has destroyed functioning structures for teaching the Frisian language and culture. The Frisian Council criticizes above all the failure to include Frisian organizations in policy decisions. This reinforces the impression that Frisian concerns are of secondary importance to the cultural administration. There is currently no regular consultation procedure as recommended in the Opinion for the Frisian ethnic group in the field of education.

Efforts to maintain Frisian language instruction at the level attained are often thanks only to representatives of Frisian interests. This applies in particular to the situation of language instruction on the island of Sylt. But volunteer or part-time teachers are no substitute for professional planning by the education authorities. Enabling existing teachers to gain qualifications in language instruction could help solve the problem of finding qualified new teachers in this area. As long as universities produce such a small number of Frisian teachers, continuing professional education can help overcome the threat of teacher shortages in this field. We regard as exemplary the successful training of a Frisian language teacher for the upper secondary level on the island of Föhr. But the school authorities have no systematic approach to this project, and gaps in Frisian language instruction, for example those arising when teachers retire, are not filled quickly enough. Funding for Frisian language professorships is inadequate.

### **Media access for members of the Frisian minority**

Schleswig-Holstein has no Frisian-language television programming. Representatives of the Frisian minority have repeatedly criticized this situation, which violates the minority's right to self-determination. Because the Frisians are not represented on the NDR Broadcasting Board, however, they have no way to make this problem known to the proper authorities, and so nothing will change. In the meantime, the public-access station Friisk Funk has started broadcasting: Friisk Funk offers an hour of Frisian and German music and features Mondays through Fridays. Friisk Funk is available as an analogue signal only on the islands; it is available on the Open Channel frequency on the west coast and via the Open Channel on the Internet outside the language area. The fact that Friisk Funk is partly funded by a private foundation, the Ferring Stiftung, is indicative of the supplementary character of Friisk Funk, which is no substitute for

regular Frisian-language programming by the public broadcasting corporations. In this context, the Frisian Council points out that the three minutes of Frisian programming once a week is available on analogue radio only in northern Nordfriesland.

#### **Using the minority language in dealings with local administrative authorities**

Public service employees currently have little incentive to learn Frisian. Taking Frisian courses offers no advantages for career advancement or position. As a result, Frisian continues to have a low priority and private status in public authorities. The Frisian Council's view is that the use of the Frisian language in public life is limited to road signs. That is insufficient.

#### **Participation of members of the Frisian minority at regional and local level**

According to the Lower Saxony Electoral Act, only the parties of the Danish minority are exempt from the five-percent threshold (Section 3 of the Act), thus parties of the Frisian minority in Schleswig-Holstein are not exempt from the five-percent threshold.

#### **Cooperation with neighbouring countries**

The Frisian Council is involved in inter-Frisian cooperation as a cornerstone of its activity. This includes meetings of farmers and young farmers, youth exchanges and the work of the Inter-Frisian Council. Budget cuts are endangering these efforts. There are currently no indications that European funding will make up for the funding cuts.

## Comments by the Central Council of German Sinti and Roma, Heidelberg

Comments regarding No. 102, Third Opinion of the Advisory Committee

In recent years, the chant “Zick Zack Zigeunerpack” (zig-zag Gypsy rabble) in sport stadiums has not been limited to football matches. Although there were a few isolated cases of spectator groups using this racist chant up until mid-2010, thanks to the commitment of the German Football Association (DFB) the situation in football has improved and a broad-based discussion has taken hold also on the Internet about ending such incitement. DFB president Dr Theo Zwanziger appeared at two press conferences with the Central Council of German Sinti and Roma and the Central Council of Jews in Germany (on 14 December 2009 with the latter’s vice-president, Prof. Salomon Korn at the Documentation Centre of German Sinti and Roma), where he clearly stated his opposition to such racist chants and announced severe sanctions. In our view, these steps have been effective. Further, the DFB has participated in solidarity campaigns for the Roma and Sinti minorities more than any other sport association, including assistance for Roma families in June 2010 whose relatives in Hungary were murdered in racially motivated attacks. The DFB cultural foundation, which runs fan projects opposing racism and violence, added a representative of the German Sinti and Roma to its board, showing that the sport association is doing everything in its power, and that it is taking the right steps.

