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**REPORT SUBMITTED BY GERMANY  
PURSUANT TO ARTICLE 25, PARAGRAPH 1 OF THE  
FRAMEWORK CONVENTION FOR THE PROTECTION OF  
NATIONAL MINORITIES**

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**FIRST REPORT**  
**submitted by the**  
**FEDERAL REPUBLIC OF GERMANY**  
**under Article 25, paragraph 1, of the**  
**Council of Europe's**  
**Framework Convention for the Protection**  
**of National Minorities**

**1999**

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The following appendices are not available in electronic version form:

Appendix A: Legal regulations in the Federal Republik of Germany that serve to protect groups falling under the Framework Convention (German texts).

Appendix B: Exemplary legal regulations in the Federal Republik of Germany that serve to protect groups falling under the Framework Convention (in English translation).

## Part I : Preliminary Remarks:

The members of the groups of German citizens protected under the Framework Convention for the Protection of National Minorities - *i.e.* the national minorities of the Danes, of the Sorbian people and of the German Sinti and Roma, and the ethnic group of Frisians in Germany (cf. the comments under Article 3, para. 1, no. 1, below) - have, with the exception of the German Sinti and Roma - their respective traditional settlement area only in certain *Länder* [federal states] of the Federal Republic of Germany. These are the Land of Schleswig-Holstein, the Free State of Saxony, and the *Länder* of Brandenburg and Lower Saxony. Due to this geographical distribution of minorities, the present State Report focuses on the information provided by these *Länder* on legislative acts and on other measures taken to enforce the principles established in the Framework Convention. In addition, specific parts of the Report deal with the German Sinti and Roma in the other *Länder* of the Federal Republic of Germany.

### I.1

The members of the groups protected under the Framework Convention for the Protection of National Minorities, as German citizens, enjoy all rights and freedoms granted under the Basic Law [Constitution of the Federal Republic of Germany] without any restrictions. The ban on discrimination pursuant to Article 3, para. 3, 1<sup>st</sup> sentence of the Basic Law also includes the members of these groups. The principle of equal treatment and the prohibition of discrimination bind legislation, the executive, and the judiciary as directly enforceable law (Article 1, para. 3, of the Basic Law). The constitutional stipulations regarding the protection of these groups are put into concrete terms by laws, ordinances, statutes, and administrative action. The constitutional rules also apply directly in the *Länder* and are explicitly confirmed in the Constitutions of some of the *Länder*. The legislation of the *Länder* refers to national minorities who have their settlement area in the respective *Land*.

The relevant instruments of international-law instruments governing protection of minorities form an integral part of national law. Germany also actively supports the protection of minorities at the international level. (For details, cf. the full account given in Part II below regarding Article 1 of the Framework Convention.)

### I.2

Under the Federal Act of 22 July 1997 ratifying the Framework Convention, the latter ranks, in Germany as a federal law which takes precedence over subordinate law, including *Land* laws [supremacy of federal law], and as a matter of principle [primacy of international law], is to be applied as the more specific law overriding other federal laws. Full compliance with the Convention at the national level is legally guaranteed. For details, cf. Part II below.

### I.3

The Federal Republic of Germany is a federated state. The public authority established by the Basic Law is divided among the state as a whole - *i.e.* the "Bund" or federal level or Federal Government, - and its various constituent states, *i.e.* the *Länder*. The pertinent distribution of authority (division of responsibilities) derives from the Basic Law, which contains detailed provisions on the tasks for which the *Bund* has law-making power [either exclusive legislative power or concurrent power with the *Länder*] and/or which are subject to federal administration. Any intervention by the *Bund* in the jurisdiction of the *Länder* in the sense of federal "superordination" is only admissible in exceptional cases as defined in the Basic Law. For legislation (laws and ordinances having the force of law), the primary responsibility lies with the *Bund*, and implementation of laws, *i.e.* administration, with the *Länder*. The *Länder* execute federal laws in their own right, *i.e.* on their own responsibility. In addition, local governments are guaranteed the right to regulate all local affairs in their own right, within the limits prescribed by the laws; in particular, this includes their own responsibility for staffing matters, organisational jurisdiction, fiscal jurisdiction/financial sovereignty, right to make by-laws/ordinances, and local town and county planning.

### I.4

Germany has a population of some 82 million inhabitants (as of 31.12.1996), of whom about 7.49 million persons are non-citizens. Statistics based on ethnic criteria are not gathered. Consequently, only estimates are available as regards the number of persons protected under the *Framework Convention*. Everybody is free to acknowledge his or her affiliation with any of the groups protected under the *Framework Convention* [belonging to any of these groups is the personal decision of every individual, which is not registered, verified or contested by state authorities]. With the exception of some communities with a Sorbian or North Frisian majority, the members of the groups protected under the *Framework Convention* form the minority of the overall population in their settlement areas.

#### I.4.1 The Danish minority

The Danish minority, like the German majority population, live in their traditional settlement area in the German part of Schleswig, just as the German minority and the Danish majority population do on the Danish side in North Schleswig - *Sønderjylland*. Germans and Danes have been living together in this area for more than one thousand years. Today's border between the two countries was established in 1920 on the basis of the results of two plebiscites agreed upon in the Treaty of Versailles. The number of members of the Danish minority living in the Schleswig region of the *Land* of Schleswig-Holstein is estimated at some 50,000 persons who, for the most part, live in the city of Flensburg, in the *Kreise* [county-type administrative districts] of North Friesland and Schleswig-Flensburg, and in parts of the *Kreis* of Rendsburg-Eckernförde. The percentage of the members of the Danish minority in the population of the various towns varies greatly, and ranges from local

communities where only single minority families live, to about 20 per cent in the town of Flensburg and some smaller places.

The members of this minority understand Danish, and most of them speak the language. In addition, all of them have a good command of German. Parts of the Danish minority – as well as the majority population - speak the regional Low German language; and in the immediate border area, the Danish minority as well as their German fellow citizens also speak *Sønderjysk*, a South Jutish dialect of Danish.

#### **I.4.2 The Sorbian people**

The Sorbs have lived in Lusatia since 600 A.D., when Slavic tribes settled in the area between the Baltic Sea and the Erz Mountains, which had been largely depopulated by the out-migration of Germanic tribes. Since King Henry I placed the Sorbs' settlement area under German rule in 929 A.D., and as increasing numbers of Germans settled there, the Sorbs – a West Slavic people – have been living together with the German population for about one thousand years. They have no mother country outside the borders of Germany.

The number of persons who consider themselves Sorbs is not known. The estimated number is about 60,000 Sorbs, of whom two thirds live in Saxony, and one third in Brandenburg. In some local communities in the *Kreis* of Kamenz, they account for up to 90 per cent of the population; in some other villages of the settlement area, the majority of the inhabitants are Sorbs. They make up about 10 per cent of the population of the overall settlement area, while in the towns they account for less than 2 per cent.

Approximately 35,000 Sorbs have a command of written and spoken Sorbian; all Sorbs speak German as well.

In the Middle Ages, the Sorbian language was spoken in a much more extended area than today. Sorbian is part of the West Slavonic language family. From the various dialects of colloquial Sorbian, two written languages developed: Upper Sorbian [more precisely: the Sorbian of Upper Lusatia], and Lower Sorbian [the Sorbian of Lower Lusatia]. The areas where Sorbian is spoken today are Upper Lusatia in the northeast of the Free State of Saxony, and Lower Lusatia in the southeast of the *Land* of Brandenburg. The Sorbs living in Lower Lusatia are also known as Wends.

#### **I.4.3 The ethnic group of Frisians in Germany**

The Frisians, as a people of the coastal region of the North Sea, have been known since about the start of the Christian Era. West Friesland - covering the contemporary province of Friesland in the Netherlands, and adjacent regions - and East Friesland have been the settlement area of Frisians since the times of the earliest historic sources. The settlement area of the East Frisians essentially covers East Friesland and the northern

Oldenburg region up to the mouth of the Weser River on the North Sea. From the coastal region and from the islands, especially after the devastating storm surges during the Middle Ages, settlement also extended to more southerly inland regions where other people of non-Frisian origin already lived.

The Saterland Frisians are descended from those Frisians who, between 1100 and 1400, moved from the North Sea coast that had been devastated by storm tides, to settle, more to the south, in the Saterland where Westphalians had already settled. The Saterland Frisians live in the Saterland Community which comprises the villages of Strücklingen, Ramsloh, Scharrel and Sedelsberg, including many farmstead hamlets. The population structure of the Saterland, as well as that of all regions of Germany, changed as a result of the general mobility in this century and the in-migration of refugees and expellees after the Second World War. The share of Saterfrisians in the total population of the community has been reduced once again in recent years because of the arrival of many so-called "late repatriates" (Spätaussiedler) who, as former members of German minorities, especially in the former Soviet Union and in South Eastern Europe, returned to their ancestors' native country where they settled in places having sufficient housing available. The majority of the inhabitants of the Community of Saterland, however, (ca. 12,000) regard themselves as Saterlanders.

Since the times of the migration of peoples (Middle Ages population movements), North Friesland at first had not been colonised. The Frisians - presumably by the 7<sup>th</sup> and 8<sup>th</sup> centuries - were the first to settle in some areas of North Friesland. Another group of settlers came to the low-lying marshes in the 11<sup>th</sup> and 12<sup>th</sup> centuries. The old North Friesland was not a political entity, but consisted of loosely connected administrative districts. Until 1867, North Friesland was part of the Kingdom of Denmark, after that - until 1871 - part of Prussia, and subsequently, together with Prussia, part of the German Empire. The settlement area of the North Frisians is along the west coast of Schleswig-Holstein (*Kreis* of North Friesland, with the islands of Sylt, Föhr, Amrum and Helgoland). About 50,000 to 60,000 persons consider themselves North Frisians on account of their ethnic descent and their sense of personal identity. In their settlement area, North Frisians account for about one third of the population, while in some island communities they form the majority.

Frisian, as an autonomous and ancestral language, descended from the North Sea Germanic branch of the West Germanic subfamily, differs distinctly from Netherlandic (Dutch and Flemish) and Low German and, in terms of historical linguistics, is closely related to Old English. It has evolved in three subgroups: West Frisian, East Frisian, and North Frisian. West Frisian is spoken in the province of Friesland in the Netherlands. East Frisian is native to East Friesland in Lower Saxony. Both regions form the historical (geographical) centre of the Frisians.

By around 1500, the East Frisians had already replaced the Frisian language by Low German as the language used for drafting legal documents. By 1800, for the most part, they had relinquished their ancestral Frisian language with the language finally disappearing at the beginning of this century on the last of the North Sea Islands. North Frisian consists of two groups of dialects with nine local varieties: six of these [so-called Continental North Frisian]

are spoken along the west coast of Schleswig-Holstein (including the holms, or *Halligen*), and three of them [so-called Insular North Frisian] on the islands of Sylt, Föhr/Amrum, and Helgoland. Despite the linguistic diversity brought about by the subdivision into dialects, the linguistic communality of North Frisian prevails. Of the North Frisian population, some 10,000 persons still speak North Frisian; another 20,000 persons understand this language.

Saterland Frisian, an Emsland-based dialect of the Old East Frisian language, continues to be used as the language of everyday oral communication by about 2,000 Sater Frisians. About twice as many people understand Saterland Frisian. Despite many Low German loan words, Saterland Frisian has preserved its linguistic independence. The Saterland Frisian language originally had superimposed itself on the Westphalian Low German of the first inhabitants of the Saterland. After East Friesland and the adjacent regions of Saterland had changed over to Low German, survival of Saterland Frisian was possible because the Saterland villages were located in a sandy river valley surrounded by extensive fens which provided a shield from contacts with the outside world and from its penetrating and shaping influence well into this century.

East Friesland is still inhabited mainly by people of East Frisian origin. Although the Frisian language is extinct in these parts, an East Frisian - cultural - identity continues to be preserved by the majority of the people in East Friesland, living in the area between the border of the Netherlands and the Weser River. However, it is not possible to give a precise estimate regarding the share of people in the population of East Friesland who identify themselves as Frisians.

The Frisians in East Friesland are united by the feeling of a common history and culture, which finds its expression in a regional identity. They do not consider themselves a national minority. The Saterland Frisians regard themselves as the Saterland Frisian language group. Nor do the largest group of organisationally associated North Frisians - the *North Frisian Association (Nordfriesischer Verein)* - consider themselves a national minority; rather, they regard themselves as a group having their own language, history and culture within Germany. A much smaller organisation, the *Forining for nationale Friiske* (Association of National Frisians), sees the Frisians as a people in its own right and considers themselves a national minority in Germany. Nowadays, the two groups have agreed on to refer to themselves as the "Frisian ethnic group" and are thus designated in the Constitution of the *Land* of Schleswig-Holstein.

Despite their different positions regarding the description of their identity, the Frisian associations and organisations welcome the claim to the protection and promotion of their culture and language, which is afforded to them by the application of the Framework Convention for the Protection of National Minorities.



#### **I.4.4 The German Sinti and Roma**

The Sinti have traditionally lived in German-speaking territory since the 14<sup>th</sup> or 15<sup>th</sup> centuries. Roma settled in Germany at a later time. Again and again, in the course of history, Sinti and Roma suffered discrimination, were crowded out from various trades and driven out of towns or regions. In instances, even into this century, attempts made by Sinti to settle in their home region were thwarted. Despite these problems, the Sinti and Roma by and by managed to establish themselves locally, and in their respective home regions, they worked as manual workers, employees, civil servants, craftsmen, artists, small tradesmen and handicraftsmen, and other businesspeople. Due to the racist fanaticism under the National Socialist (Nazi) tyranny, the Sinti and Roma in Germany and in the areas occupied by German armed forces were subjected to persecution and genocide with the aim of their extermination. Hundreds of thousands of Sinti and Roma were murdered, and their cultural heritage was, for the most part, destroyed. Of the 40,000 officially registered German and Austrian Sinti and Roma, more than 25,000 were murdered by May 1945. This persecution, aimed at systematic and definitive extermination, left its mark on the survivors and also has an impact on the members of the generation born after 1945. The memories of those persecuted will, continue to decisively influence their consciousness and their identity. After 1945, many of the surviving Sinti and Roma, whose health had been impaired and whose material basis of existence had been destroyed, still had to struggle with discrimination; for instance, they were subject to local registration with the police and the criminal identification service. In this context, cf. also the comments under Article 4, para. 2, no. 2, below.

The German Sinti and Roma are estimated to number up to 70,000 persons. Some of the Sinti organisations put the numbers even higher. The majority of them live in the capitals of the "old *Länder*" of Germany [the 11 federal states that belonged to the FRG within its territorial boundaries up to German unification], including Berlin and its environs, and in the conurbations of the greater Hamburg area, the Rhine/Ruhr region with Düsseldorf and Cologne at its centre, the Rhine/Main and Rhine/Neckar conurbations, and the greater Kiel area. In some cases, major numbers of German Sinti and Roma also live in regions of geographically close, smaller towns. Thus, German Sinti and Roma populations are to be found, for instance, in medium-sized and small towns of East Friesland, Northern Hesse, the Palatinate, Baden and Bavaria. The German Sinti and Roma only represent a small, not quantifiable, share of the population in all of their settlement areas.

The Romany spoken by the German Sinti and Roma is the language of those members of this national minority who traditionally live in Germany. It is estimated that the Romany of the German Sinti is spoken by up to 60,000 persons. This is an autonomous language, deriving from Sanskrit, which is spoken by the Sinti in Western Europe, especially in German-speaking areas, and which differs from other Romany languages used in Europe. In addition, the Romany of the German Roma is spoken by an estimated number of up to 10,000 persons. Given the dispersed settlement area, there is no uniform speech area,

confined to one particular *Land*, for the Romany language traditionally spoken in Germany. Instead, this language is spoken in most of the *Länder* of the Federal Republic of Germany.

Within the organisations of the German Sinti and Roma, there is – as in the case of the Frisians - no general agreement on the designation as either a national minority or an ethnic group. The Central Council of German Sinti and Roma, with its nine affiliated *Land* associations, as well as other associations and institutions that belong to the *Central Council* consider the German Sinti and Roma to be a national minority in Germany, but at the same time part of the German people. This view is shared by other associations of German Sinti and Roma, or of German Roma.

Associations of German Sinti, which co-operate within the Sinti Alliance Germany (in the process of being founded), see themselves as an ethnic Sinti group within the German people, which wishes to be integrated without discrimination, but also without special privileges, and to cultivate traditional language and culture at the private level, without any governmental measures in this sector. These Sinti reject protection as a national minority. This position must be taken into account by the state to the same extent as the position taken by the *Central Council*. The obligation flowing from Article 3, para. 1, of the *Framework Convention* means for the state that the only choice is special protection and promotion. It is up to each individual concerned to avail him/herself of this offer of protection and promotion, or to reject it. The same approach must be taken to the designation of the German Sinti and Roma as a national minority. German Sinti and Roma who, on the basis of their sense of identity, do not consider themselves a national minority, must not, either by a third party or by the state, be seen as a national minority. On the other hand, however, it cannot be denied to any German Sinti or Roma that he/she should identify him/herself as an integral part of the German people and, at the same time, as a member of the national minority of German Sinti and Roma. There is agreement between both positions that the German Sinti and Roma are an inseparable part of the German people. The state acknowledges this common basic position.

## I.5

In the Schleswig region, there are common settlement areas of various minorities (Danes and North Frisians, and a few Sinti and Roma) in some places. Here, the North Frisians are in the minority as compared to the Danes (but, in instances, depending on the local situation, Danes may also form the minority, with a North Frisian majority). Both groups co-operate, also politically in some instances (cf. the comments under Article 6, below). Frisian is also taught at some schools of the Danish minority. Difficulties regarding relations with one another, and/or discrimination against members of the smaller groups are not known.

As far as Sinti and Roma settling in areas where other groups live, there is no information on co-operation with other groups at the local level. So far, discriminatory action by other minority groups has not been reported.

## I.6

In 1997, the gross domestic product at market prices amounted to 3,641.80 billion DM (change as compared to the previous year: +2.8 %), the gross national product (GNP) at market prices amounted to 3,612.20 billion DM (change as compared to the previous year: +2.8%), and the net national product (nnp) at factor cost (national income) to 2,746.70 billion DM. The national income is composed of the gross wage and salary income amounting to 1,906.60 billion DM, and the gross income from entrepreneurial activity and property to the amount of 840.10 billion DM. The gross income per inhabitant in 1997 amounted to 33,500 DM, and the gross income per wage earner to 81,100 DM.

In 1997, the gross domestic product, per inhabitant, at current prices amounted to 44,400 DM (change as compared to the previous year: +2.6%).

## I.7

Following its entry into force, the Framework Convention for the Protection of National Minorities has continued to be the subject of intensive media reporting both at the supra-regional level and in the central settlement areas of the minorities concerned. The Federal Ministry of Justice published, and widely disseminated, a brochure on the *Framework Convention*, covering the Convention text, the Federal Act ratifying the Convention, and the pertinent memorandum, the Explanatory Report to the Framework Convention, and an introduction to the general subject-matter. The text of the *Framework Convention* has also been published, *inter alia*, in the collection of texts compiled by the Federal Centre for Political Education entitled "Human Rights - Documentation and Declaration". The *Länder*, too, have drawn attention to this international law instrument in various publications (brochures, press releases, Minority Report, etc.). The minorities, in particular, have informed their members in various ways.

Within the Federal Government, the Federal Ministry of the Interior has the overall responsibility for ensuring the implementation of the *Framework Convention*. Measures in support of the implementation have been, and continue to be, taken to elucidate the contents of this international law instrument, and its practical implications, by means of lectures and other contributions at conferences and seminars, in which both responsible government officials and representatives of the minorities concerned took part. One of the permanent tasks is implementation counselling for the various *Länder* and government departments, especially also through the sharing of practical experience gained in other *Länder* and foreign countries, study of the requirements of the minorities concerned, and advice provided to *Länder* and minorities.

In November 1998, the first Implementation Conference regarding the *Framework Convention* took place, which brought together representatives of the Federal Ministries responsible for the protection of minorities, similar representatives of the *Länder* of the Federal Republic of Germany, and representatives of the groups protected under the *Framework*

*Convention.* The subject was the implementation status of the *Framework Convention* in Germany, the deficits still encountered in this respect, and the development of the German State Report. Such conferences are to be held at regular intervals. An implementation conference - of several days' duration - was also held on the European Charter for Regional or Minority Languages. The Council of Europe instruments on the protection of minorities and their implementation status are also regularly the subject of discussions of bodies in which parliamentarians, government representatives and representatives of the minorities cooperate.

Before its final endorsement at the national level, the State Report has been sent to the central organisations of the groups concerned for their comments. Their feedback has, to a large extent, been embodied in the present State Report. After its submission to the Secretariat of the Council of Europe, this State Report will be published in Germany.

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## Part II

### Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of **human rights**, and as such falls within the scope of **international co-operation**.

1. The Federal Republic of Germany has actively contributed to the development of binding rules of law for the protection of national minorities and traditional ethnic groups and/or their respective language and culture. On 10 September 1997, the Federal Republic of Germany ratified the Framework Convention for the Protection of National Minorities which for Germany entered into force on 1 February 1998. In addition to the *Framework Convention*, the European Charter for Regional or Minority Languages of the Council of Europe, which is designed to protect and promote regional or minority languages traditionally spoken in a Contracting State as an endangered part of European cultural heritage, was ratified by Germany on 16 September 1998. It entered into force in Germany on 1 January 1999. In Germany, the minority languages protected under the *Charter* are: Danish, Upper Sorbian, Lower Sorbian, North Frisian and Saterland Frisian, and the Romany language of the German Sinti and Roma; Low German is protected as a regional language. A Federal Government bill to revise the Federal Act ratifying the *Language Charter* aims at extending, in the near future, the protection of the Romany language to Part III of the Charter for the area of the *Land* of Hesse and possibly other *Länder* as well.

Germany acceded to the International Covenant on Civil and Political Rights of 19 December 1966, to the International Covenant on Economic, Social and Cultural Rights of 19 December 1966, and to the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) of 7 March 1966. In the context of the obligations of reporting imposed by these instruments, reports are also given on the measures taken for the protection of minorities.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) entered into force in the Federal Republic of Germany on 15 December 1953.

In Germany, the OSCE documents are also effective, especially the document of the Copenhagen Meeting of the CSCE Conference on the Human Dimension of 29 June 1990.

In order to help to solve the problems of minorities and majorities in Europe and thus to contribute to conflict resolution, the Federal Republic of Germany (the Federal Government - *Bund* - and the *Land* of Schleswig-Holstein) and the Kingdom of Denmark founded the European Centre for Minority Issues (ECMI) in 1996 in Flensburg on the German-Danish border, and finance this centre on a pro rata basis. ECMI deals with national minorities and other autochthonous (traditional) ethnic groups and addresses current problems from a European perspective through research, information and advisory services.

Priority areas of international co-operation involving the Federal Republic of Germany with regard to the protection of national minorities are, in particular, the following:

Council of Europe -

Participation, with the involvement of the national minorities in Germany, in Europe-wide implementation conferences on the Framework Convention and the European Charter for Regional or Minority Languages; co-operation within the *Committee of Experts on the Protection of National Minorities* (DH-MIN); participation in cross-national working programmes of the Council of Europe (Joint Programme, Intergovernmental Activities, etc.) concerning the protection of minorities, and support for programmes.

Bilateral contacts with other Council of Europe Member States on issues regarding general and specific protection of minorities (information exchanges and consultations).

OSCE -

Participation in conferences on legal aspects of minority issues (implementation meetings, minorities conferences, Roma seminars), with the involvement of the national minorities in Germany; support for the work of the OSCE High Commissioner on National Minorities in The Hague and the Office of Democratic Institutions and Human Rights (*ODIHR*) in Warsaw, with its *Roma Contact Point*.

Other institutions -

Support for the activities of the Commissioner of the Council of the Baltic States to promote democratic institutions and human rights, including the rights of persons belonging to minorities; promotion, through non-governmental organisations (NGOs) and their institutions, of the development of the practical protection of minorities; support for work projects of the international umbrella organisations of minorities, Federal Union of European Nationalities (FUEN) and Youth of European Nationalities (YEN), of which all national minorities and ethnic groups in Germany are members.

2. The protection of minorities is guaranteed as part of the protection of human rights by the fundamental rights enshrined in the Basic Law (*Grundgesetz - GG*; the Constitution of the Federal Republic of Germany). This also applies to the justiciability of issues concerning the protection of members of national minorities. Under Article 19, para. 4, 1<sup>st</sup> sentence of the Basic Law, any person whose rights might have been violated by public authority has recourse to the courts. "Public authority" within the meaning of para. 4 refers to the entire executive branch, irrespective of whether the latter is qualified as "government"

or "administration". Consequently, recourse to the courts is also guaranteed to any member of a national minority.

2.1 In this context, the Administrative Procedure Act (*VwVfG*) and the Code of Administrative Court Procedure (*VwGO*) are of particular significance. The *VwVfG* lays down the principles for the procedure to be applied by an administrative authority for the purpose of passing an administrative act or concluding a public law contract. The *VwGO* makes it possible for governmental administrative action to be reviewed by a court by laying down both the protest procedure for reconsideration of acts of administrative authorities, as well as the administrative remedy procedure in court (sequence of courts for successive stages of appeal: administrative court - Higher Administrative Court - Federal Administrative Court).

2.2 However, the prerequisite for having recourse to the courts is that the relevant rule of law grants the person concerned an entitlement and that the complainant is legally affected. Among the rights granted to an individual are not only the fundamental rights, but all public rights (of an individual) deriving from the Constitution, formally enacted laws, statutory ordinances, autonomous legislation (local statutes), and customary law.

On the other hand, general regulatory orders have directly binding force only for the Administration. However, they may become effective externally (*i.e.* affect third parties outside the Administration) in cases where administrative practice in conjunction with the equal treatment principle so warrants. The same goes, with regard to the Danish minority in Germany, for the *Bonn Declaration* of 1955 (cf. Appendix) which also does not grant any direct rights/entitlements.

## Article 2

The provisions of this Framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles **of good neighbourliness, friendly relations and co-operation between States.**

The Federal Republic of Germany attaches great importance to the protection of national minorities in view of safeguarding peace within the international community and in the interest of harmonious and mutually beneficial coexistence within countries, and complies with its obligations at the national level. The principles of tolerance, understanding, and good and friendly relations have their roots, *inter alia*, in the United Nations Declaration Principles of International Law regarding friendly relations between states in conformity with the United Nations Charter. The Federal Government feels a particularly strong commitment to these principles and to the standards laid down in the OSCE documents on the Human Dimension, and has taken them as the basis for bilateral good-neighbour and good-will treaties as well as for other agreements containing provisions on the protection of minorities, which Germany concluded with the former Soviet Union, Poland, the former Czechoslovakia, Hungary, Romania and some other countries (cf. the comments under Article 18, para. 1, below).

### Article 3

(1) Every person belonging to a national minority shall have the right freely to **choose to be treated or not to be treated as such**, and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

(2) Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present Framework Convention **individually as well as in community with others**.

#### para. 1

1. In Germany, national minorities are those groups of German citizens who are traditionally resident in the Federal Republic of Germany and live in their traditional/ancestral settlement areas, but who differ from the majority population through their own language, culture and history - *i.e.* an identity of their own - and who wish to preserve that identity. These are: the Danish minority, the Sorbian people, the Frisians in Germany, and the German Sinti and Roma. It is to be noted, however, that the Sinti and Roma more or less live in *all* parts of Germany, mostly in rather small numbers. The Danes, the members of the Sorbian people, and the German Sinti and Roma are designated as national minorities, while the term of "Frisian ethnic group" reflects the wish of the large majority of Frisians *not* to be classed as a national minority, but as a Frisian ethnic group (cf. Appendix: Article 5, para. 2, of the Schleswig-Holstein Constitution). The four aforementioned groups cover all groups which are not part of the majority population but have an identity of their own, and have been traditionally resident in Germany. (The Jewish Community in Germany do not consider themselves a minority, but a religious community.)

