

<b>A SUMMARY OF COMMENTS SUBMITTED DURING THE PROCESS OF PUBLIC CONSULTATIONS, ASSESSMENT AND INTERDEPARTMENTAL ARRANGEMENTS REGARDING THE 5<sup>TH</sup> REPORT ON THE IMPLEMENTATION BY THE REPUBLIC OF POLAND OF THE EUROPEAN FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES</b>		
#	Party submitting a comment	COMMENT BY THE MSWIA
	<b>CHANCELLERY OF THE PRIME MINISTER</b>	
1	<p>Editorial note:</p> <p>A repetition of content was noted on pages 64-65 in the sub-chapter on the implementation of Articles 12-14 of the Framework Convention in the section <i>Regulations regarding non-discrimination on grounds of belonging to minorities in the system of higher education and science</i>:</p> <p>"It must be highlighted that all higher education establishments in Poland, both public and non-public, enjoy autonomy guaranteed under Article 70(5) of the Constitution of the Republic of Poland (Journal of Laws No. 78, item 483, as amended). That Constitutional rule is emphasised in the Act on higher education and science. Autonomy of higher education establishments is one of the fundamental principles of the system of higher education and science. However, the Minister competent for higher education and science, exercising the supervision over higher education establishments in terms of compliance with law, may in justified cases undertake explanatory and disciplinary actions".</p>	The comment has been included.
	<b>MINISTRY OF FOREIGN AFFAIRS</b>	
2	<p>Editing comments regarding the section <i>Status of international law in the national legal system</i>, changing the text to:</p>	The comment has been included.

"In accordance with Article 9 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended), "The Republic of Poland shall respect international law binding upon it." According to the case law of the Constitutional Tribunal is understood not only as "a grandiose declaration addressed to the international community, but also an obligation of state bodies, including the government, parliament and the courts, to observe the international law, which is binding for the Republic of Poland. Apart from appropriate changes in the national legal order, the implementation of this obligation may require the bodies of public administration to undertake specific actions within the scope of their assigned competencies".

Considering the above, it must be highlighted that respect for international law, including in particular the fundamental principles of international law set forth in the Charter of the United Nations or the Final Act of the Conference on Security and Cooperation in Europe is among the priorities of the Polish State's policy and is reflected in *inter alia* the international activity of Poland.

Pursuant to Article 87 of the Constitution, the sources of universally binding law of the Republic of Poland are: the Constitution, legislative, ratified international agreements, regulations and enactments of local law applicable in the territory of the local organ issuing such enactments.

Furthermore, Article 91 of the Constitution provides that after promulgation of a ratified international agreement in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), that agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a legislative act. An international agreement ratified upon prior consent granted by a legislative shall have precedence over an act if such an agreement cannot be reconciled with the provisions of that act. Furthermore, if an agreement, ratified by the Republic of Poland, establishing an international organisation so provides, the laws established by that organisation shall be applied directly and have precedence in the event of a conflict of laws.

The Framework Convention for the Protection of National Minorities is an agreement ratified by the Republic of Poland with a prior consent granted in an act, which makes it part of national legal order and gives it precedence over any act that cannot be reconciled with the Convention. As a consequence, the Framework Convention may be applied directly by domestic bodies, including courts, unless its application depends upon an act being adopted. The Polish Government considers that the Framework Convention includes a number of self-executing rules".

	Ministry of Family, Labour and Social Policy	COMMENT BY THE MSWIA
3	<p>On page 73 of the draft in question, Article 15 titled <i>Participation in public life</i>, section <i>Integration of the Roma community</i>, mentions the government programme Mama 4+. The draft document emphasises that the so-called supplementary parental benefit is available to mothers who gave birth to and raised at least four children.</p> <p>Please be advised that under Article 3(1) of the Act of 31 January 2019 on the supplementary parental benefit (Journal of Laws of 2022, item 1051) the benefit concerned is available to:</p> <ol style="list-style-type: none"> <li>1) a mother who gave birth to or raised at least four children;</li> <li>2) a father who raised at least four children, in the case where the mother of the children has died or abandoned the children, or in the case where the mother has ceased to raise the children for a long time.</li> </ol> <p>In principle, the supplementary parental benefit is available in the amount of the lowest pension, but for persons who receive a pension that is lower than the lowest pension, the benefit is a top-up to the amount equivalent to the lowest.</p> <p>Considering the foregoing, I suggest that the passage on page 73 of the draft:  "The government programme Mama 4+ (since 2019) gives mothers who gave birth to or raised at least four children the right to receive the so-called supplementary parental benefit (which in practice is equal to the lowest pension). The programme has significantly changed the situation of Roma women in particular, as they often have no chance to become eligible for pension benefits due to the phenomenon of early marriages".  should have the following reading:  "The government programme <i>Mama 4+</i> (since 2019) gives mothers (and in some cases fathers as well) who gave birth to and raised at least four children the right to receive the so-called supplementary parental benefit (in the amount equal to the lowest pension or a top-up to the lowest pension where a benefit below the lowest pension is received). The programme has significantly changed the situation of Roma women in particular, as they often have no chance to become eligible for pension benefits due to the phenomenon of early marriages".</p>	The comment has been included.
	<b>STATISTICS POLAND</b>	<b>COMMENT BY THE MSWIA</b>
	Comments regarding names of tables, columns and headers:	The comments have been included.