Comments on No. 108, Third Opinion:

Despite a number of positive developments following the period under review, the Central Council of German Sinti and Roma criticizes the fact that Stanislaw Mucha’s documentary film *Zigeuner* was broadcast again, despite advance protests, this time on the public television channel Hessischer Rundfunk on 25 October 2010. In the Central Council’s view, the film includes scenes which reinforce stereotypes about Sinti and Roma; broadcasting this film on German television associates these stereotypes with the entire minority in Germany. This is a serious example of public stigmatization. Among other things, we condemn the belittling and absurd portrayal of Roma as “dog eaters”. Other scenes also have the effect of ridiculing the persons shown. Although the film points out the problems and widespread misery in Roma settlements in Slovakia, it fails to do so in a neutral and appropriate way, instead using negative stereotypes which are emphasized using cinematic means.

The Central Council believes the government authorities, as part of their duty of legal supervision and in line with constitutional law, should remind the broadcasting corporations to comply with and improve their own codes of conduct; to that end, the authorities should encourage a more intensive dialogue with the relevant minority organizations. Under Section 20 of the Act on Hessischer Rundfunk, the State Chancellery of Hesse is responsible for legal supervision of the broadcaster. Section 3 no. 3 of the Act may have been violated.

With regard to positive developments in the media field following the visit of the Advisory Committee, the Central Council refers in particular to the ongoing dialogue with the German Press Council, whose board will visit the Central Council and the Documentation and Cultural Centre on 22 November 2010. And documentation of the media conference held jointly with the German Press Council on 5 November 2009 was published in August 2010, including contributions from the main editorial offices of the ARD and ZDF public broadcasting corporations. Together with the ZDF, a documentary film on Sinti and Roma in “regular” jobs and as persons well-integrated into society is being made; preparatory meetings have already been held. Bavarian Minister-President Horst Seehofer agreed on 15 September 2010 to an initiative to include the *Land* association of German Sinti and Roma in the Bavarian Media Council, making Bavaria the second *Land* after Rhineland-Palatinate in which the minority is



represented on another supervisory body for private media and the Internet. In September, in cooperation with Hungarian television and the Central Council of German Sinti and Roma, the German Embassy in Budapest carried out another media conference also dealing with the issue of media freedom and the prohibition against discrimination on the example of the Sinti and Roma.

**Comments on No. 149 of the Third Opinion:**

(authored by the Documentation Centre of the German Sinti and Roma)

Following a conversation of the chair with Dr Spaenle, the president of the Standing Conference of the *Länder* ministers of education and cultural affairs, in March 2010, Rose and the staff of the education division met with the head of the Bavarian Agency for Civic Education, Dr Peter März, and the head of its publications division, Monika Franz, at the Documentation Centre in October. The federal and *Länder* agencies for civic education have put Dr März in charge of the project on the historical and cultural presentation of the Sinti and Roma in a German and Central European context. A project of this kind was endorsed at the conference of the heads of the *Länder* agencies in Potsdam in summer. The Documentation Centre is to be involved in planning, coordinating and carrying out the project, which is to cover not only the history of the minority's persecution, but its overall history and culture as well. The publication format has not yet been decided, but should be in various media if possible.

At the meeting, the Documentation Centre's ideas were summarized as follows: The minority should not be portrayed solely as a pawn of history; aside from their suffering and persecution, Sinti and Roma must be recognizable as active subjects who have contributed to the historical and cultural development of Germany and Europe. The publication's pedagogical orientation should take priority; if possible, the publication should be divided into different modules so that it can be used in school curriculum, although the idea of a single work in book form will be retained. Representatives of the civic education agencies have been asked about evaluating projects and about social marketing of a project. The Documentation Centre has raised the possibility of contributing funding and has agreed to make its facilities available for conferences, etc.