2. The freedom of the individual members of a national minority to decide for themselves whether they wish to be identified with the given national minority and therefore choose to be treated as belonging to that national minority is a fundamental element of the protection of national minorities, based on democratic principles. Nobody may - either directly or indirectly - be forced, against his/her will, to identify him/herself as a member of a national minority. Thus, every person belonging to a national minority can decide for him/herself whether he/she wishes to be included in the category of persons for whose protection and promotion nations take measures in compliance with the Framework Convention. For the Federal Republic of Germany, this right derives from the general freedom of the person as guaranteed by the Basic Law (Article 2, para. 1): "Everybody has the right to self-fulfillment in so far as they do not violate the rights of others or offend against the constitutional order or morality." Thus it is everybody's individual personal decision - which is neither registered, reviewed or contested by the German state - whether he/she chooses to be considered a member of any of the groups protected under the Framework Convention.



3. In various *Länder*, the principle of freedom to declare oneself a member of a national minority is defined in the respective Constitution or in relevant laws:

3.1 Article 5, para. 1, of the Constitution of the *Land* of Schleswig-Holstein expressly lays down that such declaration is voluntary. Under II.1 of the Declaration by the *Land* Government of Schleswig-Holstein on the Status of the Danish Minority (*Kiel Declaration* of 26 September 1949) says that: "Everybody is free to declare his/her affiliation with the Danish ethnic community and with the Danish culture. Such declaration shall not be officially contested or reviewed." This passage of the Kiel Declaration has also been incorporated in the Declaration by the government of the Federal Republic of Germany of 29 March 1955.

3.2 Article 37, para. 2, of the Constitution of the *Land* of Saxony-Anhalt also explicitly establishes the freedom to declare oneself a member of a national minority.

3.3 Section 1 of the Act on the Sorbs' Rights in the Free State of Saxony (Saxon Sorbs Act) and Section 2 of the Act on the Specification of the Rights of the Sorbs (Wends) of the *Land* of Brandenburg provide that a member of the Sorbian people is whoever acknowledges his or her affiliation with the Sorbian people, and that such declaration shall be free. In addition, it is expressly provided that it shall be neither contested nor verified.

4. In Germany, the *Federal Statistical Office* and the *Land* Statistical Offices are responsible for compiling official statistics. Since it is every individual's private decision to declare him/herself a member of a minority, such affiliation is neither registered nor recorded officially, and consequently there are no official statistics based on ethnic or linguistic features. Therefore, only estimated figures are available regarding the members of the various national minorities and other ethnic groups traditionally resident in Germany. As a rule, the figures are provided by these groups themselves and have been compiled on the basis of membership numbers in minority organisations, votes cast for minority party tickets, the number of pupils enrolled in minority schools, and the number of participants in activities or organised events.

5. Cf. **Section I.4** above for a summary of further details regarding minorities.

**Article 3, para. 2** [rights and freedoms]

The rights and freedoms granted to members of such groups by the implementation of the Framework Convention may be exercised individually. These individual rights may also be exercised in community with others (for further details, cf. comments under Article 7 below).

In addition to these individual rights and freedoms, legal provisions have been laid down explicitly for the benefit of political parties of national minorities under federal law (election

to the German *Bundestag*; Political Parties Act) and under *Land* legislation (electoral law in Schleswig-Holstein and Brandenburg), or for bodies representing the interests of a national minority (Sorbs' Council in the Free State of Saxony and in the *Land* of Brandenburg).

#### Article 4

(1) The Parties undertake to guarantee to persons belonging to national minorities the right of **equality before the law** and of equal protection of the law. In this respect, any **discrimination** based on belonging to a national minority shall be prohibited.

(2) The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of **economic, social, political and cultural life, full and effective equality** between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

(3) The measures adopted in accordance with paragraph 2 shall not be considered to be an act of **discrimination**.

#### para. 1

1. Equality before the law and the prohibition of factually unwarranted unequal treatment (discrimination) are the keystones of a democratic body politic and, at the same time, of the protection of national minorities which aims at the peaceful living together of various ethnic groups in a state community in which tolerance prevails. The principle of equality before the law and the ban on discrimination are enshrined in the Basic Law of the Federal Republic of Germany and in the Constitutions of the *Länder*, as well as in various subject-specific laws, and comply with the obligations under paragraph 1.

2. Central provisions of the Basic Law are Article 3, para. 1 ("All persons are equal before the law."), and Article 3, para. 3, 1<sup>st</sup> sentence, stipulating that no person shall be prejudiced or favoured because of sex, birth, race, language, national or social origin, faith, religion or political opinions.

In Section I of the Declaration by the government of the Federal Republic of Germany on the Rights of the Danish Majority (*Bonn Declaration*) of 29 March 1955, it was made clear that the members of the Danish minority, like all German citizens, enjoy the rights guaranteed by the Basic Law of the Federal Republic of Germany of 23 May 1949. These constitutional rights are listed under paras. 1 to 12. The *Bonn Declaration* of 29 March 1955 had been preceded by the Kiel Declaration of the *Land* of Schleswig-Holstein Government on the Status of the Danish Minority of 26 September 1949.

2.1 In some of the *Land* Constitutions, additional safeguards have been included to enforce the ban on discrimination - thus, for instance, in Articles 1 and 134 of the Hessian Constitution, Article 6 of the Constitution of the Free State of Saxony, Article 12 of the Constitution for the *Land* of Brandenburg, Article 1 of the Constitution of the *Land* of Schleswig-Holstein, and Article 2, para. 1, of the Constitution of the *Land* of Baden-Wurttemberg. In the Constitution of Berlin, in Article 10, para. 2, an overarching non-discrimination clause has been included, under which "nobody shall be prejudiced or favoured because of their sex, birth, race, language, national or social origin, faith, religion or political opinions". In Article 4, para. 1, of the *Land* Constitution of North Rhine-Westphalia, the prohibition of discrimination on the grounds of belonging to a national minority in that *Land* has also been expressly laid down. In Bremen, the ban on discrimination is enshrined in Article 2 of the *Land* Constitution.

2.2 The constitutional ban on discrimination is also contained in various ordinary laws of the *Bund* and the *Länder*, of which some examples are given below.

Thus, non-discriminatory school education is specifically laid down in Section 1, para. 1, 1<sup>st</sup> sentence, and para. 2, Section 3, para. 3, of the Hessian Schools Act and in Section 1, para. 1, of the Schools Act of Baden-Wurttemberg.

Eligibility for employment in the public service is laid down as a rule in Article 33, para. 2, of the Basic Law. This provides that every German citizen shall be equally eligible for any public office according to his/her aptitude, qualifications, and professional achievements. The relevant provisions implementing this are contained in Section 8 of the Act on Federal Public Officials (*Bundesbeamtengesetz*) which stipulates that selection of applicants for public official (civil service) status must be based on aptitude, qualifications and professional achievements, irrespective of sex, birth, race, language, national or social origin, faith, religion or political opinions, origin or the person's associations. Similar rules are laid down in Section 7 of the Act Defining the Scope of Officials' Rights and Duties (*Beamtenrechtsrahmengesetz*) and, accordingly, the *Land* Civil Service Codes, e.g. Section 8, para. 1, 1<sup>st</sup> sentence of the Hessian Civil Servants Act, Section 11, para. 1 of the Act on *Land* Public Officials of Baden-Wurttemberg, or Section 12 of the Act on *Land* Public Officials of Berlin, which provides that selection of applicants is to be based on "aptitude, qualifications and professional achievements, irrespective of sex, parentage, race, faith, religious or political opinions, labour union affiliation, origin or the person's associations".

Section 67 of the Federal Staff Representation Act (BpersVG) states the following: "The employing agency and the staff council shall see to it that all staff members of the agency are treated in justice and fairness, and in particular, that there is no form of unequal treatment of persons [discrimination] on account of their parentage, religion, nationality, origin, political or unionist activities or views, or sex". On the basis of the outline provision of Section 105 of the BpersVG (ban on discrimination), the *Länder* have issued appropriate regulations.

3. The Central Council of German Sinti and Roma complains that there are still instances of harassment by public authorities towards individual members of the minority. It is also pointed out that stigmatising prejudices and discriminatory views directed at this minority continue to be frequently reflected in media reporting. These problems are encountered, in particular, in the context of reporting on criminal charges which sometimes - also on the basis of information provided by the police - contains mentions as to the ethnicity of an accused person, without such mention being required for understanding the reported incident. The Central Council holds that any official indication regarding the ethnic background violates the valid principle that it is forbidden to make any *ex officio* review of a person's declaration of his/her affiliation with the ethnic community and culture of a national minority. Police or press reports containing ethnicity information have caused the Central Council to call for a ban on discrimination in the media laws of the *Länder*. In the Council's view, the changes achieved in media reporting as a result of voluntary self-regulation by the media are not sufficient. At their Bonn conference on 15 April 1999, the Heads of the *Land* Governments discussed the subject of "Representation of Minorities in the Media". They reached the conclusion that the public service media deal with the problems of minorities in an appropriate and adequate form. At the same time, however, they reaffirmed their will to continue resolutely to oppose any attempts at discriminatory practices. They also concluded that, for the most part, discrimination of minorities is not specific to the media but rather is a general problem of society. Thus, there is a need for political action by means of information/education (awareness-raising). This insight led the Heads of *Land* Governments to reach the conclusion that there is no evidence indicating any discrimination against minorities on the part of the media which would call for changes to the media laws. Also, the Central Council pleads for the inclusion of specific bans on discrimination in general administrative law and in the legal provisions governing public officials (civil service law). Some of the *Länder* have promised to look into these proposals.

In order to overcome this problem, *Land* authorities have ordered references to affiliation with particular groups of the population to be omitted from press releases by public authorities unless the general public would, without such references, not be able to fully understand the facts of the issue under consideration.

For press releases, the German Press Council laid down the following rule:

"Nobody may be discriminated against on account of his/her sex or his/her belonging to a racial, ethnic, religious, social or national group." (Press Code, no. 12)

For further specification, the *German Press Council* on 21 September 1994, endorsed an amendment to the previous Directive on Protection from Discrimination. Under the new Directive 12.1 on journalistic work, the recommendations now read as follows:

"In reports 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, without which the reported incident would not be properly understood. Special attention should be paid to the fact that such mention might foment prejudices against groups requiring protection."

Therefore, the *Land* Governments have repeatedly emphasised that they prefer voluntary self-regulation of the media to any legal solution in media law, which raises constitutionality questions in view of the freedom of the press and the radio, as guaranteed under the Constitution. As the Federal Government sees it, such legislative action would not be feasible from a constitutional law point of view.

In view of the problems referred to above, the *Central Council* endeavours to have German Sinti and Roma represented on supervisory bodies of the media (which, on principle, are subject to *Land* jurisdiction). The *Länder* point out that compliance with this request, especially in view of the small number of Sinti and Roma living in a given *Land*, raises legal and practical problems. By its decision of 25 August 1998, the Federal Constitutional Court (*BVG*) ruled that the *Central Council* does not have a claim to a seat on the supervisory bodies of *Deutschlandradio* and of *Hessischer Rundfunk*, either in terms of Article 3, para. 1 (principle of equality), or under Article 5, para. 1, 2<sup>nd</sup> sentence (freedom of the press), of the Basic Law. In its constitutional complaint, the *Central Council* argued that the Central Council of Jews in Germany was represented on the supervisory bodies, but that the Central Council of German Sinti and Roma was not. In its decision, the *Federal Constitutional Court* took account of the fact that, like other denominational groups, the *Central Council of Jews in Germany*, as a denominational group, was represented on the supervisory bodies while the German Sinti and Roma regard themselves as a national minority with their own language and cultural identity. The *Central Council* now intends to appeal to the European Court of Human Rights to obtain its representation on the *Broadcasting Boards* of the broadcasting institutions. In the *Council's* view, the *BVG* Decision is contrary to European law.

4. With reference to physical descriptions of offenders, the *Länder* of the Federal Republic of Germany renounced further use of direct ethnic typifications. In the Free State of Bavaria, however, the offender type "Sinti/Roma", in addition to other neutral ethnic typifications, is still used in (reporting) forms. Also, when obtaining the personal data of those accused or affected, Bavaria records, in addition to membership of other ethnic groups, the actual ethnic group affiliation "Sinti/Roma" in cases where recording of such data is required for tactical reasons of criminal investigations and where information is provided on a voluntary basis.

The *Central Council of German Sinti and Roma* regards this practice as discriminatory against this national minority.

The Bavarian State Government considers it necessary for compelling reasons of crime prevention to continue to register the "Sinti/Roma" offender type and ethnicity in the aforementioned cases. This practice, as well as the regional collection of data on vagrants under the slogan of "*Information Landfahrerbewegung - ILAN*" (Information on the Movement of Vagrants) – without cause – which at the end of 1998, upon the demand of the Bavarian Data Protection Commissioner, were discontinued by the Bavarian police, have been challenged by the *Central Council* in the Bavarian Constitutional Court.

5. The measures resulting from the constitutional stipulation take concrete shape in the implementation of the various provisions of the Framework Convention, and are described in detail in the comments on those provisions under the relevant Articles.

**Article 4, para. 2** [equality]

1. Article 3 of the Basic Law, the relevant provisions in the *Land* Constitutions and subject-specific laws ensure that, in the Federal Republic of Germany, the measures to be taken by the Contracting States under para. 2 meet the requirements of para. 1.

For all persons who, in a given country, are members of the majority population and speak the official language as their native language, it is a matter of course to cultivate their specific culture and traditions, to learn, and be taught in, their language, to make daily use of their language and to derive from it elements for shaping their identity. For a much smaller group within the state's population, the prerequisites for the cultivation of an autonomous culture, preservation of their own language and development of their identity can only be ensured by providing an appropriate infrastructure. Therefore, measures taken by the state for the protection of national minorities are aimed at according the members of those minorities equal status with the majority population within the country. By setting this objective, such measures do not violate the principle of equality but, instead, comply with it by precluding unfair/prejudicial treatment. Wherever it is necessary and appropriate, the state may take adequate measures to promote equality between the members of national minorities and the majority population in the economic, social, political and cultural fields. Such measures must take account of the specific conditions existing for the respective group and its members.

In their Coalition Agreement, the coalition parties of the present Federal Government stated that they want to support legal protection of minorities.

2. As regards the areas considered under para. 2 of economic, social, political and cultural life, the following should be noted:

The economic and social structure, including the educational structure, is basically the same for the members of the groups protected under the Framework Convention and for the majority population in the respective settlement areas. Also, in Germany, the economic and social development of the members of the [Sinti and Roma] minority has been more conflict-laden than in the case of the members of the other national minorities. Around the end of the 15<sup>th</sup> century, Sinti and Roma were increasingly oppressed and persecuted by the majority population. They were denied the practice of craft trades, and were expelled from many areas. At the same time, however, there were, especially at the local and regional levels, various forms of normal and peaceful coexistence of this minority and the majority population. It was only in the course of the 19<sup>th</sup> century that social exclusion was succeeded by the minority's gradual integration into society. This process made further progress under the democratic governmental system after World War I so that German Sinti and Roma then

came to be citizens, of legally equal status, of the state and part of society. Nevertheless, they continued to be subject to a wide-ranging set of ordinances, decrees and orders - partly dating back to Imperial Germany - which regulated their lives.

The progressive development towards integration and equality was interrupted by the examination of the minority by so-called "race researchers" and by the minority's persecution by the tyrannical Nazi régime. Every Sinti/Roma family in Germany had to mourn murdered relatives. Many families were destroyed, with only a few individuals surviving. Racial persecution by the Nazi régime has continued to have a direct impact on the survivors, especially by permanently impairing their health and physical fitness and through the results of the destruction of the domestic community, of their infrastructure and material basis of life, as well as on account of the years lost as regards school education and vocational training; and that persecution has also had an indirect as well as direct effect on the next-born generation. Moreover, due to the compulsory sterilisation carried out by the Nazi régime, many survivors were no longer able to build up a family for themselves.

It was only in the decades after World War II that a general process of change, within the state and society, gradually evolved towards acceptance of the German Sinti and Roma. With reference to the overall population, the process has undergone a positive development, but is not yet completed. Also, society must come to be understanding of the free decision of various groups within this minority to centre their community life around centuries-old standards of the Sinti rather than to adapt themselves to the majority population in each and every respect. The fact that Sinti or Roma standards are, and will continue to be, respected, must not be misunderstood as a lack of readiness to be integrated; rather, adherence to these standards serves to preserve their own identity. In this respect, an important task of practical minority-related policy activities will be, in the future, as well, to find a way of mutual understanding.

Where, in respect of some members of this minority, help is required in difficult life situations, and economic and social integration needs to be improved, the government contributes towards achieving gradual adaptation of the social and economic status of all segments of society by funding Counselling Bureaus of the Sinti and Roma organisations and through other continuous initiatives or one-time individual projects. This is illustrated by the following examples:

In the *Land* of Berlin, the Senate Authority [of the Berlin Senate] for Schools, Youth and Sports has, since 1990, been funding a social services/youth work Counselling Bureau run by the Berlin-Brandenburg Association of German Sinti and Roma. The staff members of this Bureau are themselves Sinti. Their main task is social counselling and general assistance with the enforcement of compensation claims of victims of the Nazi régime who are members of this national minority. In addition, awareness-raising activities forming part of school and extracurricular education and adult education, or presented at public events, are carried out in the attempt to reduce misconceptions about, and prejudices against, the Sinti and Roma by providing basic information.

The *Land* of Baden-Wurttemberg is the only federal state which grants financial support to the Documentation and Cultural Centre of German Sinti and Roma and, in addition, to the Union of German Sinti and Roma - Baden-Wurttemberg *Land* Association. The activities of the *Land* Association, which was founded in 1986, cover all issues of the economic, social, political, community and cultural life of the Sinti and Roma in that *Land*. One of the priorities of these activities is the social field. Therefore, social counselling provided by the *Land* Association in a form geared to the particular requirements of the Sinti and Roma is subsidised out of the departmental budget of the Ministry of Social Affairs. Such counselling is given by both full-time staff and volunteer counsellors belonging to the minority. They also provide counselling to their clients in their mother tongue. The main subjects of counselling are, among others, issues regarding compensation for victims of the Nazi régime and pension claims, questions in respect of social insurance and long-term care insurance [old-age nursing-home insurance], assistance provided on a case-to-case basis to help with difficult economic and social situations in life, issues connected with the naturalisation and integration of foreign Roma, and information activities referring to the social situation of the Sinti and Roma in Baden-Wurttemberg.

In the Free Hanseatic City of Bremen, the Sinti associations of Bremen and Bremerhaven form the *Land* Association of German Sinti and Roma. Bremen, on a voluntary basis, provides financial support to the associations for the operation of two Counselling Bureaus in Bremen and Bremerhaven. In addition, another two offices are publicly funded within the framework of job creation schemes. The two associations play a very important role for the Sinti and Roma living in [the City-State of] Bremen since they have, for many years already, provided social counselling in all areas of concern to the Sinti and Roma, including non-citizens. The work of the Counselling Bureaus is focused on giving assistance - with specific reference to the respective individual case - with problems at school, in education and training, in employment and in the family, as well as in cases of indebtedness or with regard to the immigration/residence status and matters concerning reparation payments for victims of the Nazi régime. As a general rule, social problems are resolved in co-operation with the Social Services and, where appropriate, with the involvement of other public authorities and institutions. Other priority areas of the work of the associations are group offers designed for the "women" and "young people" target groups. These offers and other projects for the promotion of the cultural identity help to enhance the Sinti's and Roma's self-assurance and sense of personal identity.

In Lower Saxony, the Hanover-based *Counselling Bureau for Sinti and Roma* which is operated by the *Lower Saxony Association of German Sinti*, has been in existence since 1983. The *Land* of Lower Saxony provides funds, as part of institutional promotion, for the operation of the Bureau and so covers 99.8 per cent of its annual overall requirements. The Counselling Bureau offers person-oriented help and counselling to the members of the minority, with the aim of their integration into society, and wishes to help with reducing current prejudices by means of wide-ranging public relations work. The Göttingen-based Counselling Bureau for Sinti and Roma is operated by the local government. *Inter alia*, it has developed a project for young Roma women and girls in order to offer them better educational and developmental chances. The focus in this regard is on assistance with regular school attendance.



In the Free and Hanseatic City of Hamburg, the *Roma und Sinti Union* runs a Counselling Bureau in the Hamburg city district of St. Pauli. The Bureau is staffed with an interpreter, a social worker and a clerk and is fully funded by the Department for Labour, Health and Social Affairs. The Counselling Bureau has the task of providing personal help for Sinti and Roma to assist them in coping with problems in the everyday life spheres of housing and employment/training, and in achieving integration into the social environment. In addition, the Bureau is to help Roma and Sinti with keeping the respective spheres of life free of conflict to the extent possible, while preserving their ethnic identity.

The city of Nuremberg in Bavaria supports the Action Group for the improvement of the living conditions of the Nuremberg Sinti ("*Initiativkreis zur Verbesserung der Lebensbedingungen der Nürnberger Sinti*") by paying the staff costs for a social worker.

The Ministry for Labour, Social Affairs and Health of the *Land* of Rhineland-Palatinate, within the framework of institutional promotion, provides funds on a yearly basis to the Rhineland-Palatinate *Land* Association of German Sinti (reg'd), upon the latter's application, for the operation of the Secretariat of that *Land* Association. In addition, the *Land* also provides funds for the promotion of voluntary service within the *Land* Association.

In Schleswig-Holstein, the *Land* Association of German Sinti and Roma has established a Secretariat and a Counselling Bureau in Kiel. One of the tasks of that Bureau is to achieve an improvement in the civil-rights situation - and where required, the social situation - of the German Sinti and Roma in Schleswig-Holstein. The Bureau is financially supported by the *Land* Government of Schleswig-Holstein.

In North Rhine-Westphalia, the Dusseldorf-based Counselling Bureau of the North Rhine-Westphalia *Land* Association of German Sinti and Roma helps members of the minority with their contacts with public authorities.

Other governmental promotion measures to the benefit of the German Sinti and Roma, which also aim at promoting full and effective equality with the majority population, are covered in the comments under other Convention Articles - especially under Articles 5 and 15 - since compliance with the particular obligations under those Articles is the primary objective of the respective promotion measures.

3. It should also be pointed out that the settlement areas of the Danes, Sorbs and Frisians belong to those areas of the Federal Republic of Germany which - like other regions having a weak structure in terms of trades and/or industry as compared to the economically more fully developed conurbations - are faced with special economic and social problems. The financial, or revenue, equalisation among the *Länder*, which is designed to set off the divergence in tax receipts that results from structural differences, helps to enable also the

*Länder* with structurally weak regions to meet their state obligations, and thus also benefits regions with settlement areas of national minorities and ethnic groups. However, the minority-related policy tasks of the *Länder* are not separately itemised, as regards the provided funds, in the schedule of allocations.

The migration to metropolitan agglomerations, which is due to the different economic structure of the various regions, has an impact on the preservation of the identity of the groups protected under the Framework Convention since outward migration of members of the given minority - especially of the younger generation - impairs the basis for preserving the culture and language of minorities. Such migration is particularly painful for minorities if those who leave are people who have a high educational level and are committed and dedicated to the work of minority organizations and who are needed as junior staff within the structures of cultural self-management of the minorities. Therefore, individual efforts aimed at opening up perspectives for the employment of such persons in the settlement areas of minorities are particularly deserving of support.

4. In compliance with the obligations to promote full and effective equality, the state has, further, taken specific measures, which are dealt with in detail under Article 5 (section 3 of the comments on Art. 5, para. 1). The requirement for taking due account of the specific conditions of the respective protected groups is covered in the context of the various measures described in that section.

**Article 4, para. 3** [no act of discrimination]

Cf. the comments under Article 4, para. 2, (no. 1), above.

## **Article 5**

(1) The Parties undertake to promote the conditions necessary for persons belonging to national minorities to **maintain and develop their culture**, and to **preserve the essential elements of their identity**, namely their religion, language, traditions and cultural heritage.

(2) Without prejudice to measures taken in pursuance of their general **integration policy**, the Parties shall refrain from policies or practices aimed at **assimilation** of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

### **para. 1**

1. The obligation of the Contracting States to promote the overall conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve their identity is implemented in Germany through the prevailing law and the promotional practices of public agencies.

According to the distribution of responsibilities within the federal system of the Federal Republic of Germany, cultural affairs and the education system are, on principle, subject to the *Länder's* autonomy in cultural and educational matters. Within the framework of local self-government under the *Statutes enacted by the Länder concerning the organisation and powers of local governments* [Local Authority Statutes], e.g. Section 10, para. 2, of the Local Authority Code of the *Land* of Baden-Württemberg, local authorities are called upon to promote the common welfare of their inhabitants through the citizenry's self-management. This also covers the requirement for attending to the social and cultural needs of the inhabitants. Included in this are the needs of those inhabitants who belong to the groups protected under the Framework Convention because the definition of "inhabitant" is independent of a person's nationality, language, cultural heritage or religion.

2. For the members of national minorities, special importance attaches, in particular, (a) to the general right of personality [right to the free development of one's personality] under Article 2, para. 1, of the Basic Law, which *inter alia* leaves the use of the respective minority language, maintenance of the relevant autonomous culture, and preservation of the minority identity to each individual; and (b) to Article 4, paras. 1 and 2, of the Basic Law, which guarantees freedom of faith, conscience, and to profess a religious or philosophical creed, as well as the undisturbed practice of religion.

### 2.1 Religion

There is no state religion in Germany. The freedom of faith, conscience, and religious or ideological creed, as guaranteed under Article 4, para. 1, of the Basic Law, comprises the following, *inter alia*: the right freely to decide on one's affiliation to a religious community [denomination] or an ideological association/community - including the choice not to join, or to resign membership of, such a community; the right to promote (canvass for) one's creed; the right of parents to impart to their children the religious or ideological creed which they consider to be the right one; and generally the right to act according to one's creed. Additional information on this aspect is given in the comments under Article 8 below.

### 2.2 Language

The right of persons belonging to national minorities to use their language in daily life is protected under Article 2 of the Basic Law which guarantees the right to the free development of one's personality. Accordingly, there are no restrictions in the Federal Republic of Germany regarding the use of a minority language in private life or in public.

However, as regards the citizens' dealings with the public administrative machinery, German is the official language under Section 23 of the [Federal] Administrative Procedure Act. The Administrative Procedure Acts of the *Länder* also lay down German as the official language. German also is the official language in court (cf. the comments under Article 10,

para. 3, below). Germany has ratified the [European] Charter for Regional or Minority Languages. The Charter entered into force [in Germany] on 1 January 1999, and is also binding on the *Länder*. In accordance with the obligations notified for the various languages, a number of individual regulations have been laid down for minority languages, under which a minority language may be used in specified cases in one's relations with local or regional administrative authorities (cf. the statement under Article 10 below).

### 2.3 Cultural heritage and traditions

On the basis of the federal structure of the Federal Republic of Germany, primary responsibility for implementing the measures for the promotion and preservation of the culture of the groups protected under the Framework Convention lies with the *Länder*. Five *Land* Constitutions contain explicit provisions to this effect: Article 25 of the Constitution of the *Land* of Brandenburg; Article 18 of the Constitution of the *Land* of Mecklenburg-Western Pomerania; Articles 5, para. 2, and 6 of the Constitution of the Free State of Saxony; Article 37, para. 1, of the Constitution of the *Land* of Saxony-Anhalt; and Article 5 of the Constitution of the *Land* of Schleswig-Holstein.

The aforementioned constitutional stipulations are put into specific terms by laws, ordinances, statutes, and administrative action. Thus, for instance, Section 2, para. 3, of the Act on the Sorbs' Rights in the Free State of Saxony (Saxon Sorbs' Act) expressly lays down that conditions shall be ensured and promoted which will enable citizens of Sorbian origin to preserve and further develop their language and traditions as well as their cultural heritage [as substantial integral parts of their identity].