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As regards the table *Population of minorities and users of minority languages* on page 7:

The headers of columns 3 and 5 say they contain the "percentage of overall population", i.e. in other words - *per cent*, whereas the values provided in the columns are expressed in *promille* (which is shown by the amounts and the use of the promille sign). We suggest changing the text of the header to "share in overall population" and leaving the promille sign, or to "promille of overall population" and resigning from the promille sign (excess of information). Alternatively, the header name can be kept as it is, with the values converted to percent (but with the percent sign at every value).

The row "TOTAL" in column 4 contains the figure (197,877 - which is most likely the sum of rows without the row regarding the Kashubian language [?]) which does not correspond to the findings of the Census, counted both with and without the Kashubian language. It must be noted that in the case of the language spoken at home, i.e. in the case of the so-called multiple answers where respondents could give more than one language, the use of summary rows (total) is slightly more complicated than just a simple adding up of the values in the column. This is caused by the fact that different detailed items (different languages) could include the same persons (one person per two or more languages), hence obtaining a summary category (interpretation: the number of persons speaking any minority language) is quite complicated and requires reaching the source data. Here, please be advised that the total number of speakers of any of the minority languages listed is 301,804, and without the Kashubian language (although there is no reason for excluding this item from this column) it is 194,142.

Furthermore, we have certain comments regarding the names used in column headers and the inconsistency between the recommended interpretation of the terms in the glossary of acronyms, header names and content of the columns:

The header of the first column (side) and the common header of columns 2 and 3 are actually similar and contain the term "minority..." , whereas it seems that the term is adequate for the side which lists types (designations) of minorities (communities). Furthermore, columns 2 and 3 provide data regarding the population of minorities, i.e. members of those minorities - i.e. persons not communities as such (e.g. the headers of column 4 and 5 indicates that it is about persons: "users..."). Besides, columns 2 and 3 omit the data for users of the Kashubian language, while the header of those columns ("minority") does not indicate that it is about national/ethnic minorities, whereas in the glossary of acronyms on page 4 provides a clear interpretation of the term "minority" used in the document, which encompasses also users of the regional language.

Therefore, let us propose two variants of the table which take the above into account:

The first variant (the one suggested) fully includes the statistics in columns 2 and 3, including for the Kashubian language (repetition of data about the number of users of the Kashubian language) and full summary (the summary of national communities with the Kashubian language also poses a problem in that it is not possible to simply add up the figures, as more than a hundred users of the Kashubian language belong to national minorities).

The second variant – with a solution which provides for omitting the statistics for the Kashubian language in columns 2 and 3.

*Variant 1*  
*Population of minorities and users of minority languages*

Minority	Members of the minority		Users of the minority language	
	population	share in overall population	population	share in overall population
Belarusian <sup>[1]</sup>	43,878	1.14‰	26,448	0.69‰
Czech	2,831	0.07‰	1,451	0.04‰
Karaim	314	0.01‰	<50	0.00‰
Lithuanian	7,376	0.19‰	5,303	0.14‰
Lemko	9,640	0.25‰	6,279	0.16‰
German	144,236	3.75‰	96,461	2.50‰
Armenian	1,683	0.04‰	1,847	0.05‰
Romani	16,723	0.43‰	14,468	0.38‰
Russian	8,796	0.23‰	19,805	0.51‰
Slovak	2,739	0.07‰	765	0.02‰
Tatar	1,828	0.05‰	<50	0.00‰
Ukrainian <sup>[2]</sup>	38,795	1.01‰	24,539	0.64‰
Jewish	Hebrew	7,353	321	0.01‰
	Yiddish		90	0.00‰
users of the Kashubian language	108,140	2.81‰	108,140	2.81‰
TOTAL	394,113	10.23‰	301,805	7.84‰