In order to provide a comprehensive survey, it may be necessary to collect additional materials; the civic education agencies will not be able to pay for these. Components of the overall project may have to be outsourced and/or paid for with mixed funding. To answer this question, a preliminary symposium is being considered, as is the recruitment of specialized staff, in order to meet high expectations of quality.

The paper presented by the European Roma and Travellers Forum on a Romani curriculum cannot be implemented due to the different situation of the Romani of the German Sinti and Roma. For more information and explanations, see the comments of the Central Council and the Documentation Centre of German Sinti and Roma on the state reports on the European Charter for Regional or Minority Languages and the Federal Ministry of the Interior brochure on minority languages in Germany.

Nos. 93 and 94 (refugees from Kosovo):

During a fact-finding visit to Kosovo in May 2010, the Central Council of German Sinti and Roma spoke to Roma families deported from Germany, representatives of international

organizations, local Roma NGOs, mayors and representatives of German institutions. These comments are mainly based on the results of this visit.

### **Security**

Again in 2010, the security situation is problematic. Deported families repeatedly reported on cases of inter-ethnic violence; these cases were not reported to the police for fear of retaliation. There is a general lack of trust in the Kosovo authorities, which often employ persons who took part in expelling Roma. Roma often feel threatened and generally unsafe outside the ethnically homogeneous settlements and neighbourhoods. Older persons do not want to travel to larger cities, for example for medical treatment.

One should always remember that the Kosovo Albanians suspect the Roma minority of having collaborated with the Serbs, which may lead to violent protests at any time. These protests become increasingly dangerous as more Roma are deported to Kosovo, especially when the Roma appear to receive preferential treatment in the form of return assistance projects from which the local population is excluded.

### **Social situation**

Unemployment in Kosovo is nearly 50%; among the Roma, it is much higher, with estimates of over 90%. At best, Roma can find work as day labourers, and that only during the summer months. Many families live in total poverty, as they do not qualify for social assistance unless the household includes a child under age 5 or someone over age 65. Social assistance amounts to about €70 per month for a family, regardless of the number of family members. Housing in the cities costs about €100 – 150 for three rooms.

Deported families are usually unable to return to their former homes, as these have been destroyed or (mostly in the cities) occupied by Kosovo Albanians. Although there is a procedure for property claims, in fact there is little chance that claims will be successful, as the courts are swamped and proof of ownership has been lost or destroyed. Further, by demanding the return of their property, Roma families risk retaliation if the new owners are Kosovo Albanians.

As reported by various international organizations and NGOs, a very large number of Roma deported from Western Europe leave Kosovo soon after arriving there, either to seek better prospects in Serbia, Montenegro or Macedonia or to try to return to Western Europe. It is estimated that up to 70% of deported families leave Kosovo within two months.

### **Return possibilities and projects**

With its return agreement, the Republic of Kosovo has indicated its intention to readmit persons from Kosovo. It has presented a strategy and established a ministry for this purpose. However, this ministry has no funding and few at local level have heard of the strategy. In talks with the mayor of Mitrovica, it became clear that the cities and municipalities are unable to cope with the current situation of those living in Kosovo: housing, employment and income, medical care, school and education. According to the mayor, Mitrovica cannot handle any additional returnees.

The example of Mitrovica also reveals the problems of Roma living in Kosovo. The Roma who have lived there for more than ten years in camps thoroughly contaminated with lead and other heavy metals are now to be relocated to the old Roma quarter, but this option applies only to families who previously lived in this quarter. The mayor of Mitrovica and international institutions fear that the camps will immediately fill with deported Roma families who have nowhere else in the region to live. They argue that, due to the deportations, the international scandal surrounding the Mitrovica camps will continue.