### 3. Infrastructure

To create the conditions for focused governmental promotion of the culture of national minorities and ethnic groups, the state has established bodies in which regular exchanges between the political community, public administration and minorities can take place so that the needs of minorities will be taken account of in governmental promotion. Also, functional areas have been established in public administration, which are in constant touch with the minorities and have direct responsibility for the protection and promotion of the groups protected under the Framework Convention. When establishing this infrastructure, account had to be taken of the different needs of the groups concerned, and of the capabilities available on the government side.

Establishment of the bodies for the promotion of the conditions required for preserving the identity of the protected groups pursuant to Article 5, para. 1, provides at the same time for the implementation of the obligations under Article 15 (therefore, cf. also the comments under Article 15 below).

### 3.1 Government agencies, other public authorities, and Commissioners

At the Federal level, the *Federal Ministry of the Interior* has the primary responsibility for matters of minority law and for implementing, at the national level, the protection of national minorities. As regards human rights aspects of the protection of minorities, responsibility also lies with the *Federal Ministry of Justice*. In the *Länder*, general responsibility for matters concerning national minorities is vested in the State Chancellery or one of the Ministries (usually the Ministry of Cultural Affairs and/or of Education, or the Ministry of Scientific Affairs).

According to their specific portfolios, other Ministries and institutions at the same level also deal with various aspects of the protection of minorities (usually in connection with specific promotion tasks). At the federal level, this is the *Federal Commissioner for Cultural Affairs and the Media* (previously in the Federal Chancellor's Office). In the *Länder*, there are, in instances, several different Ministries with responsibility in this field since, under the federal system of the Federal Republic of Germany, material support for the work of minority organisations is primarily the responsibility of the *Länder*.

In the *Land* of Brandenburg, the Ministry for Science, Research and Cultural Affairs has a Section for Sorbian (Wendish) Matters, while the Free State of Saxony has established a Section for Sorbian Matters at its Ministry of Scientific Affairs and Arts. In Schleswig-Holstein, the head of a section of the State Chancellery is responsible for minority matters. In other *Länder* of the Federal Republic of Germany, these tasks are performed by units of various highest *Land* authorities. The interests of the Sorbian and German/Sorbian schools in the Sorbian settlement area of the Free State of Saxony are dealt with by a Commissioned Inspector of Schools of the Bautzen Regional Schools Office.

In order to provide a direct point of contact for the minorities in Schleswig-Holstein, the post of the Border Region Commissioner, who reports to the Minister-President, was established in 1988. *Inter alia*, the Commissioner advises the Minister-President on matters which concern the Danish minority in the Schleswig region of the *Land* and the Frisians and German Sinti and Roma who live in Schleswig-Holstein. The Border Region Commissioner monitors the cultural, social and economic development in the border region in terms of its implications for the minorities and reviews the development and implementation of the legislation on minorities and ethnic groups at the international level.

*Kreise* [county-type administrative districts] with larger shares of national minorities and ethnic groups, and local authorities in the settlement areas of the latter have, like other public-law corporations (e.g. the *Ostfriesische Landschaft*), also established offices for the assistance of minorities. The *kreisfreie Stadt* [non-district municipality] of Cottbus and Spree-Neisse *Landkreis* [(rural) administrative district] in Brandenburg have designated full-time Commissioners for Sorbian Matters. In the *Landkreise* of Oberspreewald-Lausitz and Dahme-Spreewald, volunteer commissioners have been designated. The *Amt* [local

authority union] of Jänschwalde has designated a volunteer Sorbian Affairs Commissioner, and the *Amt* of Burg has a similar designation in preparation.

The Sorbian associations had the right of nomination for elections in Cottbus and in the *Ämter* of Jänschwalde and Burg. In the Spree-Neisse *Landkreis*, opinions of the Sorbian associations were taken into consideration. In the Oberspreewald-Lausitz *Landkreis*, the associations were not involved in the selection process but agreed to the selection and since then have pursued constructive co-operation. In the *Landkreis* of Dahme-Spreewald, the Sorbian associations exercised no right of nomination.

In the Free State of Saxony, the Bautzen *Landkreis* and the *kreisfreie Stadt* of Hoyerswerda have Sorbian Affairs Commissioners. In *Niederschlesischer Oberlausitzkreis* (the Lower Silesian *Kreis* of Upper Lusatia), this function is performed by the office of the *Landrat* [chief executive official of a *Landkreis*]. Kamenz *Landkreis* has laid down the rule that a senior position in the administration is to be filled with a member of the Sorbian people. At present, this is the post of the Head of the Department for Youth and Social Affairs.

The tasks of the Sorbian Rights Commissioners, for instance, include preparations for decisions of the mayor, departmental heads and town councils; co-ordination and co-operation with the local agencies and departments with regard to all Sorbian matters; monitoring and supporting the public agencies in respect of the enforcement of the rights of the Sorbian people; introduction of draft bills affecting the interests of the Sorbian population; and co-operation with Sorbian institutions.

The tasks of these public authorities include the protection of national minorities at the federal and *Land* levels, including responsibility for legislative proposals, for the implementation of minority law and the pertinent international-law instruments, for promoting the work of national minorities and ethnic groups and, at the local government level, on-the-spot assistance/counselling and direct support.

The activities of the public authorities relate to the minorities living in the respective *Land* or region, and at the federal level, to the Danish minority, the Sorbian people, the Frisians in Germany, and the German Sinti and Roma.

### 3.2 Councils, institutions, and/or round tables in/at which minorities are represented

#### 3.2.1 Federal level:

- Federation/*Länder* Conferences with the minorities on the Framework Convention for the Protection of National Minorities: Participants are the Federal Ministries dealing with the protection of national minorities, the respective *Land* authorities with lead responsibility, representatives of the umbrella organisations of the minorities protected by the

Convention and of their scholarly institutions. One of the Conference subjects is discussion of the implementation of the Framework Convention.

- Federation/*Länder* Conference with the language groups concerned on the European Charter for Regional or Minority Languages: Participants are Federal and *Land* Government authorities dealing with aspects of the *Regional/Minority Language Charter*, and representatives of the umbrella organisations of the language groups concerned and of their scholarly institutions. One of the Conference subjects is discussion of the implementation of the *Regional/Minority Language Charter*.

- Consultative Committee on Issues concerning the Danish Minority, set up at the Federal Ministry of the Interior: Members are the Federal Minister of the Interior and a State Secretary of the Federal Ministry of the Interior; two members each of the parliamentary groups of the German *Bundestag*, three members of the Danish minority in Germany, and one representative of the *Land* of Schleswig-Holstein. The Committee is chaired by the Federal Minister of the Interior. The Committee is to ensure contacts of the Danish ethnic group with the Federal Government and the *Bundestag*. It has the task of discussing all important issues of the Federal Government's domestic policy that concern or affect the Danish minority.

Foundation for the Sorbian People: Members of the board of trustees (Foundation Board) are representatives of the Sorbian people, of the *Bund*, of the Free State of Saxony, and of the *Land* of Brandenburg, and local government representatives; the Parliamentary Consultative Council, which includes Members of the German *Bundestag*, of the Saxon *Landtag* and of the Brandenburg *Landtag*. The aims of the Foundation are promotion, both in terms of ideology (moral support) and funding, of activities designed to preserve the Sorbian identity and language, Sorbian institutions and Sorbian culture (the Director of the Foundation is a member of the Sorbian people). Cf. the comments under no. 4.2 below for further details.

- So far, no similar bodies have been established at the federal level to attend to matters concerning the Frisians or the German Sinti and Roma. However, leading personalities from the spheres of politics, science and industry in Germany are represented on the Board of Curators of the Documentation and Cultural Centre of German Sinti and Roma.

### 3.2.2 At the *Land* level

- The Saxon *Landtag* elects a Council for Sorbian Affairs, and the *Landtag* of Brandenburg a Council for Sorbian (Wendish) Affairs, each for the duration of a legislative period. Each of these Councils has five members who, in the *Land* of Brandenburg, must be members of the Sorbian people. In Brandenburg, Council members are nominated by the Sorbian associations, and in the Free State of Saxony by Sorbian associations and the German-Sorbian communities. The Council deals with all parliamentary matters of

importance to the Sorbian people, including legislative proposals, and submits comments/opinions from the Sorbian point of view.

- The *Landtag* of Schleswig-Holstein has a body dealing with matters concerning the Frisians in the *Land* of Schleswig-Holstein. Its members are representatives of the political parties of the *Landtag*, the *Bundestag* MPs for North Friesland, the Minister-President's Border Region Commissioner as the representative of the *Land* Government, and representatives of the Frisian Council (the body is chaired by the President of the *Landtag*). Its task is to deal with all matters of importance to the Frisians in Schleswig-Holstein.

#### 4. Promotional Policy

The groups protected in Germany under the Framework Convention differ in terms of their regional distribution, the given (minority) language proficiency, the infrastructure which they have established and maintained for cultural institutions and associations, and their respective concepts for preserving their cultural and linguistic identity. In instances, this is also the case within a given minority when it is represented by various organisations with different aims. The respective situation, tied to the historical development, has influenced the state promotion policies, as has the varying financial capacities of the *Länder* and the respective number of members of the national minorities and ethnic groups in each *Land*. Consequently, the information provided here on the various groups differs in length and detail.

While members of only one group protected under the Framework Convention live in all other *Länder* of the FRG – aside from individuals – the situation in two of the *Länder* is different. The Danish minority and the North Frisian ethnic group as well as - substantially smaller numbers of - the national minority of the German Sinti and Roma live in Schleswig-Holstein. In Lower Saxony, there is, on the one hand, the large group of East Frisians who see themselves as a cultural ethnic group with a regional identity, including the Saterland Frisians (who are both a cultural and a language group), and on the other hand, a considerable number of German Sinti and Roma.

The basis for the policy regarding minorities in Schleswig-Holstein is (the definition of objectives set by, and for, the state as contained in) Article 5 of the Constitution of the *Land* of Schleswig-Holstein. Its para. 2 reads as follows: "The existence, in its own right, of the culture of national minorities and ethnic groups and their political participation are afforded protection by the *Land*, local governments and local authority associations. The national Danish minority and the Frisian ethnic group are entitled to protection and promotion."

Promotion of the three groups in Schleswig-Holstein takes account of their widely varying structures and different needs. In addition to the *Land*, the *Kreise* and local authorities are involved in public support for minorities. Once per legislative period, the *Land* Government submits a report to the *Landtag* on the situation and status of the national minorities and ethnic groups in Schleswig-Holstein, which also covers the activities of the German Border



Associations, of the Federal Union of European Nationalities (FUEN) and of the European Centre for Minority Issues (ECMI).

#### 4.1 As regards promotion of the Danish minority

The Danish minority, within its various organisational structures, organises a broad range of Danish cultural activities and events for its members. *Sydlesvigsk Forening* (SSF) (South Schleswig Association), as the chief organisation for cultural work, is committed to the promotion of "*Danish work in South Schleswig*", of the Danish language and of Danish national culture. *Inter alia*, the association organises Danish theatrical performances and concerts, maintains buildings as meeting places and assembly rooms as well as residences for the elderly and operates senior citizens' clubs with a wide range of recreational facilities. Danish touring theatre companies and regional theatres and the Royal Theatre give guest performances at cultural events of the Danish minority or are represented by individual artists. A highlight in terms of musical performances are the evening concerts of *Sønderjyllands Symfoniorkester* (South Jutland Symphonic Orchestra) from Denmark. The programme of cultural events throughout the region also includes lectures, movies, slide lectures, discussions and social gatherings. The yearly meeting of the Danish minority, with large open-air gatherings in various places of the settlement area, and parades with musical accompaniment developed into a large public festival years ago. The minority and the majority have opened up towards each other and share experiences and activities without any fear of this contact.

The Danish minority also operates the historical museum of Danevirkegården near [the town of] Schleswig, and an adult education centre in Jarplund.

*Sydlesvigs danske Ungdomsforeninger, SdU* (Danish Youth Association for Southern Schleswig), organises a wide range of youth work activities. It supports recreational centres and sports facilities. Its affiliated bodies include, *inter alia*, the Danish-language amateur theatre "Det lille Teater" in Flensburg. Associations of a very different structure co-operate within the Youth Association. Besides sports clubs, these include freely organised groups and church youth groups as well as the Danish Boy Scouts Corps in South Schleswig. For the various fields of interests, there are numerous recreational activities offered also outside group-based activities.

In addition, the Danish minority has his own library system, *i.e.* the *Dansk Centralbibliotek for Sydlesvig*, or Central Library for South Schleswig, which is the local main library for adults and children and also comprises two mobile libraries, a bibliographic section and a selection of audiovisual media. The Danish Central Library has two main branches and many sub-branches in schools and nursery schools. It also comprises a research section and an archive.

Of particular importance to the Danish minority is their well-developed system of private schools ranging from pre-school education (nursery schools) to grammar/secondary schools.

The Danish minority finance their work with their own resources, with donations from private individuals and foundations and, for a significant part, with allocations from the budgets of the Government of the *Land* of Schleswig-Holstein and of German local governments in the settlement area. Also, it receives substantial funds for its work from the Kingdom of Denmark and from the Danish Border Association. These funds make it possible for the cultural work of the Danish minority to be carried out on an extensive scale.

Promotion of Danish schools is regulated in the Schools Act of the *Land* of Schleswig-Holstein. The funds for Danish private schools and for the cultural work of the minority are included in the *Land* budget estimates (for further details on the educational system, cf. comments under Article 13, para. 1, below).

Besides the school and library system, the *Land* of Schleswig-Holstein also subsidises the evening school/adult education system, the Danish health service, the Union of Agricultural Associations, and the political work of the *Landtag* group of SSW [South Schleswig Association of Voters].

#### 4.2 As regards promotion of the Sorbian people

The ancestral settlement area of the Sorbs is on the state territory of the *Länder* of Saxony and Brandenburg. In Brandenburg, the Sorbs also call themselves Wends.

In order not to pursue separate promotional policies in Saxony and Brandenburg, these two *Länder* have, mutually and with the *Bund*, agreed upon a common promotion policy. This policy was embodied in the Foundation for the Sorbian People. It was established in 1991 as an unincorporated foundation of the Free State of Saxony, with the *Bund* and the *Länder* of Brandenburg and Saxony as the providing bodies. This unincorporated foundation has always been understood by the interested parties as an interim solution. The aim was the establishment of a legally autonomous foundation which would enable the Sorbian people to organise its interests and concerns in a largely autonomous way. After the structures required to this end had been developed, the [incorporated] foundation was established with the conclusion of a State Treaty signed on 28 August 1998 in Schleife/Saxony between the *Land* of Brandenburg and the Free State of Saxony. The Treaty was ratified on 18 December 1998, and entered into force on 1 January 1999.

The institutors of the Foundation, and Contracting Parties to the State Treaty, are the *Land* of Brandenburg and the Free State of Saxony. The Federal Government (*Bund*), on the basis of the *Agreement on the Common Funding of the Foundation*, provides funding and appoints representatives to the Foundation's bodies. The principal tasks of the Foundation are, in particular:

- promotion of institutions preserving the culture, arts and homeland of the Sorbs;
- promotion of, and participation in, projects concerning the documentation, publication and presentation of Sorbian art and culture;
- promotion of the preservation and further development of the Sorbian language and cultural identity, also in Sorbian educational and scientific/scholarly facilities, and such institutions as serve these objectives;
- promotion of the preservation of Sorbian identity among the general public, in professional life and in the community life of the Sorbian and non-Sorbian populations;
- promotion of projects aimed at furthering international understanding and co-operation with other ethnic groups and national minorities in Europe, and promotion of the historically evolved relations of Sorbs with their Slav neighbours with a view to forging a link between Germany and Eastern Europe; and
- participation in the design of governmental and other programmes affecting Sorbian interests.

The main parameters of the Foundation's activities and its annual budget are decided by the Foundation Board (board of trustees). The Board is composed of 15 members, of whom six are representatives of the Sorbian people. The Foundation's Parliamentary Consultative Council supports and advises the board of trustees. The Consultative Council has an extensive right to access to information. It is composed of two members each of the German *Bundestag* and of the Saxon and the Brandenburg *Landtage*.

The Foundation is based in the city of Bautzen, and has regional offices in Cottbus, Schleife, Hoyerswerda, Crostwitz and Bautzen. The Foundation's affairs are managed by the Director. The Foundation has an administrative staff of currently 26 employees. The Foundation's administration also comprises "*Sorbische Kulturinformation*" (Sorbian Cultural Information) in Bautzen and the Sorbian Cultural Information Office "Lodka" in Cottbus.

For fulfilment of the Foundation's objectives, the Foundation receives annual grants from the *Bund*, the Free State of Saxony and the *Land* of Brandenburg. In the future the *Bund* will provide about half of the Foundation's funds, after federal grants had to be cut in this field of activities as well on account of a general austerity programme of the Federal Government, while the Free State of Saxony will provide about a third and the *Land* of Brandenburg one sixth.

The following institutions are subsidised with endowment funds:

- *Sorbisches National-Ensemble GmbH*, (Sorbian National Ensemble) Bautzen;
- *Domowina - Bund Lausitzer Sorben e.V.* (Federation of Lusatian Sorbs, registered association), as the umbrella organisation of Sorbian organisations;
- *Domowina-Verlag GmbH* (Domowina Publishing House), Bautzen;
- *Sorbisches Museum Bautzen* (Sorbian Museum in Bautzen);
- *Wendisches Museum Cottbus* (Sorbian/Wendish Museum in Cottbus);
- *Sorbischer Schulverein* (Sorbian Schools Association, reg'd);
- *Sorbisches Institut e.V.* (Sorbian Institute, registered association), Bautzen, as a scholarly institution;
- *Schule für niedersorbische Sprache und Kultur* (School for the Low Sorbian/Wendish Language and Culture) in Cottbus.

The *Deutsch-Sorbisches Volkstheater* (German-Sorbian Folk Theatre), Bautzen, is subsidised as part of project promotion by the Foundation. In addition to institutional promotion, project-oriented promotion by the Foundation covers a wide range of subjects, for instance production of movies and sound recordings, projects related to the cultivation of culture, traditions and folklore, competitions for various age groups and fields of interest.

There is neither a Sorbian university nor any other college/university in the German-Sorbian settlement area. Teacher training in Sorbian as a school-subject and training of specialists of the Sorbian language and culture (Sorabists) is offered by the Institute of Sorbian Language and Culture at Leipzig University. In addition, the Sorbian specialised technical college for social pedagogy in Bautzen provides professional training. In order to enable Sorbian students to stay in contact with the Sorbian language and culture also outside their settlement area, accommodation in Sorbian student hostels is offered in Dresden, Leipzig and Berlin.

Support is given not only by the Foundation or, for other measures, by the *Länder* but also by the local authorities and *Landkreise* in the traditional settlement area. This is the case, in particular, as regards the promotion of traditional festivals and customs, by Sorbian associations. Cultural groups and associations are actively fostered and supported by local authorities. Maintenance of Sorbian customs is an integral part of almost all local mass events in the traditional settlement area of the Sorbian people. In most cases, these customs are also kept up and practised by fellow-citizens belonging to the majority population.

Instruction in Sorbian is provided by the state school system and, in the pre-school phase by nursery schools, either local-government or private.

Particularly through the work of the public museums in the local government area, another priority of cultural promotion at the local government level is educational work. Items of the

Sorbian cultural heritage are collected, made accessible to the public, and elucidated in lectures, guided tours, etc. So-called *Heimatstuben*, which are supported by local authorities within the framework of project promotion, also help preserve the Sorbian cultural heritage and make others familiar with it.

With a view to authentically conveying Sorbian cultural values and traditions and the Sorbian people's way of life, the association "*Sorbischer Kulturtourismus e.V.*" (Sorbian Cultural Tourism, registered association) was formed in 1996. With its projects, *inter alia* the development of a Sorbian Cultural Route, it intends, without aiming at commercialisation principally for tourism purposes, to make Sorbian institutions, museums and local traditional centres (*Heimatstuben*) accessible to tourism on a greater scale. This requires close co-operation with many individual people and institutions. The *Sorbian Affairs Commissioners* of the Free State of Saxony and of the *Land* of Brandenburg are to be involved as well. There is close co-operation with the Working Group "*Serbske pomniki - Sorbische Denkmale*" (Sorbian Architectural Monuments), the aim of which is also preservation of Sorbian cultural monuments.

#### 4.3 As regards promotion of the Frisian ethnic group

The local Frisian associations engage in diverse cultural work, including folksongs and dancing. They offer language courses and language-learning holidays as well as children's holiday camps, engage in sports activities with Frisian as the language of communication, champion Frisian stage productions, perform tasks in the areas of nature conservation and of the conservation of the architectural heritage, and operate their own museums of local history and culture. Some of these projects are supported with public funds.

As a special measure, mention should be made of the "Andersen-Haus" in Risum-Lindholm, which was renovated, with substantial *Land* funding, as a Frisian cultural centre for which North Friesland *Kreis* provides substantial funds.

Of great importance for the cultivation of the Frisian language, culture and history is the *Nordfriisk Instituut* (*Nordfriesisches Institut* - North Frisian Institute) in Bredstedt, as the central scholarly institution in North Friesland. The Institute sees its role as a bridge between theory and practice, between academic research and non-specialist research. In particular, its scientific and journalistic activities cover the areas of the language, history, and study of the geography and civilisation of North Friesland. It has a specialised library and archives, and offers seminars, courses, workshops and lectures. The Institute's providing body is the *Verein Nordfriesisches Institut*, with a membership of about 850. The work of the Institute is funded, for the most part, with subsidies provided by the *Land* of Schleswig-Holstein. Funding is provided also by local authorities and by the Danish minority. In addition, the Institute has its own resources in the form of membership dues, donations and sales revenues.

Instruction in the Frisian language - although restricted by the general situation of the school system and by the existing level of language proficiency - is provided by state-run schools and, in part, preparatory language instruction is given in - local-government or privately run - nursery schools. In this respect, the Frisian ethnic group pursues the aim of extending Frisian language instruction and achieving some improvement in the personal and didactic possibilities offered.

#### 4.4 As regards promotion of the German Sinti and Roma

Since the settlement area of the German Sinti and Roma covers most of the *Länder* of the Federal Republic of Germany, governmental promotion measures taken by the *Bund* and the *Länder* concerned are described in a condensed form, on the basis of pertinent examples.

##### 4.4.1 At the Federal level

With the *Bundestag* Resolution of 26 June 1986, all parliamentary groups of the German *Bundestag* confirmed the need for enhancement of living conditions and for promotion of the integration of the German Sinti and Roma into society. Since 1991, the Central Council of German Sinti and Roma and the Documentation and Cultural Centre of German Sinti and Roma have been supported by publicly funded institutional promotion.

Priority tasks of the *Central Council* are: representation of the interests of the national minority with regard to according them political equal status - this also includes, for instance, legislative proposals and political initiatives for the protection against radical-right violence and outrages, and the Holocaust Memorial; enforcement of minority rights and of compensation claims of Holocaust victims; commemoration of the victims of genocide; and supporting public prosecution of Nazi crimes at the national and international levels. Other chief activities are co-operation with the *Land* Associations of German Sinti and Roma and with international minority and human rights organisations, and support for the Sinti and Roma in other countries.

Priority activities of the *Documentation and Cultural Centre* are: documentation and scholarly work regarding the history, culture and present situation of the national minority; cultural work, education and further education; social work and counselling; and public relations work with the aim of integrating the German Sinti and Roma into society while preserving their cultural identity. The *Centre* publishes a series of papers in several volumes, e.g. on subjects like "Sinti/Roma Story-Telling in the Context of European Folk-Tale Traditions", "Representations of Gypsies in German-Language Literature", or "Children and Adolescents as Victims of the Holocaust". In addition, several extensive works have been published, such as the documentation entitled "Sinti and Roma under the Third Reich - The Programme of Extermination Through Labour". Also, the *Documentation and Cultural Centre* organises cultural projects and, in a large permanent exhibition, shows

the history and the extent of the National-Socialist genocide of 500,000 Roma and Sinti. A travelling exhibition on the same subject will in future tour several German cities.

In 1989, substantial public funding was provided for the purchase, interior and exterior alteration of premises in Heidelberg for use by the aforementioned institutions. These premises house the *Central Council of German Sinti and Roma*, the *Documentation and Cultural Centre of German Sinti and Roma*, and the Permanent Exhibition on the genocide of Sinti and Roma during the Nazi era.

Public funds are provided to the *Central Council* for five staff posts (mainly academic positions), and to the *Documentation and Cultural Centre* for a current number of 17 posts, to be raised to 19 as of the year 2000. The budget of the *Central Council* is fully funded by the *Bund* while for the budget of the *Documentation and Cultural Centre*, 90 per cent are provided by the *Bund* and the remainder by the *Land* of Baden-Württemberg.

#### 4.4.2 At the *Land* level

The *Länder* of Schleswig-Holstein and Hesse support the work of their respective *Land* Association of German Sinti and Roma through free financial aid. The Free Hanseatic City of Bremen promotes projects for the furtherance of cultural identity which are designed to strengthen the self-assurance and sense of personal identity of Sinti and Roma. The Free State of Bavaria supports the Secretariat and Counselling Bureau of the Bavarian *Land* Association of Sinti and Roma, reg'd. One of the objectives of this Association is to provide for, and promote, cultural events of German Sinti and Roma. In addition to promoting the *Land* Association of German Sinti and Roma in Baden-Württemberg, this *Land* provides a grant to the *Documentation and Cultural Centre of the German Sinti and Roma* in Heidelberg. In Rhineland-Palatinate, as part of the overall cultivation of culture, the Sinti and Roma "*Aven*" festival, which is regularly held in Landau, is supported with funds of the registered association "*Kultursommer e.V.*".

In the cultural area, mention is also to be made of the financial promotion provided since 1993 by the *Land* of North Rhine-Westphalia for the Romany-language "*Pralipe*" theatre in Mülheim/Ruhr. By giving guest performances of stage plays in the Romany language in Germany and neighbouring countries, this theatre company, which was originally based in what is now the Former Yugoslav Republic of Macedonia, helps to preserve essential elements of the identity of Roma and Sinti such as language, tradition and cultural heritage. Special grants by the *Land* Government in 1998 have enabled the "*Pralipe*" theatre to go on an additional tour of guest performances to present its plays to a larger audience.

The Free and Hanseatic City of Hamburg, through its Cultural Department, promotes cultural initiatives and minority artists – including Sinti and Roma - carrying out cultural projects and events. The aim is to help minorities preserve and further develop their culture.

The emphasis of promotion is on intercultural (cross-cultural) projects, *i.e.* projects in which people of different origin and background participate or which are addressed to such people.

The respective *Land* Associations of German Sinti and Roma and other Sinti organisations make financial contributions to a large number of cultural events of regional and supraregional importance, thus for instance to "*Schleswig-Holstein Tag*" or the "*Open-Ohr-Festival*" ["*open-ear festival*" - wordplay on '*open-air*'] in Mainz, and have taken part in the "*50 Jahre Hessen*" ceremonies [commemorating the 50<sup>th</sup> anniversary of the *Land* of Hesse]. Public exhibitions organised by the *Bund* and the *Länder* now also include the history of the German Sinti and Roma, as is the case with most concentration-camp memorials in Germany. For example, in Kiel, the capital of the *Land* of Schleswig-Holstein, the 16<sup>th</sup> of May has been commemorated every year since 1997 as the anniversary of the deportation of German Sinti and Roma by the Nazi régime.

In all other respects, reference is made to the promotion measures, described in the comments under Article 4, para. 2, no. 2, above, which have been taken by the *Länder* of Baden-Württemberg, Bavaria, Berlin, Bremen, Hamburg, Lower Saxony, Rhineland-Palatinate and Schleswig-Holstein.

**Article 5, para. 2** [integration/assimilation]

Germany does not have a "state culture" regulated by legal provisions. Rather, Article 2, para. 1, of the Basic Law guarantees everybody the right to free development of his/her personality. This, *inter alia*, protects the individual's self-realisation according to his/her own ideas. Legal protection not only covers the right to free development within a spiritual and cultural core sphere of the individual as a mental/spiritual and ethical being, but - entirely without reference to any specific values - the object of legal protection is a general form of freedom of action in a broad sense. This right, however, is only guaranteed to the extent that the rights of others and that the constitutional order or morality are not violated.