*Variant 2*

Minority	Members of national and ethnic minorities		Users of the minority language	
	population	share in overall population	population	share in overall population

	Belarusian <sup>[1]</sup>	43,878	1.14‰	26,448	0.69‰	
	Czech	2,831	0.07‰	1,451	0.04‰	
	Karaim	314	0.01‰	<50	0.00‰	
	Lithuanian	7,376	0.19‰	5,303	0.14‰	
	Lemko	9,640	0.25‰	6,279	0.16‰	
	German	144,236	3.75‰	96,461	2.50‰	
	Armenian	1,683	0.04‰	1,847	0.05‰	
	Romani	16,723	0.43‰	14,468	0.38‰	
	Russian	8,796	0.23‰	19,805	0.51‰	
	Slovak	2,739	0.07‰	765	0.02‰	
	Tatar	1,828	0.05‰	<50	0.00‰	
	Ukrainian <sup>[2]</sup>	38,795	1.01‰	24,539	0.64‰	
	Jewish	Hebrew	7,353	0.19‰	321	0.01‰
		Yiddish			90	0.00‰
	users of the Kashubian language	x	x	108,140	2.81‰	
	TOTAL	286,192	7.43‰	301,805	7.84‰	

	<b>Ministry of Finance</b>	<b>COMMENT BY THE MSWIA</b>
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5	<p>Replace the text on page 5:</p> <p>"Poland is divided into 16 voivodeships (<i>województwo</i>), which are divided into 314 counties (<i>powiat</i>) and 66 cities with county rights and 2,477 communes (<i>gmina</i>). Each of those territorial units is self governed".</p> <p>with the following text:</p> <p>"Poland is divided into 16 voivodeships (<i>województwo</i>), which are divided into 314 counties (<i>powiat</i>) and 2,477 communes (<i>gmina</i>), including 66 cities with county rights, which gives a total of 2,807 local government units".</p>	The comment has been included
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	ASSOCIATION OF SLOVAKS IN POLAND	COMMENT BY THE MSWIA
6	<p>Comments regarding the draft of the 5<sup>th</sup> Report...:</p> <p>The authors of the draft of the 5<sup>th</sup> Report to the Secretary General of the Council of Europe on the implementation by the Republic of Poland of the provisions of the Framework Convention for the Protection of National Minorities reserved at the beginning that "...When preparing the 5th Report, it was decided to present updated information included in the 4th Report in addition to matters subject to e.g. legal or factual changes..., which ...the authors believe (...) should enhance the clarity of the document". However, the authors of the draft of 5<sup>th</sup> Report... have not been named. The structure of the draft of the 5<sup>th</sup> Report... is not compatible with the previous report. The draft of the 5<sup>th</sup> Report ... has only 75 pages, whereas the 4<sup>th</sup> Report... had 190 pages and as many as 171 pages of annexes (7 different annexes). It must also be noted in the introductory comments that the draft of the 5th Report... contains no references to Resolution CM/ResCMN(2020)12 adopted by the Committee of Ministers on 21 October 2020 on the implementation of the Framework Convention for the Protection of National Minorities by Poland, which indeed is a surprise and which, in the belief of national and ethnic minorities living in Poland, should be a matter of essential importance. Without quoting of and referring to the recommendation arising from Resolution CM/ResCMN(2020)12 on the implementation of the Framework Convention for the Protection of National Minorities by Poland it is impossible to assess and give an opinion about the draft of the 5<sup>th</sup> Report..., for it would be detached from the reality and observations regarding the hitherto implementation of the provisions of the Framework Convention for the Protection of National Minorities by Poland. The text of Resolution CM/ResCMN(2020)12 of 21 October 202 on the implementation of the Framework Convention for the Protection of National Minorities by Poland is as follows: [...] "Having examined the Advisory Committee's fourth opinion on Poland adopted on 6 November 2019, Adopts the following conclusions in respect of Poland: The authorities are invited to take account of the observations and recommendations contained in Sections I and II of the Advisory Committee's fourth opinion. In particular, they should take the following measures to improve further the implementation of the Framework Convention:</p> <p>Recommendations for immediate action:</p> <ol style="list-style-type: none"> <li>1) adopt, implement, monitor and regularly evaluate, with the participation of Roma, a Roma Integration Programme for 2020 onwards, incorporating measures targeting the majority population to combat anti-Gypsyism, developing consultation mechanisms at local level, and granting multi-annual financial support to projects where necessary; in the framework of this programme, expand the Roma school assistants programme and take measures to increase participation of Roma children especially in preschool and in secondary education; furthermore,</li> </ol>	<p>Every Report on the implementation of the Framework Convention for the Protection of National Minorities by the Republic of Poland is prepared by the Minister competent for national minorities and subsequently adopted by the Council of Ministers of the Republic of Poland. In practice, each report is prepared by the department with responsibility for national minorities. Nevertheless, considering the comment concerned, the 5<sup>th</sup> Report has been supplemented with information about the department that developed it and the Ministry responsible for the preparation of the document.</p> <p>As regards the comment referring to Resolution CM/ResCMN(2020)12 of 21 October 2020 on the implementation of the Framework Convention for the Protection of National Minorities by Poland, the Report has been supplemented with information referring to the Resolution.</p>