Return projects such as URA-2, funded by the Federal Government and four *Länder*, can provide limited assistance, including above all housing (paying rent for up to six months) and help in finding a job. The job is subsidized for up to six months, making the arrangement attractive for employers, but the jobs are terminated promptly when the subsidies end. Such limited possibilities for integration are unable to provide lasting success. After six months, families lose their homes and their possibilities to earn income. In addition, URA-2 helps only those families deported by the four participating *Länder*.

### **Conclusions**

The Central Council of German Sinti and Roma therefore believes that steps must be taken to ensure that persons in special need of protection should not be returned or deported to Kosovo.

Such persons include

- families with children,
- traumatized persons and those with chronic illnesses, and
- older persons who have no chance of finding work in Kosovo.

The Central Council believes that when deciding whether to deport such persons, persons who qualify as hardship cases should be given a permanent right to reside in Germany. The latest statistics of the Federal Minister of the Interior show that very small numbers of the minority are currently being returned to Kosovo. As we see it, this is a clear indication that for most Kosovo Roma, obstacles to deportation apply.

**Comments by the Sinti Allianz Deutschland e.V.**  
(20 October 2010)

Comments on the summary and additional contents:

- With regard to information on the founding of the Federal Anti-Discrimination Agency:

- Nos. 176 and 177:

The Sinti Allianz Deutschland points out that it has so far had no opportunity to contribute effectively to the work of the Federal Anti-Discrimination Agency. One reason for this is that the representative of the national minorities and autochthonous ethnic groups of Germany to this body, who is at the same time the chair of the Central Council of German Sinti and Roma, strictly rejects any contact with representatives of the Sinti Allianz, making it impossible for the Sinti Allianz to participate indirectly with the Federal Anti-Discrimination Agency. Secondly, the Federal Government has so far failed to act on the Sinti Allianz suggestion of introducing the principle of rotation for the representation of the national minorities and autochthonous ethnic groups, which would allow temporary participation. We view this exclusion from participation as discrimination against the German Sinti represented by our group, an autochthonous ethnic group of German Gypsies.

- With regard to the comment that representatives of the Roma and Sinti complain that they are still not allowed to receive project funding, and that Roma and Sinti participation in all areas of public life remains limited:

- No. 48:

The Sinti Allianz Deutschland once again points out that, unlike the Central Council of German Sinti and Roma, it has never received any kind of institutional support. Given the broad range of tasks and limited private funding at its disposal, the Sinti Allianz is able to focus on only the most urgent needs. In particular, it cannot afford to carry out important duties in public life on behalf of the Sinti members of the Allianz. The same applies to the *Land* associations and clubs which belong to the Sinti Allianz, which have also never received any government support. The Federal Government and individual *Länder* have promised project funding to the Sinti Allianz or its member associations on more than one occasion. But funding was never approved, either because no funds were available or the requirement of own funding represented an insurmountable barrier. Because the work of the associations is financed entirely from private funding or donations, it is not possible to set aside reserves to finance projects. Projects were possible only at local level with grant funding. However, the dismal state of many municipal budgets threatens future funding for local and regional projects. The Sinti Allianz regards the failure to consider it and its member associations for ongoing government funding programmes as continuing discrimination.

In this context, the Sinti Allianz points out that applications of its *Land* associations and clubs, whether for project funding or other financial support for their work, have in all but one instance been rejected on the grounds that organizations of the Central Council were already receiving support. This was the case of an application by our *Land* association in Lower Saxony for a cultural centre of the Sinti autochthonous ethnic group. Plans for the cultural centre included an advising office, youth work and meeting place for elderly Sinti as well as other projects intended to preserve the cultural heritage of the German Sinti.

- With regard to reports that Sinti and Roma had been denied access to public places:

The Sinti Allianz Deutschland is not aware of any cases in which German Gypsies were denied access to public places.