Apart from the fundamental objective of achieving, in sociopolitical terms, the integration of all groups of society, the Federal Republic of Germany regards the cultural diversity of its regions and of the groups of its population as an enriching asset. Consequently, the policies concerning the national minorities are not oriented towards assimilation, but are aimed at preserving and further developing their identity. The measures taken by the *Bund*, the *Länder* and local authorities, which are mentioned in the present Report or are covered by examples given in this Report, serve to vigorously promote the initiatives of the organisations of national minorities and ethnic groups for the preservation of their language and culture. The general public in the Federal Republic of Germany supports this policy.

Complaints by members of minorities concerning assimilation efforts or any measures aimed in this direction are not known.



## Article 6

(1) The Parties shall encourage a spirit of **tolerance and intercultural dialogue** and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of **education, culture and the media**.

(2) The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of **discrimination, hostility or violence** as a result of their ethnic, cultural, linguistic or religious identity.

### para. 1

1. Tolerance, intercultural dialogue, and mutual acceptance are indispensable elements of peaceful co-existence of people from different cultural backgrounds, on the basis of mutual respect and understanding. This objective is one of the most important tasks of domestic politics in Germany. It is only in this way that a positive social climate can be created which will also benefit the situation of national minorities and ethnic groups. The Federal Republic of Germany has a Federal Government Commissioner for Matters Relating to Aliens, whose office is provided for in the Aliens Act of the Federal Republic of Germany. He has, *inter alia*, the task of improving the conditions under which foreigners and Germans, as well as various groups of non-citizens, can live together in as tension-free setting as possible, to promote their mutual understanding, and to prevent and counteract xenophobia.

The tasks of the *Land* Commissioners include the analysis and identification of conflicts between Germans and foreigners, and the development of measures to encourage tolerance and acceptance. This is achieved by diverse public relations work and by supporting the self-organisation of migrants' and refugees' associations, and local *Aliens Advisory Councils* (to the extent that provision has been made for such bodies in the legislation of the various *Länder*).

In Germany, education in tolerance and solidarity is also part of the educational mandate of schools providing general education and of political education, and ranks high in these fields. In addition, many non-governmental organisations (NGOs) and private initiatives are dedicated to this goal, which is also supported by the political parties, and to the practical implementation of the intercultural dialogue.

2. In the areas of education, culture and the media, the aforementioned principles are embodied in laws and implementing statutes. The *Bund* and the *Länder* implement these regulations by means of various measures, of which examples are given below. For one part, such measures are aimed at education in tolerance, and at promoting understanding for other

cultures and languages as well as acceptance of people with a different language and culture who live in the neighbourhood, the local community and the overall society. Other measures are aimed at increasing, among the general public, the knowledge about the existence of national minorities and ethnic groups and at familiarizing the majority population with the culture of those groups and the related traditions. In this field, the efforts concerning information in schools and political education will have to be increased outside the central settlement areas of the groups protected under the Framework Convention, so as to ensure a broader information basis in society (cf. also the comments under Article 12, para. 1, below).

## 2.1 Political education and schools

2.1.1 The Federal Centre for Political Education (BpP) has the task of promoting the understanding of political facts and processes through political education activities among the German people, strengthening democratic consciousness, and encouraging greater readiness for political involvement. It also has the particular task of providing scientifically sound and substantiated information on key political issues, strengthening the democratic basic consensus and, on these foundations, promoting the development of a culture of democratic political struggle on the basis of a rational dialogue. This also includes information on the coexistence of the various cultures represented in Germany, and on the reduction of prejudice and xenophobia (e.g. the monographs on "Arguments against hatred - About prejudice, xenophobia and right-wing extremism", 3<sup>rd</sup> reprint 1997, and the "Dictionary of ethnic minorities in Germany"). A broad-based study, which was presented at the end of 1997, confirmed that the materials prepared by the *Federal Centre for Political Education* are used with extraordinary frequency in class and in the preparation of lessons. The high degree of acceptance of these publications and materials was attributed primarily to their politically well-balanced presentation.

During the European Year against Racism and Xenophobia (1997), the *Federal Centre for Political Education*, under the motto of "Dialogue of Cultures", organised a Congress which was attended by more than 3,000 participants. At the suggestion of the Federal President, a concept was developed for related events/meetings, centred around the work of many nongovernmental organisations (NGOs) which come out against racism and stand up for tolerance, international understanding and humanitarianism. At some 80 meetings/events held centrally and decentrally, the participants analysed and discussed various subjects and the actual implementation of the intercultural dialogue.

All *Länder* of the Federal Republic of Germany have *Land* Centres for Political Education which carry out similar tasks in their respective *Land*. The Hamburg *Land* Centre for Political Education is here given as an example: *inter alia*, it regularly promotes associations dealing with the co-existence of, and mutual understanding between, different religions and nationalities. As part of the Right-Wing Extremism and Violence Programme, activities to further mutual understanding between young people of different nationalities are promoted and guidance is given with regard to personal courage in standing up for one's convictions when faced with conflicts and violence.

The Hamburg *Land* Centre actively pursues the following activities, among others:

- promotion of events organised by the registered association Cross-religious encounters and learning from each other (reg'd);
- assistance for the "*Jews and Muslims in Germany*" activity organised by the Catholic Academy, with the support of the Federal Centre for Political Education and *Orient-Institut Hamburg*;
- Promotion of round-table talks, discussions and reports sponsored by *Brücke Mittelmeer* [Mediterranean Bridge], which brings together scientists/scholars and representatives of diverse associations wishing to foster and advance the intercultural dialogue between Europe and the various Mediterranean states, especially about Islam and education in tolerance.

2.1.2 On the basis of the federal structure of the Federal Republic of Germany, the *Länder* have jurisdiction over school education and pre-school education. Many *Land* laws contain provisions on education in tolerance. Thus, for instance, Section 4 of the School Act of the *Land* of Brandenburg lays down, as an objective of school education, that the ability and readiness of pupils should be enhanced "to understand their own culture as well as other cultures, also within their own country and in their own personal environment as well, and to help to achieve the peaceful co-existence of cultures and peoples, and to stand up for the dignity and equal status of all humankind". Section 5 of the Children's Day-Care Centres Act of the *Land* of Schleswig-Holstein lays down, e.g. in its paragraph 6, that the work in children's day-care centres shall promote "the co-existence of children of different national or cultural origin". Similar provisions are contained in the respective laws of the other *Länder* as well.

For the implementation of these provisions, many measures have been taken in schools, including the field of pre-school education. On 25 October 1996, the Standing Conference of Ministers of Education and Cultural Affairs of the *Länder* in the Federal Republic of Germany endorsed the Recommendation on "Intercultural Education in Schools". It contains the following observation: "The *Europe in School Education* Decision taken in 1978, and reconfirmed in 1990, is aimed at promoting the European dimension in education by means of fostering readiness and openness for understanding, for reducing prejudices, and for cross-cultural open-mindedness". In this context, the following are regarded as particularly significant aspects: familiarisation with human rights as universally valid values; the issue of the cultural environment that conditions human rights; and the possibilities for the co-existence of minorities and majorities in a multicultural society. Accordingly, the existing directives and school curricula provide for the introduction of intercultural aspects in school education.

## 2.2 Culture

The *Länder* – which have responsibility for cultural and educational affairs on the basis of the federal structure of the Federal Republic of Germany – and local authorities in-

clude the culture of groups other than the German majority population in supraregional, regional and local cultural events. This is particularly clear in, for instance, large-scale *Land* festivals ["days" dedicated to the special character of the respective *Land*] such as *Schleswig-Holstein-Tag*, *Hessen-Tag*, *Tag der Sachsen* and *Brandenburg-Tag*.

### 2.3 Media

Jurisdiction over broadcasting also lies with the *Länder*. The state is prohibited by the constitution from exerting influence on the contents of broadcasting programmes.

The broadcasting programming principles embodied in the various *Land* Broadcasting Acts and State Treaties explicitly lay down, *inter alia*, that international understanding shall be promoted, and programmes shall help to reduce xenophobia and to achieve protection and promotion of minorities (cf. for example: Section 7 of the State Treaty on the Broadcasting Corporation *NDR* (Norddeutscher Rundfunk), Section 20 of the Lower Saxony *Land* Broadcasting Act, or Section 24 of the *Land* of Schleswig-Holstein Broadcasting Act).

Compliance with the programming principles is monitored, for public service broadcasting, by the supervisory bodies (Sound Broadcasting Board, Television Board) which have a pluralistic membership. Additional specific measures which also refer to the obligations under Article 6, para. 1, are described below in the comments to para. 2 of Art. 6.

#### **Article 6, para. 2** [discrimination, hostility or violence]

1. In Germany, protection against discrimination is, on the basis of the general legal order, also ensured for the members of national minorities and ethnic groups. They are entitled, under the Criminal Code (*StGB*), to the same protection of legal rights as everybody else. In this respect, particular importance is attached, in the field of criminal law, to the following offences: incitement of the people, public incitement to criminal acts, and insult (covering insult, calumny and defamation). In Section 130 para. 1 (*incitement of the people*), the Criminal Code provides for a term of imprisonment from three months to five years to be imposed on whomever, in a manner designed to interfere with public peace, violates the dignity of others by inciting hatred against parts of the population, inciting violent or arbitrary action against them, or insulting, maliciously disdainingly or disparaging them.

Under Section 130, para. 2, of the Criminal Code (*incitement of the people* [occasionally also termed *incitement to national dissension*]), a term of imprisonment of up to three years or a fine will be imposed on whoever disseminates writings which incite to hatred against a national, racial, religious or ethnic group, incite violent or arbitrary action against them, or violate the dignity of others by insulting, maliciously disdainingly or disparaging parts of the population or any of the aforementioned groups.

Under Section 111 of the Criminal Code (*public incitement to criminal acts*), a person will be punished as an accessory before the fact (Section 26) who publicly, at a meeting or by dissemination of writings, incites to an illegal act; under Section 26 of the Criminal Code (*instigation*), whoever, as an accessory before the fact, intentionally has designated another to his intentionally committed illegal act, will be punished as a perpetrator. If the incitement is unsuccessful, the act will be punishable with imprisonment not exceeding five years, or with a fine (Section 111, para. 2, 1<sup>st</sup> sentence, of the Criminal Code). Section 11, para. 3, of the Criminal Code provides that sound and video recordings, illustrations and other displays are equivalent to writings within the meaning of Sections 111 and 130 of the Criminal Code. Illegal acts within the meaning of Section 111 of the Criminal Code may be, for example: incitement to national dissension (Section 130, Criminal Code), insult (Sections 185 ff.), criminal acts against life (Sections 211 ff.) or against physical integrity (Sections 223 ff.).

2. In the last years, xenophobia on the part of a small segment of the German population, including younger members of marginalized groups, has become a problem in society. It has increasingly emerged in the "new *Länder*" [i.e. those of the former East Germany], and has ranged from verbal attacks to violent acts, also involving loss of life, primarily against foreigners of non-European origin who live in Germany. So far, the members of the national minorities and ethnic groups protected under the Framework Convention have, as a rule, not been targeted by xenophobic acts of violence since, for the most part, they are seen as an integral part of Germany's population even by far right-wing forces. In some cases, however, there have been attacks against German Sinti and Roma. The fight against racism and xenophobia is an important concern of German politics, with particular importance attached to the aspect of prevention through intellectual/political analysis and discussion.

In addition to the protection provided by criminal law, political education and intellectual/political discussion of extremism, xenophobia and violence are of major significance in eliminating the breeding ground of extremist ideology and thus helping to prevent politically motivated acts of violence. Through political education, school education and prevention-directed public relations, the values of our free democratic order are made clear, and people are made aware that violence can never, and must never, be a means of settling political differences of opinion.

The Secretariat for the *Forum gegen Rassismus* ("Forum against Racism") has been established at the Federal Ministry of the Interior. On account of the federal structure of the Federal Republic of Germany, primary responsibility for these aspects lies with the *Länder* in the fields of culture and education.

A central instrument of intellectual/political discussion are the extensive public relations activities of the *Bund* and the *Länder*, the form and contents of which are geared to specific target groups. This includes brochures on the subjects of extremism and xenophobia; seminars for teachers, for contributors to school magazines, journalists and multipliers in adult education; specialist conferences on issues of sociopolitics; awareness-

raising campaigns against extremism, xenophobia and violence; and also the initiation, monitoring and support of social scientific research in the field of internal security, and evaluation and application of analyses and research findings by means of publications.

Various public-oriented measures which have proved successful in the past are being continued. Pertinent examples are the campaign entitled *FAIRSTÄNDNIS\** - *Menschenwürde achten - Gegen Fremdenhass (Fairness and Understanding - Respect for Human Dignity - Against Xenophobia and Racism)* which was initiated in 1993 by the *Bund* [Federation] and the *Länder*; the organisation of 6 to 8 seminars per year for social multipliers on the subject of extremism and violence; the publication of 4 to 6 brochures per year in the series "*Texte zur Inneren Sicherheit*" [*Texts on Internal Security*]; and the annual edition of the *Constitutional Protection Report* which provides a basis of information for assessing the threats posed to the democratic constitutional state by racism, xenophobia and other trends and factors.

Scientific research on the causes of, and motives behind, racism and xenophobia helps to further develop and optimise concepts for sustained preventive measures. Therefore, the Federal Ministry of the Interior analyses current studies of these phenomena or, in instances, initiates its own research projects. At present, *Deutsches Jugendinstitut* [*German Youth Institute*] in Munich and the University of Jena, under a commission by the Ministry and with the support of the *Volkswagen Foundation*, are carrying out an extensive research project on right-extremist suspects and offenders, following up on the study completed in 1994 on the "Analysis of xenophobic offenders" and the study on "Xenophobic acts of violence committed by young offenders" which was commissioned by the Federal Ministry of Justice and published in 1995. Given the broader empirical basis, the combination of quantitative and qualitative survey methods and the broadened scope of the subject-matter covered, the current research project promises to yield further substantial findings regarding the causes of, and motives behind, racism and xenophobia. Erlangen University is at present carrying out another research project commissioned by the Federal Ministry of the Interior on the violence phenomenon of hooliganism. Under the auspices of this study, the question is also posed to what extent xenophobic or right-extremist motives play a role in connection with the specific "hooligan" category of offenders.

Public debate and analysis of racism and xenophobia is a task for society as a whole to tackle. Therefore, the Federal Government is continuing the dialogue taken up in the context of the "European Year against Racism" (1997) between the government and (NGOs). A mutual exchange of information and experience on this subject-matter is carried out, in particular, in the "*Forum against Racism*" which was constituted in March 1998.

However, if the fight against extremism, xenophobia and violence is to be successful on a sustained basis, the socially relevant forces (families, schools, churches, sports associations, trade unions, employers, etc.) will have to be involved on a substantially larger scale. This is

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\* word play on, and artificial word formed by, "fair" and the 1<sup>st</sup> syllable (pronounced like "fair") of the word "*Verständnis*" (German for "understanding") [T.'s Note]

the aim of the Alliance for Democracy and Tolerance - Against Extremism and Xenophobia planned to be instituted by the Federal Government. The general public should be informed as thoroughly as possible on these themes, mobilised and sensitised, whereby in addition to awareness-raising, value-forming is central. If the *Alliance* is to succeed in its efforts, the diverse measures and action concepts developed at various levels to fight racism and xenophobia must be efficiently co-ordinated and brought in focus. The governmental measures are widely supported by the media in the Federal Republic of Germany (press and broadcasting media) and social actors as well as by the majority of the population.

3. The specific anti-xenophobia concepts developed and implemented by the *Bund* are matched by similar measures taken by the *Länder*. An example is furnished by the *Land* of Brandenburg, one of the traditional settlement areas of the Sorbs (Wends). In 1998, the *Land* of Brandenburg Government presented an action concept against violence, right-extremism and xenophobia, the key elements of which are the following:

- an alliance for action against violence, right-wing extremism and xenophobia  
(This project, which is supported with substantial *Land* funds, is to mobilise society for tolerance, solidarity and internationality; the projects of this Alliance are very heterogeneous.);
- condemnation of violence by intensified public discussion in the media and schools;
- establishment of counselling bureaus for the victims of right-extremist and apparently xenophobic criminal offences;
- support for counselling services sponsored by local authorities;
- support for the development of local structures for the integration of migrants;
- qualification of professional educators for handling and managing violence and right-wing extremism;
- preventive work with at-risk youth and with youth groups;
- creation of suitable police mechanisms to respond to xenophobic violence (example: establishment of "*Mobile Einsatztrupps gegen Gewalt und Ausländerfeindlichkeit*" [Mobile Task Forces against Violence and Xenophobic Hostility]).

The above measures are to prevent and punish all forms of discrimination against persons belonging to other ethnic groups. This also applies to the Sorbian/Wendish minority. It is to be noted, however, that acts of violence against persons belonging to the Sorbian (Wendish) ethnic group have so far not become known. Isolated cases of verbal attacks on representatives of the Sorbs, or posters containing insulting or inflammatory statements or elements were acts committed by individual offenders.

4. For criminal offences of right-extremist motivation, a reduction by 5.7 per cent was noted in 1998 as compared to the preceding year. The number of acts of violence decreased by 10.5 per cent to 708 offences. The decrease in the number of such acts of violence is due, *inter alia*, to the resolute action by the police, to uncompromising prosecution of crimes and, not last, to the aforementioned preventive measures taken by the state. Nevertheless the

fight against the various forms and phenomena of racism and xenophobia will continue to be an important task attentively and perseveringly pursued by the *Bund* and the *Länder*.

## Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to **freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.**

1. In Germany, freedom of assembly and freedom of association are protected, and guaranteed for all German citizens, by Articles 8 and 9 of the Basic Law. This includes the members of national minorities and ethnic groups. In addition, the Act concerning Assemblies and Processions guarantees to everybody, including foreigners, the right to organise, and to participate in, public assemblies and processions [rallies, demonstrations]. Under Section 1 of the Act regulating the Law of Public Associations [short title: *Vereinsgesetz* - Act on Associations], everybody is free to form associations (freedom of association). This provision guarantees freedom of association, above and beyond Article 9, para. 1, of the Basic Law ["All Germans shall have ..."] to foreigners as well.

For the Danish minority, a supplemental legal basis for freedom of assembly and of association is the Bonn Declaration of 29 March 1955.

Freedom of assembly and association is, in addition to the Basic Law, also embodied in the Constitutions of various *Länder*. In Germany, it is also guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights - ECHR).

Freedom of thought, conscience and religion is covered under the comments to Article 8 below; the right to freely express one's opinion (freedom of expression) is dealt with under the comments to Article 9 below.

2. The groups protected under the Framework Convention have widely used the rights protected under Article 7 of the *Convention* within reference to freedom of association.

2.1 The chief organisation of the Danish minority for cultural work is the ***Sydslesvigsk Forening*** (*SSF*), or *Südschleswigscher Verein* [South Schleswig Association], with the *Dansk Generalsekretariat* in Flensburg and a membership of 16,000. Another 27 associations pursuing a wide variety of activities are affiliated with the *SSF*. There are also independent organisations. The political organisation of the Danish minority (and of the national Frisians) is the ***Sydslesvigsk Vaelgerforening***, or *Südschleswigscher Wählerverband* (*SSW*) [South Schleswig Association of Voters], with its headquarters in Flensburg.



The providing body for activities related to schools and nursery schools is *Dansk Skoleforening for Sydslesvig*, or *Dänischer Schulverein für Südschleswig* [Danish Schools Association for South Schleswig]. The church activities of the Danish minority are organised and supported by the Lutheran Protestant *Dansk Kirke i Sydslesvig*, or *Dänische Kirche in Südschleswig* [Danish Church in Southern Schleswig]. The *Sydslesvigs Danske Ungdomsforeninger* (SdU), or *Dänischer Jugendverband für Südschleswig* [Danish Youth Association for Southern Schleswig], is the umbrella organisation for a wide range of youth work activities, and is composed of 72 associations. It also supports recreational centres and sports facilities.

All of these associations work together in an advisory committee, *Det sydslesvigske Samråd* [South Schleswig Joint Council], which is the co-ordination agency for Danish activities.

2.2 The Sorbs also have founded a large number of associations with widely varying objectives. The umbrella organisation of the Sorbian associations and institutions is *Domowina – Zwjazk Łužiskich Serbow*, or *Bund Lausitzer Sorben* [Federation of Lusatian Sorbs], to which 14 organisations of the Sorbs, with more than 6,000 members, are affiliated. These include the Sorbian Scientific Society/*Maćica Serbska* and, for school and cultural matters, *Sorbischer Schulverein* [Sorbian Schools Association], *Bund der sorbischen Studierenden* [Union of Sorbian Students], *Sorbischer Künstlerbund* [Sorbian Artists' Union] and *Verband sorbischer Gesangsvereine* [Union of Sorbian Choral Societies]. In the field of youth work, particular mention is to be made of the Sorbian youth organisation *Pawk*. In addition, there are many other associations and support/promoting associations which, in part from locations abroad as well, are actively committed to the cultivation and promotion of the Sorbian history, language and culture.

2.3 The largest association of the Frisian ethnic group is the *Nordfriesischer Verein* [North Frisian Association] which was founded in 1902. It has about 4,700 members and more than 25 local associations. A smaller group of North Frisians regard the Frisians as a people in their own right. They are organised in the *Foriining for nationale Friiske*, or *Verein nationaler Friesen* [Association of national Frisians], which has some 625 members and works together politically with the Danish minority. Both associations are dedicated to the preservation of the language, culture and landscape of North Friesland. The providing body of *Nordfriisk Instituut* is the *Verein Nordfriesisches Institut* [Association for the North Frisian Institute].

The umbrella organisation of the Frisians is *Interfrasche Rädj e.V. (Interfriesischer Rat - Inter-Frisian Council)* which comprises three *Frisian Councils*: Section North (in the *Land* of Schleswig-Holstein), Section East (in the *Land* of Lower Saxony), and Section West (in the Netherlands). Membership of the *Section North* of the Frisian Council includes representatives of the North Frisian Association and of the national Frisians, and one representative of the North Frisian Institute. The *Section East* brings together the associations of East Frisians and Saterland Frisians. The main associations in the East Frisian area are: *Ostfriesische Landschaft* (a public-law corporation) and *Friesischer Klootschiesserverband*

[Frisian Curling Association]. The interests of the Saterland Frisians within this Section are represented by *Seelter Bound*, an association which, in particular, is dedicated to the cultivation of the Saterland Frisian culture and language.

Throughout the entire East Frisian area, there are, in addition, many local clubs dedicated to the cultivation and preservation of Frisian customs/folklore.

2.4 For the representation of their interests, the members of the German Sinti and Roma are organised in associations and, in line with the federal structure of the Federal Republic of Germany, these are grouped in *Land* associations. The **Zentralrat Deutscher Sinti und Roma** [Central Council of German Sinti and Roma] serves as the umbrella organisation for nine of these *Land* associations as well as several regional and local associations and institutions. The Lower Saxony *Land* Association of German Sinti, one Sinti and Roma association in Hamburg and a number of smaller organisations of German Sinti, German Sinti and Roma, or German and foreign Roma are independent.

Recently, some of the organisations not affiliated to the *Central Council* and some elders of family clans of German Sinti have joined up in the *Sinti Allianz Deutschland* which is currently seeking the status of an incorporated society.

3. The very active life of the societies and associations of the groups protected under the Framework Convention - which often includes all aspects of life in society, but is primarily focused on activities and events concerning the language, culture and tradition of the minorities - is constant proof of the wide use being made of the freedoms guaranteed by the Constitution.

## Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her **religion or belief** and to **establish religious institutions, organisations and associations**.

1. In Germany, everybody has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations. The freedom of faith and of conscience, freedom to profess a religious or philosophical creed, and undisturbed practice of religion are guaranteed under Article 4 of the Basic Law and are also guaranteed by Article 9 of the European Convention on Human Rights (and Fundamental Freedoms - ECHR). In this respect, cf. also the comments under Article 5, para. 1, above.

The guaranteed practice of religion covers all ritual acts prescribed or customary in each religion, including, above all, religious services, ceremonies, processions, prayers, administration of sacraments, ringing of bells and other expressions of religious life. Undisturbed practice of religion is ensured not only for the individual, but also for the

individual in communion with others, and for religious communities as such and for religious associations. Like all fundamental rights which, by their wording, are of unqualified validity, the practice of religion is limited by concurrent fundamental rights of others and by other constitutionally guaranteed legal values if, in case of concurrence, these take precedence.

In Germany, there is no state church, i.e. no official state religion, no unity of, or institutional/organisational linkage between, state and church, and particularly no state jurisdiction as regards church matters and no specific governmental supervision. Like all other religious communities, the Churches are autonomous organisations, independent of the state, with their own specific tasks.

Article 3, para. 3, 2<sup>nd</sup> sentence, of the Basic Law states that nobody shall be disadvantaged because of his/her affiliation or non-affiliation with a religious or philosophical/ ideological creed.

There are no legal provisions referring to the creed of persons belonging to national minorities. In Saxony, however, Article 10 of the Act ratifying the Treaty between the Holy See and the Free State of Saxony of 24 January 1997 (cf. Appendix B: German legislation) explicitly lays down that the Catholic Church shall preserve and protect the specifically Catholic Sorbian cultural heritage.

2. The vast majority of those persons belonging to the national minorities and ethnic groups in Germany who are members of a religious community belong to the Protestant Church or to the Catholic Church.

2.1 The body organizing and supporting the church activities of the Danish minority is the Lutheran Protestant *Dansk Kirke i Sydslesvig*, or *Dänische Kirche in Südschleswig* [Danish Church in Southern Schleswig]. As an incorporated society under German law, it is a Free Church comprising 39 parishes with 24 ministries [pastorates]. The Danish Church in Southern Schleswig is independent *vis-à-vis* the regional Lutheran Protestant Church, *Nordelbische Evangelisch-Lutherische Kirche*, in Germany and the *Folkekirke* [National Church] in Denmark, but closely co-operates with the private-law organisation *Dansk Kirke i Udlandet*, or *Dänische Kirche im Ausland* [Danish Church Abroad], in Odense/Denmark. Religious services are held in Danish, but in part also in German and Danish.

2.2 The majority of the Sorbs in Saxony are members of the Christian churches, with about half belonging each to the Protestant Church and to the Catholic Church. The Protestant Sorbs in the Sorbian settlement area in Saxony are members either of the Protestant Church of Lower Silesian Upper Lusatia, or of the Lutheran-Protestant *Land Church of Saxony*. The Protestant Sorbs of Brandenburg are, as a rule, members of the Protestant Church in Berlin-Brandenburg, but some also belong to the Protestant Church of Silesian Upper Lusatia. It is to be noted, however, that no data regarding the breakdown of religious affiliation by ethnicity are collected.

The Sorbian Superintendent in Bautzen attends to the Sorbs in the two Protestant churches in Saxony. His duties include holding Sorbian-language services and social gatherings in parishes which have no Sorbian-speaking minister. This is the case with 22 Protestant parishes in all. In one of the parishes, the minister speaks Sorbian. Three retired Sorbian-speaking ministers support these church activities in the Upper Sorbian language. In Brandenburg, too, an increasing number of regular church services, sermons and Bible classes are held in the Sorbian language by a number of Sorbian-speaking ministers and preachers in varying places; these activities are promoted, in particular, by the *Verein für sorbischen Gottesdienst* [Association for Sorbian-Language Church Service] and by *Landeskirchliche Gemeinschaft* [Land Protestant Church Union].

*Serbske ewangelske towarstwo z.t.*, or *Sorbischer evangelischer Verein e.V.* [Association of Sorbian Protestants, reg'd], is an association of Protestant Sorbs. It organises a Sorbian Protestant Church Congress once per year and other meetings. *Domowina-Verlag* is the publishing house for the monthly *Pomhaj Bóh*, or *Hilf Gott* [Help God], for the Protestant Sorbs, which is supported with state-provided funds by the *Stiftung für das sorbische Volk* [Foundation for the Sorbian People] and which has a circulation of 1,200.

