

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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

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

(received on 21 September 2015)



Bundesministerium des Innern, 11014 Berlin

**Subject: Fourth Opinion of the Advisory Committee on Germany
regarding the Framework Convention for the Protection of
National Minorities**

Here: Comments of the German authorities

Comments of the Federal Ministry of Justice and Consumer Protection:

In nos. 69 and 70 and in the third additional recommendation, the Opinion of the Advisory Committee is based on facts which are out of date. The reform of Section 46 of the Criminal Code it called for has already been carried out: The act on the implementation of the recommendations of the Bundestag Committee of Inquiry into the National Socialist Underground (NSU, National Socialist Underground) of 12 June 2015, effective 1 August 2015, explicitly added racist, xenophobic and other inhuman motives and aims to the list of circumstances to be taken into account in sentencing given in Section 46 (2), second sentence, of the Criminal Code. Even before this amendment was made, it was acknowledged that the "motives and aims of the offender" listed in Section 46 (2), second sentence, of the Criminal Code also include racist or xenophobic motives and that they are to be taken into account as an aggravating circumstance. However, naming these motives explicitly was intended to underline their importance for the sentences passed by courts.

Comments of the Free State of Saxony:

Referring to an ongoing trial before the Dresden Regional Court, one should point out urgently to the Committee of Ministers that there is no connection between the stabbing of an Eritrean man on the one hand and Pegida demonstrations in Dresden or general xenophobia on the other hand, although the Advisory Committee seems to have made this connection. According to paragraph 56 (p. 19) of the Fourth Opinion "the heinous fatal

stabbing of an Eritrean man in Dresden on the evening of one such demonstration, just three days after the door of his flat had had a swastika painted on it, is particularly disturbing in this context."