- With regard to the recommendation to take more resolute action to improve the participation of Roma and Sinti in public life, with due regard for the cultural diversity found within these groups; to fund and support projects and initiatives to improve their participation in social and political life:

- Nos. 71, 75, 168 and 176:

The Sinti Allianz Deutschland thanks the Advisory Committee for the above recommendation and for its view expressed in no. 71 that the Federal Government should reconsider and expand its funding policy. The Federal Government and some of the state governments provide significant institutional funding for the organizational work and for documentation and cultural tasks concerning German Sinti and Roma. These funds are directed exclusively to associations and institutions connected with the Central Council of German Sinti and Roma. Nor has it been possible for the German Sinti within the Sinti Allianz to work with the publicly-funded Documentation and Cultural Centre of German Sinti and Roma in Heidelberg, for example. If additional funding were provided for the Sinti Allianz and its member associations, or if the existing funding were divided between both umbrella organizations and their *Land* associations, the German Sinti participating in the Sinti Allianz would not be excluded from these efforts. With its own funding, the Sinti Allianz is able to take on only very limited tasks intended to encourage participation by German Sinti in social and political life.

With regard to no. 71, the Sinti Allianz informs the Advisory Committee that access to funding remains very limited not only for small local organizations, but also that the Sinti Allianz, a longstanding and recognized umbrella organization, has never received any government funding. This also prevents the umbrella organization from maintaining a larger media and public presence. The Sinti Allianz has no paid staff for this purpose but depends on the unpaid labour of board members and volunteers.

- With regard to the recommendation to take measures in the area of education:

- Nos. 20 and 137 to 141:

The Sinti Alliance Deutschland continues to believe that equal opportunity in education is a reality in Germany. The indisputable fact that Roma and Sinti from weak educational backgrounds are not appropriately represented in superior secondary schools is rather due to the circumstance that in Gypsy communities school education has traditionally been considered a lower priority than musical or handicraft skills and work within the family. The Sinti Allianz believes that this is an important task for organizations representing this ethnic group and Gypsies who are convinced of the importance of good school education and vocational training for all children. They have to convince their families and the larger community of this importance. In some cases, state measures directly focusing on Sinti and Roma would only increase suspicion among families towards compulsory school attendance.

Limited job opportunities for some Gypsies are usually not caused by a lack of equal opportunities in Germany, but by poor education and a lack of job qualifications. The Sinti Allianz and its *Land* associations consider it an important task to help foster more positive

attitudes among all Sinti families regarding public educational offerings and compulsory school attendance. Government funding for existing organizational structures would greatly improve the chances of devoting more energies to this effort.

Other issues:

- No. 7:

With regard to the language of the German Sinti, Sintetickes, the Sinti Allianz Deutschland does not share the Advisory Committee's view that important minority protection documents, in particular the second Opinion and the second Resolution of the Committee of Ministers, should be translated into all languages of the national minorities. By now it is well-known that the Sinti do not wish their language to be used in public and that translation into this language is not possible, because the language does not exist in written form.

- Nos. 16, 172, 173 and 176:

The Advisory Committee notes that there are still no consultation procedures specifically for the Roma and Sinti communities, while such procedures have proved useful for the other national minorities and autochthonous ethnic groups. The Sinti Allianz Deutschland points out that it has repeatedly declared to the Federal Government, the minority associations and the general public its willingness to work in such a body without reservations and on an equal footing. In response, the other umbrella organization has repeatedly refused to work with the Sinti Allianz in such a body. This is apparently the reason why the Federal Government has not yet established such a body.

- Nos. 20 and 139 to 140:

The Sinti Allianz Deutschland points out that there are no statistics on the Gypsy population in Germany and thus there can be no statistical evidence for an over-representation of Gypsy children in special schools. However, some examples from problem neighbourhoods have been noted. In the experience of the Sinti Allianz, Sinti children do not have educational problems due to persistent stereotypes or clichés among the general population. Studies show that educational deficits of Gypsy children are not caused by racist discrimination on the part of teachers, but by poor attendance of children from at-risk families. See also the comments on education above.