The area of the Catholic Sorbs is, for the most part, situated in the area between the towns of Bautzen, Kamenz and Hoyerswerda. The Sorbian-speaking inhabitants, for the most part, form the majority in this region with a Catholic tradition with two dioceses [bishoprics] (Görlitz and Dresden-Meißen), but German is also spoken on many church-related occasions; in a number of parishes, though, divine services are held in Sorbian on a regular, and sometimes even daily, basis. Twenty Sorbian-speaking priests are available for this purpose. The Church endeavours to preserve and promote the specifically Catholic Sorbian cultural heritage and the Sorbian language in particular. As an association of Sorbian Catholics, the *Cyrrill and Methodius Association (Towarstwo Cyrila a Metoda z.t.)* supports the Catholic pastoral and cultural life of the Sorbs and, with state-provided funding, edits the weekly *Katolski Posol (Catholic Herald)* published by the *Domowina* Publishing House, with a circulation of 2,650 copies, and also publishes other religious literature of the Catholic Sorbs.

2.3 Those North and East Frisians who are members of a religious community mostly are of Protestant faith while the smaller group of Saterland Frisians and the East Frisians in the Oldenburg region are Catholics for the most part. Frisians usually attend services held in German. A Working Group of *Nordfriesisches Institut* is drawing up a Frisian hymn-book for church use. Responding to requests by Saterland Frisians, the Catholic Church on special occasions holds services in Saterland Frisian.

2.4 The religious orientation of the German Sinti and Roma does not differ from the majority population in the various regions of Germany. The majority of German Sinti and Roma are either Protestant or Catholic Christians. They attend services held in German.

## Article 9

(1) The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes **freedom to hold opinions and to receive and impart information and ideas in the minority language**, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

(2) Paragraph 1 shall not prevent Parties from requiring the **licensing**, without discrimination and based on objective criteria, of **sound radio and television broadcasting, or cinema enterprises**.

(3) The Parties shall not hinder the creation and the use of **printed media** by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their **own media**.

(4) In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate **access to the media** for persons belonging to national minorities and in order to promote tolerance and permit **cultural pluralism**.

### para. 1

1. In Germany, general freedom of expression is extensively guaranteed under Article 5, para. 1, 1<sup>st</sup> sentence, of the Basic Law and under Article 10 of the European Convention on Human Rights (ECHR). The Basic Law safeguards the right freely to express and disseminate one's opinions in speech, writing, and pictures, as well as the right to withhold one's personal opinion ("negative freedom of expression"). Opinions thus protected are all types and forms of [personal] judgments or of behaviour; the notion of "opinion" must be understood in its broadest sense and, in addition to value judgments, also covers declarations of fact where these are a prerequisite for forming opinions. In this respect, it does not matter whether a given opinion is objectively correct or false. Thus - as an input to, and basis for, analysis and discussion - also false, reprehensible and value-laden expressions of opinion are protected - within the limits prescribed by Article 5, para. 2, of the Basic Law (i.e. violation of the provisions of general laws, legal provisions on the protection of youth and the right to inviolability of personal honour). Freedom of expression is accorded to all German citizens and thus, of course, to the groups protected under the Framework Convention, and to foreigners.

The basic right to free speech primarily provides protection against government interference. But in addition, it places the state under the obligation to safeguard this freedom. Article 5, para. 1, 1<sup>st</sup> sentence, of the Basic Law also guarantees freedom of informa-

tion - the right to inform oneself [without hindrance, from generally accessible sources] - as a fundamental right. Such protection extends both to the active procurement of information and to merely receiving information. Especially the Danish minority in Schleswig-Holstein makes use of the broadcasting programmes and the press from the Kingdom of Denmark – across national borders – in their traditional settlement area.

The right to freedom of expression is also manifested in the freedom to create and use media (press, broadcasting, and other communications media). Article 5, para. 1, 2<sup>nd</sup> and 3<sup>rd</sup> sentences, of the Basic Law guarantees freedom of the press and freedom of reporting by means of broadcasts and films, without censorship. Freedom of the press and of broadcasting particularly implies the principle of governmental non-intervention, which prohibits any state interference which is not compatible with the freedom of the press and of broadcasting or which is not warranted by the limitations of such rights as provided under Article 5, para. 2, of the Basic Law.

For the press, these constitutional guarantees have been developed in detail and confirmed by the judicial decisions (rulings) of the Federal Constitutional Court and by the various *Land* Press Acts. These provide the basis for the free and economically autonomous development of the press in the Federal Republic of Germany.

Freedom of broadcasting, like freedom of the press, is an essential factor in the public opinion-forming process and in the articulation of the political will. Like the press, broadcasting has institutional autonomy. For compliance with the constitutional mandate of broadcasting, it will not suffice for the state to refrain from any interference whatsoever and, in all other respects, to leave broadcasting for the social actors to deal with. Rather, the requirement is for some regulatory structure. The Federal Republic of Germany has the so-called dual broadcasting system - i.e. the existence of public-service and private broadcasters side by side - by which the state guarantees that, through the overall offer by all broadcasters, reporting meets the requirements stipulated in the Constitution for balanced diversity, i.e. encouraging the individual's freedom to form his/her own opinion and depiction of cultural diversity.

The federal structure of Germany assigns responsibility for broadcasting, and thus for ensurance of diversity of opinions, to the *Länder*. The legal basis for broadcasting is provided by the Broadcasting State Treaties concluded between the *Länder*, which lay down the minimum requirements according to which the *Länder*, within their respective jurisdiction, shall issue detailed regulations in their *Land* Media Acts. These comprise the *Land*-specific programme requirements and provisions to secure pluralism of opinions and freedom of expression (in this regard, cf. the specific examples given in the comments under para. 4 below). The *Land* Media Acts also regulate the licensing conditions for private broadcasting (cf. also the comments under para. 2 below).

Article 3, paras. 1 and 3, of the Basic Law also prohibit any discrimination with regard to access to the media so that also the national minorities and ethnic groups protected under

the Framework Convention have access on the same conditions as the majority population. In this regard, particular mention is to be made of the supervisory and control bodies which have the duty of safeguarding diversity of opinions and ensuring compliance with the programming principles of broadcasting. The relevant major political, philosophical/ideological and social groups are granted adequate participation in the supervisory bodies of the public-service broadcasters and of the *Land* Supervisory Authorities for Private Broadcasters [*Land* Broadcasting Institutions], the Broadcasting Board and the Broadcasting Commission/Media Council. Membership of these bodies is so diversified that all socially relevant groups are provided sufficient opportunity to have their say. In addition to representing the interests of their associations or groups, the members of these bodies also contribute comprehensive and multi-faceted views on socially important issues to the deliberations of these bodies.

The issue of the representatives of national minorities on these media boards was the subject of an action brought by the *Central Council of German Sinti and Roma* (cf. the comments under Article 4, para. 1, no. 3, above). Controlling the public-service broadcasters primarily is the broadcasters' internal responsibility and rests with the supervisory bodies, i.e. the Broadcasting Board and the Board of Administration. Responsibility for controlling private broadcasters lies with the *Land* Supervisory Authorities [*Land* Broadcasting Institutions]. According to the judicial decisions of the *Federal Constitutional Court*, the task of the supervisory bodies is not to represent the interests of the groups/organisations delegating the respective members, but rather is to act as a trustee for the public interest and thus to prevent any one-sided interference and programming and to ensure that appropriate and fair account is taken, within the overall programme, of all major political actors and groups. Accordingly, the *Federal Constitutional Court* did not guarantee the right of any socially relevant group - including, for instance, a national minority - to be represented on supervisory bodies, and consequently did not regard non-inclusion as an act of discrimination.

Some representatives or members of national minorities have been elected to broadcasting bodies. A representative of *Sydslesvigsk Forening* (South Schleswig Association), the chief cultural organisation of the Danish minority, is a member of the *Unabhängige Landesanstalt für den Rundfunk* (ULR - the Schleswig-Holstein supervisory authority for private broadcasters). Also, a member of the Television Board of *Zweites Deutsches Fernsehen* (ZDF - Second German Television) belongs to the Danish minority. In accordance with the Act on Private Broadcasting in Saxony of 18 January 1996, a Sorbian representative nominated by the associations of the Sorbs is a member of the Assembly of *Sächsische Landesanstalt für privaten Rundfunk und neue Medien* [Saxon *Land* Institution for Private Broadcasting and New Media]. The Saxon *Landtag* delegated a representative of the Sorbian umbrella organisation *Domowina* to the Broadcasting Board of *Mitteldeutscher Rundfunk* (mdr). In Brandenburg, too, a representative of *Domowina* is a member of the Broadcasting Board of *Ostdeutscher Rundfunk Brandenburg* (ORB) and of the Media Council of *Landesmedienanstalt Berlin-Brandenburg* [*Land* Supervisory Authority for Private Broadcasters, Berlin-Brandenburg].

On account of the actual overall conditions regarding freedom of the press as guaranteed by the Constitution, which provide for a large number of independent press products which, in terms of political orientation or worldview/ideology, compete with each other, no comparable legally regulated supervisory bodies exist in the print media sector.

The aforementioned freedoms may, as a matter of principle, also be exercised by the national minorities in their respective minority language (as regards use of minority languages in general, cf. also the comments under Article 10 below). For the extent of inclusion of minority languages in the media, cf. the comments under paras. 3 and 4 below.

**Article 9, para. 2** [licensing]

Regulation of broadcasting falls within the jurisdiction of the *Länder*. Article 5, para. 1, 2<sup>nd</sup> sentence, of the Basic Law (freedom of broadcasting) does not require a *Land* to adopt a specific organisational form of broadcasting. However, the *Land* is obliged to make certain provisions to ensure freedom of broadcasting. As a matter of public interest, broadcasting must be operated on a non-party basis and in full independence and must be protected against any biased intervention. The public-service broadcasters, in particular, must furnish comprehensive information within their overall programme and allow full pluralism of opinions. As regards private broadcasting, the legislator also must ensure that such private operators meet the constitutional requirements and, in particular, that the highest possible in balanced diversity is achieved. The existing regulations regarding licensing of broadcasters are based exclusively on objective criteria. The licensing conditions are laid down in the various *Land* Media Acts.

In all cases, the applicant must have his residence or the domicile of his company in the area to which the Basic Law applies (in some of the *Länder*, this may also be a location in the EU Member States). Granting of a licence also depends on whether the applicant has the qualification for lawful provision of broadcasting programmes, i.e. meets the financial and legal requirements with regard to programming. Moreover, programmes must be in accordance with the general programming principles as laid down in the Broadcasting State Treaty concluded between the *Länder*; these include, *inter alia*, compliance with the constitutional order and respect for human dignity. In addition, the *Land* Media Acts lay down various requirements to be met by private broadcasters which, however, are also based exclusively on objective criteria.

If an application for licensing is refused, an objection may be filed, or an action be brought, in accordance with the general legal provisions.

**Article 9, para. 3** [minorities' own media]

1. As regards the legal scope for the creation and use of media, cf. the fundamental comments under para. 1 above. It is pointed out once more that the national minorities and



the majority population enjoy the same rights and possibilities as regards freedom of the press and of broadcasting. Also under the present promotional policies of the *Bund* and the *Länder* (cf. the comments under Article 5, para. 1, above), the groups protected under the Framework Convention can avail themselves of the freedom of press and of broadcasting. In this respect, it should be noted that, given the different size and the resultant varying economic and practical capabilities of the protected groups, these groups use the media on a different scale.

2. The right to create and use print media is guaranteed by the freedom of information and of the press embodied in Article 5, para. 1 of the Basic Law. There is no censorship so that, within the constitutional order, nobody is prevented from engaging in journalistic work and mass-media activities. Freedom of the press, as guaranteed by the Basic Law, is manifested in a large number of publications of the groups protected under the Framework Convention, of which examples are given below.

2.1 The Danish minority has its own bilingual daily newspaper (*Flensburg Avis*). The publisher's headquarters is in Flensburg; there are local editorial offices in (the town of) Schleswig, in Husum and Niebüll. It has a circulation of some 6,600 copies, part of which is distributed north of the border. A Press Service which is affiliated to *Syslesvigsk Forening* (South Schleswig Association), i.e. the chief cultural organisation of the Danish minority, supplies information about the Danish minority to the media in Germany and Denmark. The Danish minority also makes use of the Danish press which is available for a wide spectrum of subjects.

2.2 For the Sorbian people, the following Sorbian-language print media are published on a regular basis:

- *Serbske Nowiny* (*Sorbische Zeitung* - Sorbian Newspaper) - 2000 copies. A daily in Upper Sorbian, published on Mondays through Fridays as an evening paper; on Fridays: including specific supplements, e.g. literature/arts, youth supplement, sports supplement (*Sokolske listy*) Circulation: Mondays through Thursdays: 1500 copies; Fridays 2000 copies

- *Nowy Ćasnik* (*Neue Zeitung* – New Newspaper) - 1100 copies. A weekly in Lower Sorbian, with a German-language portion; published on Saturdays

- *Rozhlad* (*Umschau* - Outlook) - 610 copies. A monthly periodical for Sorbian culture, language, literature and art, with articles in the Upper and Lower Sorbian languages

- *Serbska šula* (*Sorbische Schule* - Sorbian School) - 210 copies Educational journal, with articles in Upper and Lower Sorbian; 10 editions per year

- *Płomjo / Płomje* (*Flamme* - Flame) - 2400 / 950 copies. Children's and youth journal *Płomjo*: Upper Sorbian edition, 2400 copies *Płomje*: Lower Sorbian edition, 950 copies

- *Katolski Posoł* (*Katholischer Bote* - Catholic Herald) - 2650 copies. Upper Sorbian weekly of the Catholic Sorbs

- *Pomhaj Bóh* (*Gott hilf* - Help God) - 1200 copies. Protestant monthly in Upper Sorbian

Scientific and cultural books in Sorbian as well as school textbooks, modern and classical Sorbian fiction and poetry, youth, children's and picture books are published by *Domowina* Publishing House. Many publications on Sorbian social and cultural history, language development, studies on the material culture and customs, and the study of civilisation and science of art are also brought out in German, e.g. by the *Sorbian Institute* and *Maćica Serbska*, the Sorbian Scientific Society.

2.3 In the Frisian settlement area, local papers in North Friesland and some regional journals occasionally publish articles in the Frisian language. Since 1993, the newspapers distributed in North Friesland by *Schleswig-Holsteinischer Zeitungsverlag* [Schleswig-Holstein newspaper publishing company] have published monthly supplements which also include Frisian-language articles. Articles in the Saterland Frisian language regularly appear in the local editions of the regional newspapers read in the Saterland.

2.4 Publication of print media in the Romany language is not in agreement with the conviction of the German Sinti that cultivation of their language should be confined to the family and family clan and that no written form of this language should be developed. On the other hand, however, the *Central Council* regularly distributes, in the German language, articles and comments to the press and also to its affiliated associations. Other organisations of the German Sinti and Roma publish information through information services or by means of circulars. Roma organisations disseminate such information also in the Romany language. The *Documentation and Cultural Centre of German Sinti and Roma* issues a publication series in German.

3. As in the case of press products, creation of one's own media in the field of broadcasting (sound radio and television broadcasting) depends on the size of the protected group and its economic capacity. Where creation of a group's own broadcasting media is not expedient or not feasible, "Open Channels" are usually available. These are used for local and regional dissemination of non-commercial broadcasting items. In this way, individuals, social groups, organisations, associations, unions and institutions can, independently and on their own responsibility, produce broadcasting contributions and have them aired. These contributions must conform to the general programming principles, must not contain any commercial advertisements, must be on a non-profit basis and must not be provided for remuneration. No definitive findings are available as regards the extent to which these "Open Channels" are used by the groups protected under the Framework Convention. The Danish minority makes occasional use of the Open TV Channel for airing videos on the minority in the Danish or German language in their region. The Frisian ethnic group prepares a sound broadcasting pilot project in the Frisian language which is to be aired in North Friesland at regular broadcasting times.

In the following, examples are given of the broadcasting media which are so far available to the groups protected under the Framework Convention:

### 3.1 Regarding the Danish minority

In the settlement area of the Danish minority in the north of the *Land* of Schleswig-Holstein, a particular situation exists as regards use of broadcasting media. Since the settlement area borders directly on Denmark, the members of this minority can receive the entire broadcasting programme of the Kingdom of Denmark. Consequently, no special need for their own broadcasting media has arisen so far. The private radio broadcasting station *Radio Schleswig-Holstein* disseminates a daily Danish-language news programme designed by the Danish minority. In addition, there are a TV model test project of *Norddeutscher Rundfunk* (NDR) in Danish and programmes of the Danish regional TV stations for Sønderjylland (South Jutland, or North Slesvig) on subjects concerning the Danish minority.

### 3.2 Regarding the Sorbian people

In the traditional settlement areas of the Sorbian people in the Free State of Saxony and in the *Land* of Brandenburg, public-service broadcasting has developed an extensive programme in the Sorbian language. The programme is devoted, in particular, to the fields of information, culture and education. "Culture" is understood in the broadest sense of the word; this thematic section also covers reports on traditions/folklore and on the life of societies and associations, reviews of stage productions and books, and talks with Sorbian authors and other persons engaged in the cultural sector. In addition, there are news, commentaries, topical reports, especially on current affairs in the region, and religious contributions. The musical sector covers the range from Sorbian folk songs to modern Sorbian popular songs.

Under Article 6, para. 3, of the Saxon Act to implement the Agreement on *Mitteldeutscher Rundfunk (mdr)* of 27 June 1991, broadcasts of the mdr must take account of the interests of *all* segments of the population – including the minorities. With its *Sorbisches Studio Bautzen*, *Mitteldeutscher Rundfunk (mdr)* broadcasts a daily programme in Lower Sorbian Mondays through Saturdays, for three hours during the early morning programme, and on Sundays, around midday, for one and a half hours, and occasionally live transmissions as well. In addition, a 1-hour youth programme, "*Radio Satkula*", has been aired every Monday since April 1999; it covers news, reports, modern Sorbian and international music, and other reports. It is developed and presented by Sorbian youngsters. The programme is repeated on *Ostdeutscher Rundfunk Brandenburg* the following day. Leaving special broadcasts aside, this amounts to an airtime of 21.5 hours per week in the Upper Sorbian language.

In addition, *Landesfunkhaus Sachsen (Land Broadcasting Centre Saxony)* of the mdr airs a half-hour dual-channel (German and Upper Sorbian) television programme at 20.15 hours every four weeks on Wednesdays. Also, every two Sundays, there is dual-channel transmission (German and Upper Sorbian) of the short children's programme "*Sandman*". These are not programmes dealing with Sorbian subjects, but are translations of the regular

programmes into a Sorbian version. The mdr does not have a TeleWindow covering Sorbian subjects in the Sorbian language.

Under Article 4 of the Act on *Ostdeutscher Rundfunk Brandenburg, Ostdeutscher Rundfunk Brandenburg* (ORB), like mdr, has to take account, in its programme, of the cultural diversity of the *Land* of Brandenburg and of the Sorbian culture and language.

From its Cottbus Studio, ORB broadcasts a daily 1-hour radio programme in Lower Sorbian Mondays through Fridays, with an additional 90-minute programme on Sundays, so that radio broadcasting alone produces 6 ½ hours per week in the Lower Sorbian language. This brings the total of sound broadcasting aired in the Sorbian language to 28 hours per week.

Special attention is given to the cultivation of Sorbian music and the study and revival of the musical heritage. This is, in part, achieved by presenting a wide range of carefully selected music in the radio programme. In addition, mdr and ORB produce their own recordings since Sorbian music is hardly offered on the market. About 80 to 100 titles are recorded per year. This production also comprises efforts to research the inventory of Sorbian folk songs, giving suggestions and assistance to interpreters, groups and vocalist ensembles with regard to their musical arrangements, promotion of talented Sorbian musicians, for instance by organizing a yearly concert of talented young artists or tape-recording of musical events, and assistance given by ORB in the publication of sound recording media.

ORB television airs the only regular Sorbian-language programme, which is entitled "*Łužyca - Sorbisches aus der Lausitz*" [Sorbian matters from Lusatia]. Since April 1992, a regular monthly air-time has been assigned to this programme, namely every third Saturday of the month, at 13.30 hours. There are re-runs on the respective subsequent Wednesday, at about 23.30 hours. This is a 30-minute magazine programme in Lower Sorbian, with German subtitling. The aim of this magazine programme is to present the Sorbian language, culture, tradition, everyday life and problems. The Sorbs' emotional ties with the homeland and their national self-assurance are to be fostered. Examples of this are reports on traditions in the handicrafts and on folk arts and crafts which might die out in the future. Also, efforts are being made to prevent any reduction in the younger generation's respect and esteem for the Sorbian language.

A number of Sorbian film productions are offered on video-cassettes. Most of them are children's movies (for the most part, adopted from Czech animated cartoons), videos for schools, e.g. for history classes, and films about the Sorbs or Sorbian subjects. Most videos are in Upper Sorbian; a few are also edited in Lower Sorbian; in most cases, information films are also provided with a German version. About three to five videos are published per year.

The Internet also provides information on the Sorbs, which *inter alia* was contributed or is attended to by *Sorbisches Institut Bautzen* or by *Domowina*. This information is published in the German, Upper and Lower Sorbian, and English languages.\*

Thus, there are diversified offers by broadcasting and the other media. A particular deficit, however, is seen by the members of the Sorbian people in the fact that mdr so far does not air any regular TV programmes on Sorbian issues and in the Sorbian language.

### 3.3 Regarding the Frisians in Germany

Programmes in the Frisian language are only offered on a very limited scale in the Frisians' traditional settlement area. Since 1989, the sound broadcasting section of *Norddeutscher Rundfunk* (NDR) has, once per week, aired a North Frisian programme in a regional "TeleWindow". The length of the broadcast is, however, only three minutes. Also, as a one-time event, a 1-hour sound-broadcasting feature was presented in the Frisian language. So far, no Frisian-language television programmes are available. In 1994/95, the private broadcaster *Radio-Schleswig-Holstein* aired a 1-hour programme in the North Frisian language four times a year. Since 4 October 1999, *Offener Kanal Westküste* [Open Channel West Coast] has aired the programme of "*Radio Friislon*".

### 3.4 Regarding the German Sinti and Roma

Since the German Sinti and Roma are dispersed more or less over the entire area of Germany, creation of their own broadcasting media or their participation in the so-called Open channels is difficult because of practical and economic reasons. Therefore, the primary interest of associations of German Sinti and Roma is to keep up the dialogue with broadcasters and the print media so as to help to achieve unprejudiced reporting and to develop public awareness of the possibility that ill-considered reports and notices might foment any prejudices that still exist in parts of society. The position taken by the German Sinti with regard to their language was already described above. The Berlin-based radio station *SFB 4 Multikulti* \*\*, which also broadcasts a programme in the Romany language, addresses this programme mainly to Roma living in the Greater Berlin region and, in particular, to foreign Roma.

4. One of the current media-political aims of the umbrella organisations of the minorities in Germany is to bring about that, in addition to the activities described above, the broadcasting media will provide wider coverage of minority-related subjects and more intensive, unprejudiced reporting so as to supply the population of the Federal Republic of Germany with more information about this part of the nation's population and its own

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\* e.g.  
 "History of the Sorbs/Wends in Germany" [<http://www-user.tu-cottbus.de/Sorben/inhalt06/domowina/eng/historie.htm>],  
 "Foundation for the Sorbian Nation" [<http://www-user.tu-cottbus.de/Sorben/inhalt06/d01.htm>] [T.'s Note]

\*\* SFB = *Sender Freies Berlin*; "Multikulti" colloquially refers to "multicultural" [T's Note]

identities. In connection with this aim, the Danes, Sorbs and Frisians also express the wish for having their languages included in additional offerings by the audio-visual media.

**Article 9, para.4** [access to the media; cultural pluralism]

For issues regarding facilitation of access to the media by the national minorities and ethnic groups protected under the Framework Convention, cf. the comments under paras. 1 and 3 above. The question of promoting tolerance and thus providing for cultural pluralism is essentially covered in the comments under para. 1 above, where - in the context of defining freedom of broadcasting in terms of constitutionality - both elements are presented as a basis for freedom of broadcasting which the state must ensure. Some of the *Land* Media Acts have explicitly included these elements, with particular reference to minorities, without confining them to the groups protected under the Framework Convention. Thus, for instance, the following provision was included in the State Treaty on the Co-operation of Berlin and Brandenburg in the Field of Broadcasting of 29 February 1992:

"The private broadcasters licensed in the area to which this State Treaty applies shall reflect the essence of the plurality of opinions in the contents of their programmes. The relevant political, philosophical/ideological and social actors and groups shall be given adequate scope for expressing their opinions in generalist programmes and in specialist (thematic) programmes with a focus on information; opinions of minorities shall be taken account of."

Also, the State Treaty explicitly provided for the obligation that the overall programme shall promote the living together of foreigners and the German population.

In the *Land* of Hesse, Section 13, para. 1, of the Act on Private Broadcasting stipulates that the programmes shall contribute towards "the protection of ethnic, cultural and linguistic minorities".

**Article 10**

(1) The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her **minority language, in private and in public, orally and in writing.**

(2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to **use the minority language in relations between those persons and the administrative authorities.**

(3) The Parties undertake to guarantee the right of every person belonging to a national minority to be **informed promptly**, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or

her, and to **defend himself or herself in this language**, if necessary with the free assistance of an interpreter.

**para. 1**

1. In Germany, freedom to use one's own language in private and in public is ensured by Article 2, para. 1, of the Basic Law, which guarantees the right to the free development of one's personality. This freedom is also ensured in the context of the freedom of expression, of the press and of broadcasting [reporting by means of broadcasts] as guaranteed under Article 5, para. 1, of the Basic Law.

In addition to the freedoms guaranteed for the entire territory of Germany, Section 8 of the Act on the Specification of Rights of the Sorbs (Wends) in the *Land* of Brandenburg (SWG) reaffirmed the right to freely use the Sorbian (Wendish) language. Pursuant to the Saxon Constitution and Section 8 of the Act on the Sorbs' Rights in the Free State of Saxony and a number of other laws and ordinances, the Sorbs in the Free State of Saxony have the right to communicate, orally and in writing, in their language in private and in public.

Use of the minority languages in public is largely accepted by the German population. No reservations exist in this respect. A much wider use is made of languages other than German by the large numbers of foreigners living in Germany, and this fact does not raise any problems in society – aside from individual far-rightist individuals.

2. The majority of the members of the Danish minority use the Danish language in the private sphere. But the situation in mixed-nationality marriages where German usually prevails must also be noted. Danish is spoken within the organisations of the Danish minority. Constant use and promotion of the Danish language provide the basis for all minority-related activities. Of particular importance for proficiency in the Danish language are the Danish private schools, particularly important for the children from mixed-nationality marriages.

Use of the Sorbian language in private depends, to a large extent, on the Sorbian people themselves, especially on whether the language is passed on to their children. For the central settlements with a large share, or even the majority, of Sorbs, this is more the case than for families in larger places and towns where they constitute a dispersed minority. In the case of the Sorbs, too, the existence of many mixed marriages has an influence on the language spoken within the family and on the extent to which Sorbian is passed on to the children so that attendance of Sorbian schools is of particular importance to these children.

Use of the Sorbian language in public is rendered difficult by the fact that the German-Sorbian settlement area is not generally bilingual but that, as a rule, only the Sorbs have a command of both languages. Therefore, German is more generally used in public events, as well as in church – with some exceptions.

North Frisian is still to a major extent the language spoken within the family and is the language for communication in public, especially among the Frisians living on the islands and holms (*Halligen*). This is less so on the continent. In mixed-language marriages, German normally prevails. The use of Saterland Frisian by the Saterland Frisians is gradually increasing since school-children are taking a greater interest in learning this language and children and the grandparent generation have started to communicate in Saterland Frisian again.

In the private sphere, the German Sinti and Roma, who grow up as bilingual speakers of Romany and German, use their traditional Romany and occasionally the German language. However, German is their second mother tongue, or secondary language. For communication in community with other German Sinti and Roma, Romany is predominantly used. German is more or less always spoken [by Sinti and Roma] in public, especially when members of the majority population, of other minorities or foreigners living in Germany are present.