	<p>ensure that all funds allocated to improving housing conditions of Roma are actually spent for that purpose;</p> <ol style="list-style-type: none"> <li>2) strengthen the protection and promotion of cultures and identities of persons belonging to national minorities, effectively addressing the needs of numerically smaller ones, including through the provision of adequate funding for associations of national minorities and making it more sustainable in the long term;</li> <li>3) take resolute measures to promote intercultural dialogue and mutual understanding between the majority and the different minority groups, as well as religious communities, in Poland; condemn at the highest political level all manifestations of intolerance and ethnically motivated hostility in political discourse and in the media and promote actively a sense of belonging to a shared country, based on the acceptance of the complexity of Poland's history; increase efforts to combat hate speech and effectively identify, register and investigate cases of alleged hate crime, and prosecute and sanction those responsible;</li> <li>4) take measures to enhance the quality of minority language teaching through taking more responsibility for the production of new teaching materials, ensuring that funds transferred to local authorities for minority language teaching are earmarked for that purpose, and securing the availability of qualified teachers, in particular in the Kashubian language.</li> </ol> <p>Further recommendations:</p> <ol style="list-style-type: none"> <li>5) take a pragmatic and constructive approach in the dialogue with groups having expressed an interest in the protection afforded by the Framework Convention, including the Silesians, and consider the application of the Framework Convention on an article-by-article basis;</li> <li>6) step up efforts to raise awareness of the legislative standards and remedies available for victims of discrimination, in particular among groups most frequently exposed to discrimination such as Roma; provide adequate political and financial support to the Office of the Commissioner for Human Rights to enable it to effectively pursue its independence and fulfil its mandate in protecting persons belonging to national minorities;</li> <li>7) ensure, if necessary, by taking legislative measures, the effective participation of national minorities in regional public radio and television programme councils; continuously monitor the impact of media legislation on the rights afforded to national minorities and ensure that all national minority languages and cultures that exist in society are visibly and audibly present in both regional and national broadcasting;</li> <li>8) increase efforts to collect disaggregated data on the socio-economic participation of the Roma minority in Poland, especially on housing and employment, and on that basis ensure the effective participation of Roma in economic and social life by designing and implementing comprehensive and adaptable policy measures;</li> </ol>	
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- 9) enter into a dialogue with representatives of national minorities on a reform of the working mechanism of the Joint Commission of the Government and National and Ethnic Minorities, to strengthen its mandate and revisit the appointment procedure with a view to better reflecting diversity within minorities;
- 10) ensure that the rights of persons belonging to national minorities are duly taken into account when planning and implementing administrative territorial reforms."

Considering the fact that the draft of the 5<sup>th</sup> Report... lacks any reference to the aforementioned recommendations and does not include any postulates submitted to the 4<sup>th</sup> Report..., it is impossible to give an opinion on the draft of the 5<sup>th</sup> Report...

1. The more so as the Draft of the 5<sup>th</sup> Report... provides untrue data regarding the amount of education subsidies, education of teachers, actual amount of grants, of organisation of methodical guidance. For example, the statement "...School superintendents in charge of organising a methodological consultancy network are obliged to take into account – as required – methodological consultancy services for teachers employed at schools with the language of instruction being the language of a national or ethnic minority or the regional language..." does not mean that they fulfil that obligation. We raised this issue in our comments to the previous report but, sadly, no changes have been made and our comments have been left unanswered. It must also be noted that there are no Slovak language textbooks or any will to prepare them.

Considering the above, we believe that the draft of the 5<sup>th</sup> Report on the implementation of the provisions of the Framework Convention for the Protection of National Minorities by Poland in 2017-2021 cannot be submitted and needs a thorough revision and reiteration for another opinion.

Yours faithfully,

Secretary General

The Association of Slovaks in Poland

dr Ludomir Molitoris