- Nos. 46, 48, 70, 172 and 173:

In its third Opinion, the Advisory Committee welcomes the 2005 Framework Agreement between the Government of Rhineland-Palatinate and the *Land* Association of the Central Council of German Sinti and Roma. In this context, the Sinti Allianz Deutschland notes that, in its recent discussions with the *Land* association of the Sinti Allianz Deutschland examining the content of the Framework Agreement, the government of Rhineland-Palatinate refused to undertake necessary revisions, nor was it willing to conclude similar agreements with the associations belonging to the Sinti Allianz Deutschland. And a framework agreement between the *Land* government and the various *Land* associations failed due to a veto by the *Land* association of the Central Council of German Sinti and Roma. As a result, some of the Sinti living in Rhineland-Palatinate have no voice on issues affecting Gypsies in Rhineland-Palatinate and cannot be represented in certain bodies. Also due to the Framework Agreement, the *Land* association of the Central Council is the only adviser to the *Land* government on issues affecting Gypsies, and the *Land* government has given the *Land* association of the Central Council the sole right to represent all Gypsies in Rhineland-Palatinate. This *Land* association of the Central Council also receives all the institutional funding. All Gypsies who do not belong to this association are excluded from participation in the framework of the Agreement. This constitutes official discrimination against the *Land* association belonging to the Sinti Allianz and its members.

- Nos. 53 to 55:

The Sinti Allianz Deutschland once again notes that, like the other associations of national minorities and autochthonous ethnic groups in Germany, it opposes the gathering of statistical data on the ethnic composition of the German population and membership of a national minority or autochthonous ethnic group. The reasons include negative experiences in the past, which remain strongly felt in many families. Further, in an integrated society, gathering such statistics could lead to problems which would have a negative impact on social cohesion. For groups whose minority situation is based not on ethnic-historical characteristics, but solely on language and culture, the question of who identifies themselves as a member of the minority limits the value of statistical surveys. And estimates provided by government agencies and the minority associations provide a general orientation as to the number of those concerned; in the view of the Sinti Allianz, these estimates suffice for the purposes of public funding.

- Nos. 54, 55, 168 and 169:

The Sinti Allianz is aware of the significance of full and effective equality for all population groups including national minorities and autochthonous ethnic groups. Based on its experience, however, the Sinti Allianz believes that some Gypsies face the same difficulties in finding work and housing as other comparable parts of the population in Germany (persons from disadvantaged backgrounds, large families, persons with low levels of education and those who do not take advantage of public educational offerings). Problems arise in particular when families have deficits in education and social integration. But one should not assume that Gypsies in Germany generally face discrimination and exclusion.

- Nos. 138 and 140:

In this context, the Sinti Allianz notes that a study on the use of mediators at schools found no improvement in Gypsy children's school attendance nor greater participation in regular classes, so that the proportion of children from problem families who are enrolled in special schools was unchanged.

- No. 140:

The Sinti Allianz Deutschland views as problematic the idea to let parents, rather than teaching staff, decide whether their children should be placed in special classes or schools, regardless of the children's educational performance and in contrast to the procedure for the majority population.

- No. 149:

The Sinti Allianz Deutschland agrees that it is important for the majority population and especially teachers and pupils to have better general knowledge of the existence, history and culture of national minorities and autochthonous ethnic groups. This aim reaches its limits at the focus on the cultural foundations of the Sinti, especially their traditional language. All associations in Germany which represent German Sinti oppose measures to use the Sinti language in public or in education; they especially oppose creating a written form of this language. The Sinti Allianz therefore stresses that it views the reference to the Curriculum Framework for Romani solely as a tool for promoting the Romani language of the Roma. The information provided by the Advisory Committee that this Curriculum was developed by the Council of Europe in cooperation with the European Roma and Travellers Forum underscores this view, as the Forum does not represent any Sinti. The Forum can therefore not serve as a standard for the culture, needs or political or social concerns of the Sinti.