3. There are various ways in which the state promotes the learning and use of minority languages (cf. the comments under the respective Articles). In particular, efforts are encouraged to keep these languages alive by using them within the family and in extra-familiar everyday-life situations. In this regard, the cultural value of the minority languages for Germany's cultural life is particularly emphasised so that, on the basis of the resultant self-esteem and self-assurance, the younger generation will be more willing to adopt these languages and pass them on.

**Article 10, para. 2** [relations with administrative authorities]

1. Under German law, the official language is German. The obligation required under para. 2 specifically refers to areas inhabited, traditionally or in substantial numbers, by members of national minorities, and in Germany applies especially to the settlement areas of the Danish minority, of the Sorbian people, and of the North Frisians and Saterland Frisians. The German Sinti and Roma are dispersed more or less throughout Germany, while no major number of them is known to live in one particular place or region.

Due to the mostly small number of members of minorities as a percentage of the given local population, in general it is not possible to use the minority language in relations with the administrative authorities; rather, such use is confined to special regulations. This does not, however, mean that the relations between persons belonging to groups protected under the Framework Convention and administrative authorities are rendered difficult, for all members of those groups are bilingual and have no problems with using the German language. Where the legal and practical scope for using the minority languages in relations with administrative authorities does exist, the most part of the members of the respective minorities do not avail themselves of this possibility.



However, in the view of the Danish minority, of the Sorbs and of the Frisians, further development of the existing practical scope for such use would be desirable because this would increase public awareness as regards the existence of minority languages, and provide additional incentives to the subsequent generation to retain the minority language. This will be one of the subjects of the planned Conference of the Federal Ministry of the Interior with the *Länder* and local governments of the minority settlement areas and with representatives of the minorities, which is to be held in the year 2000 as part of the activities to implement the European Charter for Regional or Minority Languages.

The national minorities and ethnic groups suggest that for better minority language communication on the part of the staff of local and regional administrations, local authorities might encourage participation in language courses and that, when staff members are being recruited, their proficiency in the minority language might be particularly taken into account as an additional qualification.

The detailed situation is as follows:

## 2. Regarding use of the Sorbian language

In the German-Sorbian areas, both German and Sorbian are admitted in relations with the public authorities and administrations of the *Land* and local governments. This right is expressly stipulated in Sections 9 and 11 of the *Saxon Sorbs Act* of 20 January 1999 and in Section 23 of the Administrative Procedure Act of the *Land* of Brandenburg. In addition, in the settlement area of the Sorbs, the Sorbian language is to be included in public signs and inscriptions; this means that both names must be given for *Landkreise* and *Gemeinden* (bilingual place-name signs), for public buildings, institutions, and streets, roads and places. However, within the area to which the (Federal) Administrative Procedure Act applies, the Sorbs must, as a matter of principle, use the German language.

Within local administrations, the staff and directors of various sections speak the Sorbian language. Some of them have direct responsibility for Sorbian matters. Within the local authorities of the traditional settlement area of the Sorbian (Wendish) people in the *Land* of Brandenburg, most public notices are bilingual; for official letters of such authorities, bilingual letterhead is used.

In the Sorbian communities, or communities with a Sorbian majority, in the Free State of Saxony, the Sorbian language prevails in public life. This also includes administrative authorities and meetings of local/municipal councils. At the same time it is ensured, e.g. by bilingual notices on the bulletin board, that citizens who only speak German are also included in community life. In these places, in particular, civil marriages are increasingly contracted in the Sorbian language.

In all places where the Sorbs form the (mostly small) minority within the local population, only hesitant use is made of the legal and practical scope for using the Sorbian language in relations with the administration.

Even where sufficient numbers of staff members of *Kreis* and local authorities have proficiency in the Sorbian language, these capabilities are seldom used by the Sorbian population. As a rule, Sorbian citizens prefer to use the German language in their relations with administrative authorities because they thus want to preclude any misunderstandings in the administration's assessment of the matter put before it. To give some examples:

In the city of Cottbus, the correspondence between the *Commissioner for Sorbian (Wendish) Matters* and the Sorbian institutions and associations as well as citizens belonging to the Sorbian people takes place, for the most part, in the Lower Sorbian language. Although this provides the basis for handling such petitions in Sorbian, no citizen has so far made a written submission in the Lower Sorbian language to the municipal authorities.

In Oberspreewald-Lausitz *Landkreis*, the Lower Sorbian language is seldom used in relations with administrative authorities although the actual conditions for such use exist, since usually the staff of the authorities concerned have a command of the Lower Sorbian language. For the *Landkreise* of Spree-Neisse and Dahme-Spreewald, no cases have been reported where citizens contacted administrative authorities in the Lower Sorbian language. In the interest of greater responsiveness of administration to citizens, however, it certainly would be of advantage if a larger number of the staff of public authorities in the Sorbian settlement area could use the Sorbian language.

### 3. Regarding use of the Danish language

The Danish minority represents a larger percentage of the population - about 20 per cent - only in the city of Flensburg and in a number of adjacent small communities. In all other places of the Danish settlement area, the share of the Danish population is much smaller. Under the Kiel Declaration by the *Land* Government of Schleswig-Holstein on the Status of the Danish Minority of 26.09.1949 and the Declaration by the Government of the Federal Republic of Germany of 29.3.1955 [Bonn Declaration] - the content of which is identical with that of the Copenhagen Declaration by the Government of the Kingdom of Denmark of 29.3.1955 - use of the Danish language in courts and *vis-à-vis* administrative authorities is regulated by general legislation. Thus, under the general laws, only German is admitted for use in courts and administrative authorities. All members of the Danish minority, however, also speak German and use the German language in courts and in relations with administrative authorities.

Where Danish-speaking members of the administration, persons belonging to the Danish minority as staff members of the administration or as elected representatives of local government authorities, on the one hand, and as citizens seeking advice, on the other hand, deal with each other, the Danish language is also used in administrative relations. Staff

members of authorities in the vicinity of the border participated in intensive Danish courses, especially with the aim of having a command of that language when working within trans-frontier Working Communities or associations - a training that in the long term will reinforce Danish language proficiency.

In the museums of the settlement area, signs and general information are increasingly also given in Danish - this is done, however, with the primary aim of providing better information to visitors from the Kingdom of Denmark.

Use of German as the language to be used in court and in relations with administrative authorities has not raised any problems between the Danish minority and public authorities so far; yet the organisations of the Danish minority speak up for increased use of their language also in relations with administrative authorities.

#### 4. Regarding use of the Frisian language

Of the total number of nine North Frisian dialects, three - which are spoken by less than 150 persons - are acutely threatened by extinction. The other six dialects are not only used orally but also exist in written form. Their orthography for the most part is based on uniform rules. The first book in the North Frisian language was published in 1809. Since then, a large body of Frisian-language literature has been created, which covers several hundreds of books and, in addition, several thousands of literary items in a variety of publications. This ensures that the Frisian language also meets the requirements expected of a modern means of communication.

Under Section 82a of the *Land* of Schleswig-Holstein Administration Act, the official language is German. Yet a large number of staff members of the *Ämter* [local authority unions] and local authorities of North Friesland *Kreis* have a good knowledge of the North Frisian language. As a result, some public employees, especially in the island communities deal in Frisian with personal callers during office hours if the callers so wish. The spoken message of the telephone system of the North Friesland *Kreis* Administration for callers on hold is given in four languages (German, Frisian, Danish, and Low German).

On the North Frisian islands and holms, local council meetings are held, for the most part, in the Frisian language provided that no local councillor or visitor attending a meeting objects to such use.

In public life, however, the North Frisian and Saterland Frisian languages so far only play a minor role because, even in the Frisian settlement areas, they are in constant use by only a small segment of the population. As a rule, the members of this ethnic group use the German language in court and in relations with administrative authorities. Some Civil Registry Offices in North Friesland, however, provide for civil marriages in the Frisian language. In Saterland *Gemeinde*, too, it is possible to have civil marriages and other official

acts performed in the Frisian language. Public officials of that local authority indicate their proficiency in Saterland Frisian on their office door-plates.

#### 5. Regarding use of the Romany language

The German Sinti and Roma see Romany as a language that is used within the family and the family clans of the Sinti and Roma. In their relations with German authorities, they use the German language and object to their language being learned and used by staff members of administrative authorities who do not belong to this minority. However, the German Sinti and Roma wish to achieve that the use of Romany will not meet with any problems when Sinti and Roma deal with each other as staff members of administrative authorities, on the one hand, and as advice-seeking citizens, on the other hand.

In view of the fact that the German Sinti and Roma grow up as bilingual speakers of Romany and German and, as a rule, have a command of both languages, no actual requirement for using Romany in relations with administrative authorities has been observed.

#### **Article 10, para. 3** [language in court]

Section 184 of the Organisation of the Courts Act lays down that the official language in court is German. The constitutional stipulations regarding fair trial and due process of law (Articles 2, para. 1, and 20, para. 3, of the Basic Law), however, entail the obligation for courts also to take note of declarations made by parties to a lawsuit in a foreign language. If the court hearing is attended by persons who do not know the German language, an interpreter must be called in (Section 185 of the Organisation of the Courts Act). Similarly, during preliminary investigation by the public prosecutor, the accused must be informed, in a language he/she understands, of the offence with which he/she is charged and must be given an opportunity to present his/her view [in that language] on the alleged offence. As soon as it becomes obvious that communication is not possible for language reasons, involvement of an interpreter is mandatory. Articles 5, para. 2, and 6, para. 3, *litt. a*, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) also stipulates this right. Paragraph 3 of the Framework Convention does not contain any obligations going beyond the provisions of the European Convention on Human Rights, and thus in Germany is already part of the (established) law in force. Apart from a few exceptions, however, the members of the groups protected under the Framework Convention understand German so that these problems do not arise in practice.

Special provisions governing use in court exist with regard to the Sorbian language. The Unification Treaty of 31 August 1990 explicitly provides that the Sorbs shall - continue to - have the right to speak Sorbian in court in their home *Kreise* and that this right shall remain unaffected by Section 184 of the Organisation of the Courts Act (Annex - I Chapter III, Subject Area A, Section III 1.4 of the Unification Treaty of 31 August 1990). This provision is implemented in the *Länder* of Saxony and Brandenburg.

The signs in the courts in the traditional settlement area of the Sorbian (Wendish) people in Brandenburg are bilingual. If Sorbians wish to litigate in their own language, translators are called in. So far, however, no case has become known where a Sorb availed him/herself of this right in a court of the *Land* of Brandenburg. In the Sorbian settlement area of the Free State of Saxony, all courts have bilingual signs. In addition, the Saxon Higher Administrative Court also uses German-Sorbian letterhead. In every court in the Sorbian settlement area of the Free State of Saxony, at least one staff member has a command of the Sorbian language so that citizens can also state their case in Sorbian. This right is made use of.

## Article 11

(1) The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her **surname** (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.

(2) The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language **signs, inscriptions and other information** of a private nature visible to the public.

(3) In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display **traditional local names, street names and other topographical indications** intended for the public also in the minority language when there is a sufficient demand for such indications.

### para. 1

In Germany, changes of first names and surnames are on principle admissible if an important reason warrants the requested change. The conditions and procedure are laid down in the Act on Changes of Surnames and First Names of 5 January 1938, amended last by the Act of 16 December 1997 (Federal Law Gazette I, p. 2942). Irrespective of those provisions, the Federal Republic of Germany has granted members of national minorities the right to bear their names in the minority language.

In order to meet the obligations flowing from Article 11, para. 1, of the Framework Convention, the Act on Name Changes by Minorities (*MindNamÄndG*) of 22 July 1997 was passed on the basis of provisions in the Act ratifying the Framework Convention (cf. Appendix B). Under that Act every person belonging to a national minority has the right to adapt his/her former name, assigned to him/her under the national legal system, to the

specific features of his/her minority language. Such adaptation may be effected by translation of the name into the minority language, if the name also denotes a specific term and thus is translatable from one into another language. If the name cannot be translated, it may be adapted to the phonetic particularities of the given minority language. Members of national minorities whose former name in the minority language had been given a German form or had been changed to another name, may again assume that original name. A pertinent declaration before the Registrar (of the Civil Registry Office) suffices for adapting a name to the special features of a minority language.

On account of the wide margin of discretion regarding implementation of the Framework Convention, the legislator was at liberty to ensure that a name thus altered would also be in Roman characters/spelling which are familiar to the German civil registration system. The "Standing Instructions for Registrars and Their Supervisory Authorities with regard to the Act on Civil Status", however, lay down that the diacritics (graphic accents, hooks, etc.) in names or other words shall be retained as such. The change of a person's surname at birth will affect the married name of the person making such declaration only if the spouse also makes such a name-change declaration before the Registrar. Extension of such name changes to the children of the person making the declaration or of his/her spouse is governed by the provisions of the Civil Code of the Federal Republic of Germany.

Section 3 of the *MindNamÄndG* provides that no fees shall be charged for acceptance of a declaration to this effect and for its certification or authentication [recording].

A number of Sorbs have already made use of this right.

**Article 11, para. 2** [signs/inscriptions]

The right to display to the public, stipulated in para. 2 of Article 11, signs, markings and inscriptions and other information of a private nature in the minority language is in Germany guaranteed in particular by Article 2, para. 1, of the Basic Law.

Article 25, para. 3, of the Constitution of the *Land* of Brandenburg guarantees the right of the Sorbs/Wends to preserve the Sorbian language and culture in public life. This also covers the right to display signs, markings and inscriptions and other information of a private nature in a form visible to the public. This right is limited only by the pertinent legal provisions applying to all public notices; differentiation on the basis of the language used is not allowed.

The Danish minority, the Sorbian people and the Frisian ethnic group make intensive use of this right. The German Sinti and Roma, who regard Romany solely as the language of the members of this minority, generally forgo public markings and inscriptions in the Romany language.

**Article 11, para. 3** [topographical indications]

1. The regulation regarding the provision of topographical markings in the minority language as well applies to areas inhabited traditionally by - or by substantial numbers of - members of a national minority. This clause only imposes the obligation on public authorities to strive for the achievement of this objective, but which is linked to additional conditions.

2. The provision has, with a few local exceptions, been fully implemented in the traditional settlement areas of the Sorbs in Saxony and Brandenburg (for details, cf. no. 3.1 below).

In the settlement area of the North Frisians, Frisian local authorities have recently begun to put up bilingual place-name signs (in German and North Frisian; these signs are placed at thoroughfares, both at the beginning and at the end of a built-up area). Also, some communities traditionally have street signs in Frisian. Saterland *Gemeinde*, which covers the entire settlement area of the Saterland Frisians, is preparing an Ordinance which, with the consent of the *Land* Government of Lower Saxony, is to regulate the display of appropriate place-name signs. The *Land* Government has already signalled its consent.

The Danish minority at present sees no need to ask for bilingual place-name signs in their settlement area. Danish-language directional signs for institutions of the Danish minority have been put up in many communities. The Danish minority is working towards bilingual (German and Danish) signposting for footpaths/hiking trails and cycle paths in the settlement area. Under a concept currently developed, signposts are to be put up for a network of cycle paths along routes off the main thoroughfares. The network is to cover the settlement area of the Danish minority as well as the settlement area of the North Frisian ethnic groups and the southern border region of the Kingdom of Denmark where the German minority lives. The *Kreis* administrations of the communities concerned in Germany take a positive view of multilingual signposting. The decision on this matter lies with the respective local authorities.

The Danish minority is striving to achieve improvements as regards public signboards for Danish institutions in the settlement area. These efforts are supported by public authorities, e.g. by the Museums Office of Schleswig-Holstein.

Traditional place-names etc. in the Romany language are not known in Germany so that the implementation of this requirement is not an issue as regards Romany.

3. In the Sorbian settlement area, there are bilingual signs for places, towns, *Landkreise*, etc. and for public buildings, institutions, streets, lanes and roads, squares and bridges. This is explicitly laid down in Section 10 of the Act on the Saxon Sorbs' Act and in

Section 11 of the Act on the Specification of the Rights of the Sorbs (Wends) in the *Land* of Brandenburg.

The requirement for bilingual inscriptions, as laid down in Section 11 of the Act on the Specification of the Rights of the Sorbs (Wends) in the *Land* of Brandenburg, also covers the arrangement, design and posting of traffic signs/road signs pursuant to the German Road Traffic Regulations. Where local authorities, as public construction agencies, are responsible for putting up traffic signs/road signs, Sign 432 (indicating direction to destinations within built-up areas and to locations of considerable traffic importance) and Sign 437 (indicating road or street names) are referred to.

4. By an Ordinance of 20 August 1997, the Ministry of Economics, Technology and Transport of the *Land* of Schleswig-Holstein has allowed bilingual place-name signs (in German and Frisian) to be put up in the *Kreis* of *North Friesland*, at the request of the local governments concerned. So far, seven communities (Risum-Lindholm, Bredstedt, Nebel on the Island of Amrum, Niebüll, Norddorf on the Island of Amrum, Utersen on the Island of Föhr, and Kampen on the Island of Sylt) have made use of this provision; other local authorities are about to adopt such bilingual signs.

With regard to the question of multilingual signs and inscriptions for local institutions, it is not possible - given the diversity of languages spoken in North Friesland *Kreis* (in addition to German, also Danish, Frisian, Low German, and in parts Sønderjysk) - to make a recommendation that would apply to all cases. Rather, specific local interests must be taken into account, and decisions must be geared to regional circumstances on a case-to-case basis. Thus, for instance, for two museums it was decided to provide basic inscriptions in German and Danish and additional general information in another three languages (Frisian, Low German, and English).

## Article 12

(1) The Parties shall, where appropriate, take measures in the fields of **education** and research to foster **knowledge of the culture, history, language and religion** of their national minorities and of the majority.

(2) In this context the Parties shall *inter alia* provide adequate opportunities for **teacher training** and access to **textbooks**, and facilitate contacts among students and teachers of different communities.

(3) The Parties undertake to promote **equal opportunities for access to education** at all levels for persons belonging to national minorities.



**para. 1**

1. Pursuant to the federal structure of the Federal Republic of Germany, responsibility for the implementation of this provision lies, in particular, with the *Länder*. Fostering knowledge of the culture, history, language and religion of the groups protected under the Framework Convention and of the respective majority population is, as regards the educational system in the *Länder*, part of the curricula for schools, both publicly maintained and private, and of the mandate of the *Land* Centres and the Federal Centre for Political Education.

**2. Education**

A provision implementing the educational mandate stipulated under para. 1 of the *Convention* is to be found, for instance, in Section 2 of the Schools Act of Lower Saxony, according to which pupils are to be enabled to "develop and expand their faculty of perception, their sensitivity and their ability of expressing themselves, with the inclusion of the major regional variants of Low German and of Frisian ..."; in Section 4 of the Brandenburg Schools Act which provides that the pupils' ability and readiness shall be enhanced to understand their own culture as well as other cultures, with particular reference to the Sorbian (Wendish) culture; and in Section 2 of the Saxon Schools Act, under which all schools in the Free State of Saxony shall impart basic knowledge of the history and culture of the Sorbs. In this context, it must be noted that, as part of school education, knowledge of the culture and language of these minorities in Germany is passed on to a much greater extent in the respective traditional settlement area than in other parts of the national territory. It is especially in the schools of the protected groups (private schools of the Danish minority and publicly maintained schools for the Sorbian people) as described in the comments to Article 13 below - that the language, literature, culture, traditions and folklore, and history of the respective groups are dealt with in class in a particularly intensive way.

As regards imparting of knowledge of the history and culture of the German Sinti and Roma, who are dispersed more or less throughout the national territory of the FRG, the following measures may be given as examples: - In Hesse, under an amendment to the school framework plans, the history and culture of the Sinti and Roma are part of school education. On behalf of the Hessian Ministry of Culture and in co-operation with *Fritz-Bauer-Intitut*, the Hessian *Land* Institute for Pedagogy has developed pertinent educational materials. In 1998, the Hessian Ministry of Culture established the *Pädagogisches Büro Nationale Minderheiten: Sinti und Roma* [Educational Bureau for National Minorities: Sinti and Roma] and integrated it within the Hessian *Land* Institute for Pedagogy. With the establishment of this agency, the *Land* of Hesse wishes to further pursue the course chosen for the implementation of the tasks resulting from the Framework Convention.

The educational offers by the *Land* of North Rhine-Westphalia are primarily aimed at imparting the history and culture of the Sinti and Roma. Thus, for instance, materials for class instruction and regional follow-up training - which provide information on the culture group and history of the Sinti and Roma - are, with the participation of the local Sinti and Roma, being developed in the cities of Hamm and Cologne. The involvement of Sinti and Roma in parental work – in connection with adult literacy programmes – helps to enhance the confidence-building process between schools and families.

In Baden-Wurttemberg, the following measures have been agreed in co-operation by the Ministry of Culture and the Baden-Wurttemberg *Land* Association of German Sinti and Roma: At the *Land* Institute for Education and Instruction in Stuttgart, a Working Group *Sinti und Roma in Deutschland* [Sinti and Roma in Germany] will be established, which co-operates with the *Documentation and Cultural Centre of German Sinti and Roma* in Heidelberg. Teachers and educators, representatives of the "Union of German Sinti and Roma - Baden-Wurttemberg *Land* Association", and of the Heidelberg-based Documentation and Cultural Centre are represented on this Working Group. The Working Group is to give new impulses for the inclusion of the history, culture, and suffering of German Sinti and Roma in school education. The Documentation and Cultural Centre will be included in the number of non-school educational institutions, e.g. to prepare school trips to Heidelberg. The *Land* Institute for Education is preparing a brochure to be used in class for analyzing, and attempting to come to terms with, the history of the Sinti and Roma. In addition, the *Land* Government endeavours to induce educational publishing companies to take increased account of the Sinti and Roma in textbooks and other educational media.

As regards the educational mandate of schools, reference is made to the comments under Article 6, para. 1, no. 2.1.2, above.

In imparting knowledge of the culture of the majority population and of national minorities and ethnic groups in schools and in the extra-curricular sector, an important role is played by the public institutions for political education, i.e. the Federal Centre and the *Land* Centres [for Political Education] (cf. also the comments under Article 6, para. 1, no. 2.1.1, above). The materials compiled by the Centres with regard to issues of the co-existence of the various cultures represented in Germany are used as instruction material both in schools and in adult education.

Information about the culture of the Danish minority, of the ethnic group of Frisians and of the minority of German Sinti and Roma is provided by the Government of the *Land* of Schleswig-Holstein especially in the Minority Report, already mentioned above under section I.7, which is published as a brochure. In addition, the *Land* of Schleswig-Holstein Centre for Political Education publishes a brochure entitled "Minorities in the German-Danish Border Region".

A report on the situation of the Sorbian people in the Free State of Saxony is submitted pursuant to Section 7 of the Saxon Sorbs Act by the Saxon State Government to the

Saxon *Landtag* [*Land Diet*] at least once per legislative period. The report is also published for release to the general public. Additional activities by the Saxon *Land* Centre for Political Education include, for instance, publication - in co-operation with the *Domowina* Publishing Company - of a "Short History of the Sorbs" appearing in the series of publications covering the history, geography and political system of the country. This *History* closes with the following words: "The Sorbs' future lies in their bilingualism. Thus they will, on the one hand, face up to the economic needs and requirements and, on the other hand, preserve and further develop the Sorbian culture which has a rich tradition. This, in turn, fulfils an important function as a mediator between Germans and Slavs and contributes towards understanding, friendship and good-neighbourly relations among peoples."

Information on the culture and history of the German Sinti and Roma is provided, for instance, in the brochures "*Nationalsozialismus - Band III*" ["National Socialism - Volume III"] and "*KZ Dachau*" ["Dachau Concentration Camp"] published by the Bavarian *Land* Centre for Political Education. Also, the *Land* Centre plans to publish a general survey of the culture, history, language and religion of the German Sinti and Roma. In the *Land* of Hamburg, public relations about the history and identity of this minority who have traditionally been living also in Germany, has been stepped up as part of political education. Thus in Hamburg, a number of books and brochures have been published on the subject of the living together of different cultures and nations; among these is the publication entitled "Wir sprechen viele Sprachen" ["We speak many languages"] (a reading book with picture writing, which is also used as a first reader in classes attended by Roma). In addition, the Hamburg Senate Commissioner for Matters Relating to Aliens has published a brochure entitled "Roma and Sinti in Hamburg" which is designed to foster understanding of the culture and history of the Roma and Sinti in Hamburg. The Lower Saxon *Land* Centre for Political Education, within the framework of activities related to memorial sites, deals with the history of the persecution of the Sinti and Roma during the Nazi era. It holds meetings on this subject, and carries out research on the fate suffered by the Sinti and Roma in the concentration camp of Bergen-Belsen. Discrimination against the Sinti and Roma in post-war Germany was the subject of several meetings which also dealt with matters related to indemnification for wrongs suffered during the Nazi era. In the *Land* of Baden-Wuerttemberg, a brochure entitled "Zwischen Romantisierung und Rassismus: Sinti und Roma 600 Jahre in Deutschland" ["Between romanticizing and racism: 600 years of Sinti and Roma living in Germany"] was published in November 1998 jointly by the Baden-Wuerttemberg *Land* Centre for Political Education and the *Union of German Sinti and Roma - Baden-Wuerttemberg Land Association*. It contains contributions from writers and scholars, and is first of all intended for teachers in general and for professionals in adult education. It is to impart the basic and background knowledge that helps to counter the development of prejudices and to develop and raise public awareness. The Rhineland-Palatinate *Land* Centre for Political Education has, together with the Pedagogical Centre, developed educational materials on the subject of "Sinti and Roma - Eine deutsche Minderheit" ["Sinti and Roma - A German minority"]. A key feature of these materials is that, rather than developing a "minority science" [a body of knowledge about minorities] as seen from the perspective of the majority population, the perspectives of both the majority and the minority are represented to the same extent.

The Bundeszentrale für politische Bildung (BpB - Federal Centre for Political Education) also has intensively dealt with this subject-matter, especially in various publications of the series "Informationen zur politischen Bildung" ["Information on Political Education"] which reach a large number of teachers/educators and other multipliers.

The Federal Government and the *Länder* endeavour to further improve the education and information currently offered, outside the traditional settlement areas, on the subject of national minorities and ethnic groups. The national minorities and ethnic groups regard the education/information activities outside the central settlement areas as insufficient and, in particular, find a nation-wide survey concerning the four groups concerned lacking.

### 3. Research and university education

In the field of research, state-run research institutions have already been established in several *Länder* of the Federal Republic of Germany with the pertinent terms of reference, while private research institutions of the minorities are continuously supported. On the subject of promotional policy, cf. the comments on Article 5, para. 1, above.

#### 3.1 Regarding the Danish minority

Kiel University has a professorship for Nordic philology, which provides for a course of studies in the Danish language and literature. Kiel University also has a professorship for comparative literature, covering the Scandinavian region and Germany. The focus is on familiarisation with the respective culture. At Flensburg University the Danish-language seminar offers a course of studies for the teaching profession. In addition, the *Dansk Centralbibliotek for Sydslesvig* (Dänische Zentralbibliothek für Südschleswig - Central Library for South Schleswig) in Flensburg has a research unit which prepares scholarly articles/essays on the Danish minority. The general public in the German-Danish border region, and the Danish minority in particular, also make use of the research findings of Danish institutions, e.g. of the Danish universities and especially of the *Institut für Grenzregionsforschung* [Institute for Border Region Research] in Aabenraa/Apenrade in Denmark.

#### 3.2 Regarding the Sorbian people

Leipzig University offers a course of Sorbian Studies (Sorabistics) for a Master's degree or for the teaching profession.

In the Free State of Saxony and in the *Land* of Brandenburg, the study of Sorbian language and culture is also in the hands of the *Sorbisches Institut*. The research priorities of the *Sorbian Institute* are linguistics, empirical cultural research, and the cultural and social history of the Sorbian people. At present, the Institute has a staff of 36, of whom 22 are

academics. The Institute is financed with public funds provided through *Stiftung für das sorbische Volk* (Foundation for the Sorbian People).

In the field of linguistics, the Institute, after having completed the work on the 15-volume "Sorbian Linguistic Atlas", focuses its research on subjects related to dialects. It also contributes to the multinational Slav linguistic atlas. Those involved in the related practical work have a great demand for manuals and textbooks which the Institute develops on a periodic basis. The *Sorbisches Institut* also has at its disposal the *Sorbische Zentralbibliothek* (Sorbian Central Library) with some 75,000 volumes (books and journals), and *Sorbisches Kulturarchiv* (Sorbian Cultural Archives) with about 300 running metres of records and files. Like a National Library, the Sorbian Central Library collects all Sorbian and Sorabistic editions and continuously publishes a "Sorbian Bibliography". The Archives preserve and explore the essential documents of Sorbian cultural development from more than four centuries. The *Sorbisches Institut* combines its scholarly studies with the support of specific projects in the field of cultural and language promotion. On the basis of sociolinguistic studies, concepts are developed for focused promotion of the Lower Sorbian language.

Other scholarly studies carried out by the Institute deal with everyday life and the living conditions of the Sorbs in the course of their history and at present, their religiousness, their family relations, the significance of the [geographical] area for the shaping of one's life, and bilingual and bicultural ways of life. Studies on literature, music, sculpture and graphic arts, theatre and cultural relations with other civilisations and cultural areas elucidate further central aspects of Sorbian life. The head office of the Sorbian Institute is in Bautzen in Saxony, with a branch in Cottbus (Brandenburg). This branch is the first scholarly institution to deal specifically with the Sorbs of Lower Lusatia.

### 3.3 Regarding the Frisians

Since 1950, Kiel University has had the *Nordfriesische Wörterbuchstelle* [North Frisian Dictionary Institute], and since 1978, the professorial chair for Frisian philology.

Of great importance to the cultivation and promotion of, and research on, the Frisian language, culture and history is the *Nordfriisk Instituut* [North Frisian Institute] in Bredstedt as a central scholarly institution in North Friesland. Its scholarly and journalistic activities cover the areas of the languages, history and study of the geography and civilisation of North Friesland. The Institute operates a specialised library and archives and offers seminars, courses, workshops and lectures. Its providing body is the *Verein Nordfriesisches Institut* [Association for the North Frisian Institute], with a membership of about 850, and is funded, in particular, with subsidies provided by the *Land* and by local authorities.

Research work on the Frisian culture of East Friesland is undertaken sporadically by various institutions, also including corporations under public law.

Research on the Saterland Frisian history, culture and language is of a more recent date. Saterland Frisian has not been handed down as a written language. A collection of Saterland Frisian proverbs, dating from the year 1901, is known. It was only after World War II that the first spelling rules were laid down for this language. In 1980, a "Saterland Frisian Dictionary" was published; a revised and significantly enlarged edition is in preparation. Further publications are compilations of texts, such as "*Saterfriesisches Volksleben*" and "*Saterfriesische Stimmen*". The *Zentralstelle für die sprachliche Landesforschung* [Central Office for Linguistic Regional Research] of Göttingen University, with the support of Saterland *Gemeinde*, carried out a poll among 10 per cent of the inhabitants of the Saterland region. The project is to provide findings regarding the awareness of the members of the ethnic group in respect of their own history and culture. The study of the Saterland Frisian language lies, in particular, in the hands of a Germanist at Oldenburg University.

#### 3.4 Regarding the German Sinti and Roma

Research projects by outsiders on the language, history and culture of the German Sinti and Roma are strictly rejected by the members of this minority. Such rejection is based on the experience with the pseudo-scientific race-related research undertaken by the National Socialists (Nazis). While at that time the Sinti and Roma at first were open to scientists who researched their language and culture, and in many instances supported these researchers, they later realised that this research was used as an instrument for racist purposes and was followed by the Nazi genocide of the Sinti and Roma. Against the background of this experience, the organisations of the German Sinti and Roma take the view that the language and culture of the minority should not be a subject of research by non-Sinti or non-Roma. Therefore, the study of the history and culture of this minority is mainly carried out by the *Documentation and Cultural Centre of German Sinti and Roma* which is under the minority's own administration (in this regard, cf. the comments under Article 5, para. 1, no. 4.4, above). Universities and other scientific/scholarly institutions deal with research subjects concerning the persecution of the Sinti and Roma under the Nazi rule of force.

In addition, however, other institutions have developed. In Marburg (Hesse), "*Pädagogisches Büro Nationale Minderheiten: Sinti and Roma*" [Educational Bureau for National Minorities: Sinti and Roma] was established at *Pädagogisches Institut Mittelhessen*. This Bureau closely co-operates with the (Hessian) *Land* Association of Sinti and Roma. The target group is the majority population. Through imparting of knowledge of the history and culture of the Sinti and Roma, acceptance of the minority is to be promoted within society. One example of a larger-scale project is the "*Zeitzeugenprojekt*" ["Contemporary Witness Project"] referring to events during the Nazi era, which is carried out jointly by the newly founded *Gesellschaft für Antiziganismusforschung* [Society for the Study of Anti-Gypsy Attitudes] and institutions of the Netherlands and of Israel.

The *Gesellschaft für Antiziganismusforschung* was founded in Marburg in July 1998. It is to provide scholarly support for the work of the Educational Bureau. The members of

this Society are scholars from various special-subject fields, who study anti-Gypsy attitudes in the past and at present and the outflow of such attitudes, especially the holocaustal destruction of Sinti and Roma. The Society organises meetings and carries out other projects on this subject.

**Article 12, para. 2** [teacher training; textbooks]

1. In the Federal Republic of Germany, there are no governmental impediments whatsoever as regards contacts among pupils and teachers from different communities; instead, various efforts are made to intensify such contacts. Governmental measures for teacher training, and government-supported promotion of such measures taken by other parties, are adjusted to the respective requirements of the various minorities, and thus are different for the various languages of the groups protected under the Framework Convention. It should also be noted that a long tradition of school training exists for some of these languages while others have been gradually integrated into school instruction for only a number of years, and on-the-job training of teachers in this respect and the pertinent educational material are still in the experimental stage.

2. Teacher training and development of appropriate educational materials are important prerequisites for information on the history and culture of the groups protected under the Framework Convention. As regards educational materials, cf. also the comments under para. 1 of Article 12, above.

2.1 The situation regarding the Danish language

The teachers of the private schools of the Danish minority have been trained either in Denmark or in Germany. Their in-service (follow-up) training is either in the hands of institutions of the Danish minority or is provided by Danish institutions. In Schleswig-Holstein, a course of studies in Danish is offered (for details, cf. the comments under para. 1, no. 3.1, above). The Danish private schools primarily use textbooks published by Danish educational publishing companies, but also educational materials developed by these schools themselves to take specific account of the situation and the history of the Danish minority, as well as German textbooks. The development, entailed by the Bonn/Copenhagen Declarations of 1955, of transfrontier promotion of minorities on the basis of the reciprocity principle has ensured that for the minorities on both sides of the border - Danes in Germany, and Germans in Denmark - adequate opportunities exist for teacher training and for access to textbooks.

With the specific aim of ensuring recruitment of teachers belonging to the Danish minority who are able to teach all subjects included in the curriculum, Section 5, para. 3, of the Federal Educational Grants Act (*BAFöG*) grants members of the Danish minority unlimited subsidised educational advancement for attending a training institution located in Denmark if such training cannot be undergone in Germany. This applies, for instance, to

teacher training since, in the Federal Republic of Germany, the subjects included in the curriculum are, as a rule, taught in the German - but not in the Danish - language.

## 2.2 The situation regarding the Sorbian language

In the settlement area of the Sorbs (Free State of Saxony and the *Land* of Brandenburg), language courses in the Sorbian languages (i.e. Upper Sorbian and Lower Sorbian) and Sorbian-language teaching of other subjects are offered at publicly maintained schools. The opportunity for basic training of Sorbian teachers in Sorbian Studies - course of studies for the teaching profession - exists at Leipzig University (in Saxony). This University trains the most part of Sorbian-language teachers. The Ministry for Education, Youth and Sports of the *Land* of Brandenburg has, jointly with Potsdam University (Institute for the Study of Slavic Languages and Literatures, and Centre for Further Education), prepared an extension course of studies regarding Sorbian (Wendish) for lower secondary grades (i.e. secondary education stage I of German schools), which started on 1 April 1998. The aim is to qualify some 20 teachers for teaching Sorbian (Wendish) at schools. A continuation course of studies for acquiring teaching qualification for secondary education stage II is in preparation. For the subject of Sorbian (Wendish), framework plans have been developed for primary education, for secondary education stage I, and for the upper secondary grades of a *Gymnasium* [grammar school]. These plans were established by teachers from the *Land* of Brandenburg in co-operation with a linguist from Magdeburg University. The Commission's work was co-ordinated by the *Land* Institute for Pedagogy and by *Arbeitsstelle Bildungsentwicklung of Cottbus* (ABC).

The offers regarding central and regional follow-up/in-service training of Sorbian teachers are essentially demand-oriented at present. The Saxon *Akademie für Lehrerfortbildung* [teacher follow-up training college], for instance, during the study course period September 1998 - February 1999, offered a course on the subject "*Methodische Anregung zur Textarbeit im Sorbischunterricht*" ["Methodology for Working with Texts in Sorbian Classes"] for teaching posts at *Realschulen* [secondary schools, with lower secondary grades (i.e. secondary education stage I)] and *Gymnasien* [grammar schools; schools with upper secondary grades], and a course entitled "*Unterwegs nach Europa - Mehrsprachigkeit statt Einsprachigkeit*" ["On our way to Europe – Multilingualism instead of unilingualism"]. In addition, regional training offers exist for teachers who teach Sorbian as a foreign language or as the native language. Teachers who teach other subjects in the Sorbian language can take part in centrally or regionally organised follow-up training in subject-specific and multi-disciplinary studies. The regional training activities offered so far also comprise follow-up training which is advertised and carried out in the Sorbian language. The catalogue of training offered by the Bautzen Regional Education Office covers two courses for teachers of Sorbian primary schools and one course for teachers of Sorbian secondary technical schools, which are also advertised and carried out in the Sorbian language. An offer for the entire spectrum of school types is a training course on the subject of "Sorbian: Reactivation of the Language / In-Class Educational Materials / Textbooks".



In May 1992, the independently managed *Arbeitsstelle Bildungsentwicklung Cottbus (ABC)* [Cottbus Workshop for Educational Development] was established at *Niedersorbisches Gymnasium* [Lower Sorbian grammar school] in Cottbus (Brandenburg). As regards follow-up training of Sorbian (Wendish) language teachers and of educators teaching other subjects at *Niedersorbisches Gymnasium*, ABC has the following tasks:

- Sorabistic, including reactivating and advanced, linguistic follow-up training;
- subject-specific didactical follow-up training of teachers;
- follow-up training in the fields of culture, history, customs/folklore and the policy regarding minorities for Sorbian (Wendish) teachers and interested teachers for other school subjects.

For follow-up training of teachers, funds are available to *Arbeitsstelle Bildungsentwicklung Cottbus (ABC)*. In addition, a teachers' instructor specially qualified for giving follow-up training is employed for the follow-up training of teachers. *ABC* and the teachers' instructor, in co-ordination with the *Land* of Brandenburg Institute for Pedagogy, independently develop the pertinent follow-up training offers. The courses are usually held once or twice per month and, in compact form, at the start of the summer holidays and occasionally during the spring vacation. In addition, training is offered for teachers for other school subjects in co-operation with the *Schule für Niedersorbische Sprache und Kultur* [School for Lower Sorbian Language and Culture] which is part of the Cottbus Adult Education Centre.

### 2.3 The situation regarding the Frisian languages

As part of the study courses for teachers of *Realschulen*, primary schools and secondary modern schools, Frisian is offered as a subject at *Bildungswissenschaftliche Hochschule Flensburg, Universität (BWHU)* [Flensburg College of Education, University]. Teaching is provided by a part-time (volunteer) lecturer and by teaching assignments for 15 hours per week per semester.

Christian-Albrechts-Universität in Kiel (Kiel University) offers a Master's degree in Frisian as a major or minor subject, and Frisian as a course of studies for which an extension exam can be taken for becoming a teacher at the *Gymnasium*. The University has a grade C3 professorate covering eight hours per week per semester.

At the Frisian Seminar of the *BWHU* in Flensburg, 13 students are at present enrolled for Frisian studies. It may be assumed that in the years to come, one or two Frisian-language teachers per year will conclude their First and Second State Examinations for teachers and be available. Junior teachers for the subject of Frisian are to be taken on as teachers in training at schools with Frisian instruction so that they will be available without delay for this particular instruction. At Kiel University, 44 students are at present enrolled for Frisian studies.

In addition, the *Nordfriesische Wörterbuchstelle* [North Frisian Dictionary Institute] at Kiel University has been in existence since 1950 and, since 1978, with "Frisian philology" as a study subject, has been the only university institution for scholarly research on Frisian in the Federal Republic of Germany. The professor for Frisian at Kiel University is also the Director of *Nordfriesische Wörterbuchstelle*. This Institute has regular contacts with the Frisian Academy of Leeuwarden [Netherlands Province of Friesland], with *Mertens Instituut* of the Royal Netherlands Academy of Sciences, with the professorial chairs for Frisian in Groningen and at the two Amsterdam universities, and with *Nordfriisk Instituut* [North Frisian Institute] in Bredstedt (Germany).

There are no additional training programmes for Frisian-language teachers in Lower Saxony. The educational materials which are developed by the Saterland Frisian teachers themselves are used mainly in elementary schools. These materials are patterned on existing materials for English lessons in elementary schools, on materials forming part of the teaching and learning system and developed under the pilot project "*Plattddeutsch in der Schule*" ["Low German in School"], and on materials from the North and West Frisian speech areas. A concept for learning the Saterland Frisian language in institutions of primary education is to be developed within the framework of follow-up training activities. The Saterland Frisians expect the state to increase follow-up training activities and governmental funding for the development of educational materials.

#### 2.4 The situation regarding the Romany language

The Central Council of German Sinti and Roma and other associations of German Sinti are against the introduction of the Romany language in publicly maintained schools and, in particular, against development of a written form of this language. This is in line with centuries-old Sinti traditions and moreover is based on the experience of Nazi language researchers. Therefore, the *Central Council* and other associations take the view that, out of regard for the experience undergone by the survivors of the genocide as well, Romany should neither be taught by non-Sinti/non-Roma nor learned within the public educational system. A different position is taken by Roma associations which argue in favour of the inclusion of Romany in school education and wish to support measures, like those taken in European neighbouring countries, for the development of a written form of this language. Thus, going by those German Sinti and Roma as represented by their relevant organisations, the vast majority of German Sinti and Roma are against inclusion of their Romany language in the state-run education system, and emphasise their right to cultivate their language exclusively within the family and family clans and to pass it on to future generations. These organisations also object to occasional initiatives by organisations to have teachers trained in Romany, because they object to outsiders being introduced to their language.

However, the *Central Council* favours supplemental instruction for interested children of German Sinti and Roma, where teachers coming from the minority deal with school subjects in the Romany language so that the children's knowledge of Romany will be enhanced. Within the *Länder*, however, only limited numbers of teachers with sufficient lan-

guage proficiency are available. The *Central Council* also favours language courses for members of the minority on a private basis and as part of adult education, to be carried out by teachers coming from the minority. Other Sinti organisations see imparting of their mother tongue Romany as the exclusive responsibility of the families and family clans of the Sinti community.

Use of the Romany language in the publicly maintained school system is confined, for the reasons already given, to pilot projects for German and foreign Roma children of whom larger numbers live close to each other. The organisations of German Sinti and Roma attach great importance to having the existing state-run and (state-)acknowledged system of schools and education used for the children of the German Sinti and Roma without any limitation as has been the case so far. The *Central Council of German Sinti and Roma* and other organisations therefore object to separate schools or school classes for Sinti and Roma only. This is apparently also the parents' wish since the children of the German Sinti and Roma go to local regular and/or secondary schools.

Special possibilities, which are also designed to include the cultural traditions and the language of this group, exist for promoting the schooling progress of children of Sinti and Roma in some *Länder* of the Federal Republic of Germany, for instance in Baden-Württemberg, Berlin, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, and Schleswig-Holstein; in instances these activities are part of local projects. The related projects are carried out at primary, secondary modern and secondary technical schools. The experience gained in this context has shown that, on a long-term basis, only those initiatives will be successful which are launched locally with the consent, will and participation, including shared responsibility, of the persons concerned. In the field of teacher follow-up training, in particular, regional efforts increasingly focus on taking account of the concerns and interests of the pupils who come from Sinti and Roma families.

Various schools in Hamburg, with a larger share of Roma children, have Roma employed as teachers and/or school social workers. The culture of the Sinti and Roma and musical work are included in the education. In Hamm and Cologne, for instance, materials for instruction and regional follow-up training are, with the participation of locally resident Sinti and Roma, being developed which inform on the culture complex and history of the Sinti and Roma and which in the class environment are to provide closer links between the Sinti and Roma and the school.

In Hesse, the aforementioned *Pädagogisches Büro Nationale Minderheiten: Sinti und Roma* [Educational Bureau for National Minorities: Sinti and Roma] offers follow-up training for teachers and supports projects carried out by schools. As a first step, the subjects relating to the history and present-day life of the Sinti and Roma and to anti-Gypsy attitudes were incorporated in the framework plans for sociology, history and social studies, which were adopted in 1995; subsequently, under a 2-year project, educational materials were developed for history instruction which were made available to schools in the 1998/99 school year. The establishment of the Bureau, within the framework of the Hessian Schools

Act of 1997, is the third step of the envisaged fundamental educational concept for the inclusion of the history and culture of the Sinti and Roma in school education.

The *Educational Bureau* is to provide the prerequisites for the introduction of the history and present-day life of the Sinti and Roma, of the history of anti-Gypsy attitudes, and of the culture of the Sinti and Roma in a form appropriate for the respective age-group classes and school subjects. It is to provide teachers with a basis of substantiated information about these issues which have scarcely been the subject of scholarly study and have been the subject of stereotyped judgments. These awareness-raising activities address the majority population so as to reduce deficits of information and the resultant prejudices on a long-term basis. Therefore, they are to have a *Land*-wide and regional impact. Follow-up training offered for teachers include lectures and seminars, literary research and supply of literary works, and the introduction to newly developed educational materials. Also, the Bureau advises schools and initiates and co-ordinates regional and local projects. It provides for transfer of the current research findings and works together with scientific institutions and its counterparts in other *Länder* and with institutions and organisations of the Sinti and Roma. Through organised events and meetings, a dialogue between the minority population and the majority population is being developed.

In North Rhine-Westphalia (NRW) and other *Länder*, similar projects for teacher follow-up training are implemented. A project for follow-up training of teachers carried out in Hamm (in NRW) comprises both evaluation of the lessons learnt from projects and co-operation within various projects, and the exchange of experience with other projects (Hamburg, Bremen, and Denmark and the Netherlands). This documentation gives persons and agencies other than the project participants an opportunity for informing themselves and for having exchanges with others.

In Lower Saxony, as part of the follow-up training scheme "*interkulturelles Lernen*" [intercultural learning], regionally and centrally organised teacher follow-up training courses are offered which impart knowledge of cultural, social and historic aspects of the situation of the Sinti and Roma to teachers, and also offer didactic/methodological aids in view of promoting schooling progress and integration. The Lower Saxon Association of German Sinti, as well as local initiatives, are involved in designing and organizing these follow-up training courses.

3. In the view of the national minorities and ethnic groups, the activities carried out so far with regard to the follow-up training of teachers at publicly maintained schools require additions, especially as regards selective measures in individual fields (e.g. the Saterland Frisian culture) and nation-wide broadly-based activities in the field of follow-up training of teachers with regard to the culture and language of the minorities.

**Article 12, para 3** [equal opportunities for access to education]

1. Equal opportunities for members of national minorities and ethnic groups as regards access to all levels of education are guaranteed under Article 3, para. 1, of the Basic Law [equality before the law] and are specified and detailed in the Schools Acts of the *Länder* (cf. Appendix: legislation of the *Länder*).

2. The *Länder* offer special promotional opportunities in cases where children of individual families of German Sinti and Roma do not fully meet the general attainment targets. The cause of such shortfalls is, on the one hand, the difficult transition from the traditional perception of the family being an all-embracing social community, to the concepts of modern society, with compulsory education and vocational training which mostly takes place outside the family. On the other hand, defensive reactions on the part of the parents or grandparents *vis-à-vis* the publicly maintained school system also come into play; such defensive reactions stem from the marginalisation of these persons and from their negative experience during their school days, and from subsequently being denied all educational opportunities during the persecution suffered under the Nazi régime. As regards governmental promotion measures, a number of examples are given below:

2.1 In Schleswig-Holstein, its capital Kiel runs a project which was developed jointly with Sinti and Roma and which has the primary objective of developing strategies for enhancing the school performance of Sinti children. Essential elements are the training of Sinti women as mediators and their work in schools. Their tasks include, among others, looking after Sinti children in elementary schools and in remedial classes; homework assistance; attending and supporting parent-teacher meetings; conflict mediation, conflict management; or counselling of parents with regard to their children's school career.

2.2 In the Land of Bremen, a "*Modellversuch schulische Förderung von Sinti-Kindern*" ["Model Test: Promoting Sinti Children at School"], developed for a four-year period and financed with EC funds, was established in 1986. The lessons learnt from this Model Test were analyzed and were incorporated in the present scheme for Sinti promotion which was introduced in 1990. Four teachers of the Model Test were assigned posts in the regular school system, for a total teaching assignment of 86 hours per week. On the basis of the experiences with the Sinti project, a similar project was developed in 1997 for Roma children. The 30 children included in this project are taught and guided by three teachers.

The state promotion programme is carried out in co-ordination with and with the approval of the parents concerned. This programme provides for three to four remedial lessons per week held at the schools, mostly in the subjects German and Mathematics. These measures are, on the one hand, designed to meet the needs of a given individual pupil; on the other hand, they are also carried out as part of interactive instruction involving other lower-attaining pupils. This is combined with close contacts with the parents who are encouraged to take care of the school affairs of their children themselves.

Together with the state promotion measures and the increased contacts with the parents, the efforts of the Bremen Sinti Association have helped to bring about that by now all school-age children of this group in Bremen regularly attend school. As a result of this overall trend, an increasing number of Sinti children successfully complete the given stages of education.

2.3 In Lower Saxony, those children of Sinti and Roma who still have insufficient proficiency in the German language, can - together with foreign children and with pupils of German minorities from the Russian Federation and Central Asia who resettled in Germany - take part in special promotion measures:

- Remedial classes (for pupils without any knowledge of German who cannot yet follow lessons in a regular class). The measure is designed to prepare these pupils for attending regular classes, and usually extends over a one-year period.
- Literacy courses (for pupils who can neither read nor write in their native language nor in German).
- Remedial courses and remedial instruction in German (for pupils attending regular classes but still needing language-related assistance).

### Article 13

(1) Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their **own private educational and training establishments**.

(2) The exercise of this right shall **not entail any financial obligation** for the Parties.

1. The right to establish private schools is guaranteed under Article 7, paras. 4 and 5, of the Basic Law. Under this provision the state also has the obligation to protect and promote the private education system. Private schools which are to serve as alternatives to publicly maintained schools require the approval of the state and are subject to state supervision. Since such substitute schools come under the legislative competence of the *Länder*, they are subject to *Land* law.

The Children's Day-Care Centres Act, as amended on 15 July 1999, of the *Land* of Schleswig-Holstein lays down that the right of national minorities and ethnic groups to establish and operate their own day-care centres shall be ensured and be considered in local-government requirement planning.

## 2. Regarding the groups protected under the Framework Convention:

### 2.1 Danish minority

Nursery schools and general schools are of fundamental importance for preserving the identity of national minorities. Therefore, Article 8, para. 4, of the Constitution of the *Land* of Schleswig-Holstein leaves it to the parents/guardians to decide whether their children should attend a school of a national minority.

The school and nursery school system of the Danish minority is privately organised: *Dansk Skoleforening for Sydslesvig* [Danish Schools Association for South Schleswig], which is subject to the state's legal supervisory control [i.e. supervision limited to the question of legality of administrative activities], is the providing body for schools and nursery schools (the legal bases are Articles 58, 60, 63 of the Schleswig-Holstein Schools Act of 1999 - cf. Appendix B: legislation of the *Länder*). At present it operates 50 schools of various levels of education, and 58 nursery schools and day-nurseries. The schools are of the following types: primary schools and secondary modern schools, four *Realschulen* [secondary technical schools], one comprehensive school, one *Gymnasium* [grammar school], one boarding school, and one residential adult-education school. All of these schools are state-acknowledged and are provided by voluntary bodies. The teaching objectives and facilities of these schools and the academic training of their teachers are equivalent to those of publicly maintained schools.

### 2.2 Sorbian people

In the settlement area of the Sorbian people (Free State of Saxony and *Land* of Brandenburg), the respective *Land* Constitutions and the relevant *Land* laws ensure that both children's day-care centres and schools can, on principle, be established by private providing bodies; this, of course, is also guaranteed to Sorbian (Wendish) associations. In the Free State of Saxony, for instance, 15 of the 33 Sorbian and bilingual children's day-care centres in the settlement area are provided by local authorities, 10 are provided by *Christlich-Soziales Bildungswerk Ostsachsen e.V.* [Christian-Social Educational Association for Eastern Saxony, reg'd], and two each are provided by *Sorbischer Schulverein e.V.* [Sorbian Schools Association], the Catholic Church, *Arbeiterwohlfahrt* [Workers' Welfare Association] and the German Red Cross (DRK). All other educational institutions of the Sorbian-German settlement area in Saxony which offer instruction in the Sorbian language, especially the schools, are state-provided. A similar structure exists in Brandenburg.

### 2.3 Frisians, and Sinti and Roma

The children of the Frisian ethnic group and of the German Sinti and Roma usually attend the local children's day-care centres provided either by state or voluntary bodies. The

large majority of the children of both groups attend publicly maintained schools. Some of the children of the Frisian ethnic group go to schools of the Danish minority. These minorities do not want to have their own day-care centres and schools.

**Article 13, para 2** [financial obligation]

As regards the payroll costs and material expenses of Danish private schools, the *Land* of Schleswig-Holstein, without verification of the requirements, pays a contribution per pupil which corresponds to 100 per cent of the costs incurred for a pupil at a comparable publicly maintained general-education school in the preceding year. In addition, the Danish school system in Germany (schools and nursery schools) receives substantial funding from the Danish state. The basis for this funding, which includes these Danish subsidies and applies likewise to the funding of the private school system of the German minority in Denmark, was provided by the Bonn and Copenhagen Declarations of 1955. A number of local authorities in Schleswig-Holstein grant subsidies for the operation of - both German and Danish - nursery schools.

In order to meet the requirements laid down for Sorbian and bilingual children's day-care centres, the providing body of the respective institutions receives an allowance for supporting measures, in addition to the general subsidies, from the Free State of Saxony. The *Land* of Brandenburg grants general subsidies which are used by the minority's institutions for specific projects.

**Article 14**

(1) The Parties undertake to recognise that every person belonging to a national minority has the **right to learn his or her minority language**.

(2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for **being taught the minority language** or for **receiving instruction in this language**.

(3) Paragraph 2 of this article shall be implemented without prejudice to the **learning of the official language or the teaching in this language**.

**para. 1**

The freedom of the individual to learn a language of his/her choice - unhindered by external influences, especially state intervention - is generally protected by Article 2, para. 1, of the Basic Law [free development of one's personality]. State promotion of language learning is discussed in the comments under Article 14, para. 2, below.



**para. 2**

In Germany, implementation of the obligations imposed under para. 2 is incumbent on the *Länder*. The legal situation and legal practice as well as the governmental promotion measures for teaching of, and instruction in, the minority language meet the requirements stipulated by the Framework Convention.

1. According to the language proficiency of school-children and youngsters, and in accordance with the parents' wishes, different school structures have been developed for the teaching of the minority language and in the minority language. While the Danish private-school system and the Sorbian publicly maintained schools have a long tradition of such language teaching, the teaching of the Frisian languages is still in an initial stage and its integration into instruction is based on different concepts. In this respect, this State Report can only provide information on the current state of affairs. Since the German Sinti, on the basis of their traditional stance in this matter and for other reasons already mentioned, usually wish neither a written form of their language nor the inclusion of the Romany language in the instruction offered at local schools, pilot measures for the introduction of Romany in school education usually are confined to Roma children according to the parents' wish (cf. also the comments under Article 12, para. 2, no. 2.4, above).

2. The Constitutions of five *Länder* of the Federal Republic of Germany contain provisions referring to national minorities and ethnic groups or to national and ethnic minorities. In part, they also refer directly to their languages. The constitutional provisions provide the basis for legislative measures or administrative action in favour of these languages.

Article 25 of the Constitution of the *Land* of Brandenburg provides under para. 3 that the Sorbs have the right to the preservation and promotion of the Sorbian language and culture in public life and to having these imparted in schools and children's day-care centres. Section 8 of the Sorbs (Wends) Act explicitly reiterates the stipulation that the Sorbian language, in particular Lower Sorbian, shall be protected and promoted. Provisions similar to those of Brandenburg are contained in Article 6, para. 1, of the Constitution of the Free State of Saxony and in Section 8 of the Saxon Sorbs' Act.

In the Constitution of the *Land* of Saxony-Anhalt, Article 37, para. 2, guarantees cultural autonomy of ethnic minorities.

Article 5 of the Constitution of the *Land* of Schleswig-Holstein stipulates that the cultural autonomy and political participation of all national minorities and ethnic groups are afforded protection by the *Land*, local governments and local authority associations. It also contains the explicit provision that the national Danish minority and the Frisian ethnic group are entitled to protection and promotion.

## 2.1 The Danish language in education

The Danish minority has the right, in all of the *Land* of Schleswig-Holstein, to instruction in the Danish language (Declaration by the Government of the Federal Republic of Germany of 29.3.1955 [Bonn Declaration], and Section 58, para. 3, 1<sup>st</sup> sentence, of the Schleswig-Holstein Schools Act). (For details regarding the school system, cf. the comments under Article 13, para. 1, above.)

The providing bodies of the schools and nursery schools of the Danish minority, *Dansk Skoleforening for Sydslesvig* (Danish Schools Association for South Schleswig), at present operates 50 schools of various levels of education and 58 nursery schools and day-nurseries. The nursery schools prepare their children for the Danish elementary schools. The [colloquial] language of communication in these nursery schools is Danish. For the most part, these children will later attend a Danish school.

By school type, these are primary schools and secondary modern schools, four *Realschulen* [secondary technical schools], one comprehensive school, one *Gymnasium* [grammar school], one boarding school, and one residential adult-education school. All of these schools, which all have Danish as the language of instruction, are state-acknowledged schools and are provided by voluntary bodies. The boarding school allows pupils of 14 to 18 years of age to obtain a school leaving certificate for the secondary modern school or to do the 10<sup>th</sup> voluntary year.

Secondary modern schools must be attended for nine years, and pupils may do a voluntary 10<sup>th</sup> year. Pupils may enrol in secondary schools – *Realschulen* and grammar schools – starting with the so-called diagnostic, or orientation, stage (5<sup>th</sup> and 6<sup>th</sup> grades), and complete their *Realschule* education after the 10<sup>th</sup> school year and grammar school after the 13<sup>th</sup> year. Apart from the compulsory major subject "German", the teaching language is Danish. In the final-year classes and courses, however, it is ensured that technical terms, especially in the fields of mathematics/natural sciences and economics, are also taught in German so as to prepare pupils sufficiently for their future - German-language - vocational training in enterprises and at university. Final examinations are recognised in both Germany and Denmark.

For most subjects, primarily textbooks published in Denmark are used. Textbooks published in Germany and educational materials developed by the minority or by teachers of these schools themselves are also used.

*Jarplund Højskole*, the Danish residential adult-education college in South Schleswig, offers further educational activities, ranging from events of several days' duration to courses extending over several months.

The German general-education schools of the *Land* of Schleswig-Holstein usually offer Danish as a subject, although not on a continuous basis and not *Land*-wide.

## 2.2 The Sorbian language in education

2.2.1 It may be assumed that only about 35,000 of the 60,000 Sorbs in the central settlement areas have such a command of Sorbian that they can actively communicate in that language orally and in writing. In terms of geography, the two language-proficiency groups are distributed unevenly. Nearly all of the Sorbs who have a very good knowledge of Sorbian live in the area of the school district of the Sorbian schools, which have been in existence since the late 1940s, in the Bautzen-Kamenz-Hoyerswerda region. In the other parts of Lusatia, only a small share of the Sorbians - mostly of older age - have a good knowledge of Sorbian. As regards language proficiency, cf. the comments under Article 10, para. 1, no. 2, above.

As regards the nursery-school and school system, cf. the general comments under Article 13, para. 1, above. The Saxon Act on Children's Day-Care Institutions of 10 September 1993 and the Children's Day-Care Centres Act of the *Land* of Brandenburg of 10 June 1992 form the legal basis for the teaching and cultivation of the Sorbian language and culture at Sorbian and bilingual day-care centres in the German-Sorbian area. The Schools Act for the Free State of Saxony of 3 July 1991 guarantees the right of pupils to learn the Sorbian language and, at a number of schools, to instruction in selected subjects in the Sorbian language. Under the Schools Act of the *Land* of Brandenburg of 12 April 1996 (Section 4, para. 5, 2<sup>nd</sup> sentence), advancement of the knowledge and understanding of the Sorbian (Wendish) culture is a special task of schools. In the settlement area of the Sorbs (Wends) pupils have the right to learn Sorbian (Wendish) and, in subjects taught for extended age-groups to be determined, to be instructed in the Sorbian language.

2.2.2 In the Free State of Saxony, Sorbian-speaking and bilingual groups are set up in **childrens' day-care centres** if the parents/guardians so wish. The providing body of the given institution is responsible for implementing the requirements laid down with regard to Sorbian and bilingual groups. In practice, this means that the existing good overall conditions for Sorbian-language education in children's day-care centres are actually used to the extent requested by the parents and supported by the providing body. The free decision of the parents/guardians is in agreement with the constitutional rights of the Sorbian people.

In the Free State of Saxony there are at present (as of November 1999) 13 day-care centres run under the *WITAJ* \* project and Sorbian day-care centres, 18 German-Sorbian day-care centres, and 154 children's day-care centres which keep up the Sorbian culture and the Sorbs' customs/folklore. *Sorbischer Schulverein e.V.* [Sorbian Schools Association] became the voluntary providing body of the children's day-care centre of Sielow in the *Land* of Brandenburg on 1 September 1998, and of the children's day-care centres in

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\* "witaj": Sorbian for "Welcome" [T's Note]

Dörghenhausen and in Rohne (both in the Free State of Saxony) on 1 April 1999 and on 1 July 1999, respectively. In these three children's day-care centres, 95 children from German-speaking or mixed-language homes are at present being initiated into the Sorbian language within the framework of the *WITAJ* model project. These three day-care centres employ 14 Sorbian-speaking educators/teachers.

*Christliches Soziales Bildungswerk Sachsen e.V.* [Christian Social Educational Association for Saxony, reg'd] is the providing body for 10 Sorbian and German-Sorbian children's day-care centres. These are attended by a total number of 654 children, of whom 266 are grouped in 23 Sorbian units.

In the *Land* of Brandenburg, as in the Free State of Saxony, the general design and organisation of the pedagogical work of children's day-care centres are largely removed from the state's influence; rather, this is the task of the providing bodies of such institutions. Under the pertinent laws, however, parents are granted extensive participatory rights. Such rights are exercised, in particular, within the *Committee of Children's Day-Care Centres* (Section 7 of the Children's Day-Care Centres Act) which "decides on educational and organisational matters of the day-care centre, especially on the pædagogical concept". This Committee provides a forum which grants substantial rights regarding the conceptual design and pædagogical orientation of the children's day-care centres also to Sorbian (Wendish) parents with a view to focusing educational work also on the cultivation and imparting of the Sorbian (Wendish) language and culture.

In twelve children's day-care centres of the *Land* of Brandenburg, a priority activity is the imparting of the Sorbian (Wendish) language and culture. In many other children's day-care centres operated in the *Spreewald* area (Lübbenau *Amt*, Vetschau), the Sorbian (Wendish) language is used as part of activities to maintain customs/folklore following the yearly cycle of seasons and festivals. The tutoresses introduce the children to dances, songs and stories and to picture books covering the same subjects in German and Sorbian (Wendish). Also, these children get a first-hand experience of customs/folklore being kept up by their parents, grandparents and relatives in the clubs and associations dedicated to these activities.

The Youth Welfare and Youth Service Office of Oberspreewald-Lausitz *Landkreis* plans to take up the cultivation of the Sorbian (Wendish) language and culture as an introductory approach to the subject "Inter-Cultural Education in Children's Day-Care Centres".

Overall it is to be noted that for some years a number of initiatives aimed at keeping up and cultivating the Sorbian (Wendish) culture have been developed in the traditional settlement area of the Sorbs (Wends). The Ministry for Education, Youth and Sports plans to present such initiatives to a broader audience within the publication series "*Kita-Debatte*" [Discussion on Children's Day-Care Centres].

As regards **primary schools**, Sorbian is taught as the native language, as a secondary language and as a foreign language (*secondary language*: mainly for pupils from bilingual families or from a bilingual setting; *foreign language*: mainly for pupils from German-speaking families or from a German-speaking setting in the Sorbian settlement area), and as an encounter language (or basic-communication language, or contact language). As a mother tongue, Sorbian is taught at six Sorbian elementary schools, of which two are in the Bautzen *Landkreis*, and four in the Kamenz *Landkreis*.

Under a commission by the Saxon State Ministry of Education and Cultural Affairs, an amendment to the primary school curriculum was developed regarding German taught at Sorbian primary schools in order to eliminate existing differences between the *tables of approved subject hours* [allocation of teaching periods among subjects in each school year as prescribed by the Ministry] for primary schools. This amendment to the curriculum offsets the difference in the approved subject hours and is intended to have the children experience that bilingualism provides an enrichment of their lives.

At four Sorbian primary schools, Sorbian is also taught as a secondary language. Another 28 elementary schools in the area covered by the Bautzen Regional Education Office offer Sorbian as a secondary language or as a foreign language. Sorbian also is one of a choice of seven encounter languages (in the 3<sup>rd</sup> and 4<sup>th</sup> grades, the encounter language covering one hour per week is a compulsory subject at primary schools). A survey conducted during the 1995/1996 school year on the pedagogic profiles of primary schools showed that the Sorbian schools - but also other primary schools as well - pay particular attention to the cultivation of the Sorbian language and culture. In many other primary schools in the German-Sorbian region, the Sorbs' customs and folklore are also integrated into school life.

As regards **secondary technical schools**, there are six such secondary schools in the *Landkreise* of Kamenz and Bautzen. Four of these schools have classes with both Sorbian as a mother tongue and Sorbian as a secondary language. In addition, Sorbian language instruction is offered at six other secondary technical schools within the area of the Bautzen Regional Education Office. Instruction is based on the current curricula for Saxon secondary technical schools. For pupils for whom Sorbian is their native tongue, instruction is given in the Sorbian language, with the exception of the following subjects: German, mathematics, physics, chemistry and biology (from the 7<sup>th</sup> grade onward). All other pupils are taught in German. The rules laid down by the Saxon State Ministry of Education and Cultural Affairs with regard to instruction at Sorbian and other schools in the German-Sorbian region, and the specifications regarding the respective approved subject hours have resulted in an increased requirement for teachers covering these subject hours at the Sorbian secondary technical schools. Due to the limited number of Sorbian-speaking teachers, it is at present not always possible, even by means of temporary assignment of teachers, to compensate for unscheduled cancellation of classes [due to sickness, etc.].

Like other **grammar schools** in the Free State of Saxony, the *Sorbisches Gymnasium* of Bautzen provides general education which is the prerequisite for entry to

higher education [entitlement to university entrance]. This is the only *Gymnasium* where pupils are offered in-depth linguistic and literary education in the Upper Sorbian language. The Sorbian State Ministry of Education and Cultural Affairs generally allows Sorbian pupils to enrol in a special achievement course [advanced course] in their mother tongue and to take the written *Abitur* [grammar-school graduation] exams in this language. The approval for the introduction, from the 1996/1997 school year onwards, of the advanced-course subject combination Sorbian/natural sciences (biology or chemistry or physics) for pupils speaking Sorbian as their mother tongue offers pupils a significant widening of choices and, at the same time, may be seen as a contribution towards promoting the Sorbian language and culture. Bilingualism is a particularly decisive factor of school life at the *Sorbisches Gymnasium*; all pupils learn Sorbian either as their native language or as a secondary language. The special expenses entailed by bilingualism for this school are funded with *Land* grants. In this respect, however, there are occasional problems regarding responsibility for budgetary matters because the providing body of *Sorbian Gymnasium* is Bautzen *Landkreis*.

In addition to *Sorbisches Gymnasium*, two grammar schools in Hoyerswerda, also in Saxony, offer language instruction in Sorbian as a foreign language.

Overall, Sorbian instruction is given at 57 schools in Saxony and is attended by some 4100 pupils of whom about 1400 speak Sorbian as their mother tongue. At Sorbian schools, Sorbian is a compulsory subject. At other schools, participation in Sorbian language lessons is a voluntary decision to be made by the pupils' parents. The basis for this decision, especially in cases where parents have their doubts, is provided in the day-care centre or, at the latest, at the time of enrolment in an elementary school. In this respect, it is important that nursery-school teachers, educators and teachers constantly underline the value of the Sorbian language and culture and encourage parents and pupils to devote themselves to these traditional values.

In addition, adults can attend a Sorbian language course at one of the adult education centres in the towns of Kamenz, Bautzen, Hoyerswerda or Weißwasser.

In the *Land* of Brandenburg, a Sorbian school, *Niedersorbisches Gymnasium* [Lower Sorbian grammar school], has been established pursuant to the "Administrative Regulations on Education at Sorbian and Other Schools in the German-Sorbian Region" of 22 June 1992. In addition, there are a number of primary schools which strive for a particular Sorbian (Wendish) profile.

Overall, there are 22 schools in Brandenburg offering Sorbian (Wendish) instruction. These are 19 primary schools, two comprehensive schools and one *Gymnasium*. Participation in Sorbian (Wendish) classes has much increased over the past few years. Also, the number of participants in Sorbian (Wendish) classes, as a percentage of the total number of pupils, has increased substantially because, in the course of the past three years, the number

of participants in Sorbian (Wendish) classes has increased while the number of pupils attending a primary school has dropped.

The Education Offices of the *kreisfreie Stadt* [county borough type authority; non-district municipality] of Cottbus and the *Landkreise* of Dahme-Spreewald, Oberspreewald-Lausitz and Spree-Neisse have been repeatedly informed in recent years, last by the Circular of the Ministry for Education, Youth and Sports of 14 June 1996, that - for the right to learn the Sorbian (Wendish) language to be exercised - the choices existing in this respect must, in an appropriate form, be brought to the parents' knowledge at the time of their children's enrolment in an elementary school or at the time of their transfer to another school. A survey carried out at the aforementioned Education Offices has shown that the requirements for exercising the right to take part in Sorbian (Wendish) classes are met. The increase in the number of pupils also shows that parents increasingly make use of this right.

The supreme supervisory school authority intends to issue a statutory ordinance [ordinance having the force of law] under Section 5, 3<sup>rd</sup> sentence, of the Brandenburg Schools Act with a view to regulating Sorbian instruction in various subjects, learning of the Sorbian language and imparting of the Sorbian language and culture in class. This statutory ordinance is in preparation.

## 2.3 The Frisian languages in education

2.3.1 For the *Land* of Schleswig-Holstein, the legal basis making it possible to learn the vernacular in the settlement area of the Frisian ethnic group is provided in Article 5, para. 2, of the *Land* of Schleswig-Holstein Constitution under which also the Frisian ethnic group is entitled to protection and promotion. There is no comparable legal provision in Lower Saxony, but in this *Land*, too, opportunities are being developed for learning the Frisian language (Saterland Frisian).

2.3.2 Frisian is taught at most publicly maintained schools in the North Frisian speech area, as well as at some primary schools and secondary modern schools of the Danish minority. During the 1998/99 school year, 21 teachers at 28 schools of various types taught 171 hours of Frisian per week to 1,330 pupils. Usually, this is offered as an optional subject in the 3<sup>rd</sup> and 4<sup>th</sup> grades. At the Lindholm Primary and Secondary Modern School, Frisian instruction is offered from the 1<sup>st</sup> to the 9<sup>th</sup> grade. Secondary schools offer such instruction only on a very limited scale. So far, *Realschulen* [secondary technical schools] in the Frisian speech area do not offer any Frisian instruction at all; and *Gymnasien* [grammar schools] only provide such courses in their upper classes [second stage of secondary education]. Only at one school, is Frisian - in addition to Danish and German - also used as the teaching language for other subjects; this is the Primary and Secondary Modern School - of which *Dansk Skoleforening for Sydslesvig* [Danish Schools Association for South Schleswig] is the providing body - in Risum where Frisian instruction is mandatory from 1<sup>st</sup> to 9<sup>th</sup> grade. On the basis of the findings of a model test carried out in the period 1993 to 1996, the Frisian

language was also introduced in nursery schools. At present, this language is used, to a varying extent, by 28 nursery schools.

The Frisian ethnic group expects Frisian instruction to be gradually extended so as to be continued, after primary education, at *Realschulen* and in the lower secondary grades of *Gymnasien*.

At all Saterland schools the Frisian language nowadays is a school subject. At Saterland *Schulzentrum*, activity groups [AGs] of 5<sup>th</sup>-grade pupils have a two-hour lesson in Saterland Frisian, and the AGs of 6<sup>th</sup>-grade pupils a one-hour lesson. At Ramsloh primary school, two teachers teach Saterland Frisian for a total of 4 hours in grades 1 to 4. At Strücklingen primary school, the 3<sup>rd</sup> and 4<sup>th</sup> grades have a 1-hour lesson each per week. At Scharrel primary school, too, all pupils learn Saterland Frisian in activity groups; at Sedelsberg primary school, Saterland Frisian is taught in class for two hours a week for grades 1 and 2 while the 3<sup>rd</sup> and 4<sup>th</sup> grades have a 1-hour lesson per week as part of activity groups. Overall, 272 pupils in 19 learning groups receive this instruction which covers a total of 20 hours per week (the total number of pupils of grades 1 to 6 is about 1129 individuals). Also, at all of the five nursery schools in Saterland *Gemeinde*, Saterland Frisian is spoken with the children for one hour per week.

*Katholisches Bildungswerk Saterland* [Saterland Catholic Educational Association] offers the course "Speak and read Saterland Frisian" once per year; this course covers ten 2-hour evening classes.

In the Saterland, Saterland Frisian is taught not only by fully trained teachers but also by other persons if they are suitable and if there is a demand for such instruction. Such persons may be employed as part-time teachers by the *Land* and will be paid according to their respective teaching load. Thus they are equal in status with the teachers for other subjects. The Government of Weser-Ems *Bezirk* [District] notes, under the procedure for inviting applications for a position, that knowledge of Saterland Frisian is desirable or even required.

## 2.4 The Romany language in education

2.4.1 The children of the German Sinti and Roma grow up bilingually with Romany and German and usually have a command of both languages. None of the School Acts of the *Länder* provides for instruction in the Romany language within the state-run school system since such instruction is not wanted by German-Sinti parents. As regards the view taken by the *Central Council of the German Sinti and Roma* and by other Sinti organisations on non-inclusion of Romany in general instruction, cf. the comments under Article 12, para. 2, no. 2.4, above.



2.4.2 Therefore, apart from a number of pilot test models for Roma children, Romany is *not* taught at German schools, in compliance with the parents' wish. Nevertheless, special opportunities for promoting the schooling progress of children of members of the minority have, with the inclusion of their cultural traditions and their language, come into existence in some of the *Länder* of the Federal Republic of Germany:

In the *Land* of Hamburg, the Senate Authority for Schools, Youth and Vocational Training offers in-school activities in the form of Romany instruction at Laeiszstrasse Primary School, at Billbrookdeich Primary, Secondary Modern and Secondary Technical School, at Friedrichstrasse Primary, Secondary Modern and Secondary Technical School, and at Ochsenwerder Primary, Secondary Modern and Secondary Technical School, given that larger groups of this minority live in the schooling districts of these schools.

In addition, the following are available [in Hamburg]: an offer for parent-specific activities, employment as interpreters for the Romany language, and support for German teachers at primary and secondary modern school as regards instruction for members of the minority. Also, the Authority provides vocational training and further education in the adult education field, with Romany courses offered by the Adult Education Centre whenever there is a demand for such courses.

In North Rhine-Westphalia, various possibilities have opened up for promoting the schooling progress of children from Roma families, with the inclusion of their cultural traditions and their language, within the framework of a number of projects designed for specific locations. On the basis of the requirements and wishes stated by the representatives of the persons concerned, these activities are confined to imparting historical and cultural information about this minority. Thus it is to be noted that the local groups do not wish that public institutions provide instruction in the Romany language which is only spoken within the minority community.

Moreover, various *Länder* of the Federal Republic of Germany (Berlin, Hesse, Rhineland-Palatinate, and Baden-Wurttemberg), in implementation of Article 8 (education) of the Council of Europe Charter for Regional or Minority Languages [Minority Language Charter - MIN-LANG], have adopted provisions for pre-school education, primary education and secondary education regarding Romany instruction; these provisions are implemented according to the local situation and circumstances in response to the wishes expressed by parents or by the pupils themselves.

**Article 14, para. 3** [learning of, and teaching in, the official language]

In the schools of general education [*i.e.* secondary modern schools, secondary technical schools, and grammar schools] of, and for, the minorities - *i.e.* at the Danish private schools as well as at the publicly maintained Sorbian schools and at publicly maintained schools offering Frisian instruction - German instruction meeting mother-tongue standards is ensured in addition to the teaching of, and/or in, the minority language. This

also includes teaching of the required German technical terms, especially those pertaining to natural science and social sciences.

## Article 15

The Parties shall create the conditions necessary for the effective **participation** of persons belonging to **national minorities in cultural, social and economic life and in public affairs**, in particular those affecting them.

1. In the Federal Republic of Germany, effective participation of persons belonging to national minorities and ethnic groups in cultural, social and economic life and in public affairs is ensured by Germany's constitutional order as a free democratic state under the rule of law. In addition, there are legal protective provisions and practical promotion measures designed to realise such participation.

2. Participation in the forming of the political will of the people is ensured by the right to freely establish political parties. This is laid down in Article 21 of the Basic Law. The state may neither impose restrictions on the number of political parties established nor make the establishment of political parties subject to authorisation. The members of national minorities and ethnic groups, like the majority population, have the unrestricted right to establish a political party. Also, as German citizens, they come under the scope of the legal provisions on the right to vote in elections, and the right to stand for election, to the German *Bundestag*, to the *Landtage* [Parliaments of the constituent states] and to local councils. As regards elections to the German *Bundestag* and to the *Landtage* of the *Länder* of Brandenburg and Schleswig-Holstein, political parties of national minorities are exempted from the five per cent hurdle imposed under the Electoral Act.

### 3. Representation in Parliaments and Local Councils

3.1 *Sydslesvigsk Vælgerforening* (SSV - South Schleswig Association of Voters), with its headquarters in Flensburg, is the political party of the Danish minority in the Federal Republic of Germany and of the "*nationale Friiske*", i.e. "national Frisians" (a minority of Frisians in Germany), co-operating with the Danes in the political sector.

Other political parties that would specifically represent the interests of minorities in Germany do not exist. However, with the exception of some individual elected representatives of political parties at the ends of the political spectrum, there is a political consensus among all political parties represented in the German *Bundestag* and in the *Land* Parliaments to give political support to the protection and promotion of minorities. This consensus is also reflected, for instance, by the almost unanimous consent (with few abstentions) to the ratification of the Framework Convention for the Protection of National Minorities and by the unanimous consent to the ratification of the European Charter for Regional or Minority Languages within the *Bundestag* and the *Bundesrat* ("Upper House" of Parliament, consisting of members of the *Land* Governments).

3.2.1 The political party *Sydslesvigsk Vaelgerforening - SSV*, with headquarters in Flensburg, won two seats in the *Landtag* of Schleswig-Holstein during the elections on 24 March 1996. Irrespective of the number of their mandates, the SSV deputies have parliamentary group status. The SSV is at present represented, with 161 deputies, in *Kreis* Councils and in municipal and parish Councils in the *Land* of Schleswig-Holstein (municipal elections: 22 March 1998).

3.2.2 On 12 June 1996, a representative of the Sorbian people was re-elected to the European Parliament for the Christian Democratic Union (CDU). One deputy of the Sorbian people, each, were elected for the CDU and for the Party of Democratic Socialism (PDS), respectively, to the *Landtag* of the Free State of Saxony (19 September 1999).

In addition, the Sorbian people is represented in *Kreis* councils and in municipal and parish councils in the Free State of Saxony by 136 deputies, of which 31 are elected candidates of Sorbian associations of voters, and the remainder were elected under various party lists (municipal elections: 13 June 1999). In the *Land* of Brandenburg, at the *Kreis* and local government levels, at present some 40 local councillors who consider themselves members of the Sorbian people sit on municipal/parish councils (municipal elections: 27 September 1998).

3.2.3 A major number of members of the Frisian ethnic group are represented on *Kreis* Councils and municipal/parish councils in North Friesland, East Friesland and of Saterland *Gemeinde*, but their exact number is not known. In some island communities of North Friesland, Frisians represent the majority. One East Frisian was elected to the European Parliament for the Social Democratic Party of Germany (SPD); another East Frisian was elected, also for the SPD, to the Lower Saxon *Landtag* (1 March 1998).

3.2.4 On account of their widely dispersed homes, direct participation of the German Sinti and Roma in political life is more difficult than in the case of the other minorities with a more compact form of grouped settlement. No Sinti or Roma are known to be members of the German *Bundestag* or of *Land* Parliaments. However, a number of Sinti have been elected to municipal/parish councils. The associations of the Sinti and Roma approach Parliaments and governments, parliamentarian bodies, and bodies of political parties as well as individual politicians for winning them over to the Sinti/Roma interests and enlisting their political support.

3.3 Under the Basic Law (i.e. the Constitution of Germany), local governments in the Federal Republic of Germany have the right to regulate, on their own responsibility, all the affairs of the local community within the framework of the pertinent laws. The constitutionally guaranteed autonomy comprises an entire set of sovereign powers, ranging from own responsibility for staffing matters and organisational jurisdiction to fiscal jurisdiction, the right of the *Gemeinden* to make by-laws (or ordinances), and the power to levy taxes. This local self-governance with far-reaching binding - autonomous - powers offers compre-

hensive scope for self-organisation (i.e. making their own arrangements) also to those national minorities with more compact, grouped, settlements so that in Germany, from the minorities' perspective as well, no other forms of territorial autonomy are considered necessary. The scope provided by local self-government for autonomous self-organisation of the local life of minorities is realised, in particular, in those Sorbian and Frisian communities that are predominantly or nearly exclusively inhabited by members of those minorities, but also in other communities which have a significant proportion of Danes, Frisians or Sorbs among their population (German Sinti and Roma are nowhere known to form a significant part of the local population).

4. Effective participation of the groups protected under the Framework Convention will only be ensured if the groups maintain continuous contacts with public authorities. As regards the infrastructure required to make such exchanges possible, cf. the comments under Article 5, para. 1, no. 3, above, referring to the promotional policies of the Federal Republic of Germany. In particular, this opportunity is provided by bodies in which participation of members of national minorities and ethnic groups in matters affecting them is ensured. In addition, mention is to be made of the following bodies:

The Committees on Internal Affairs and on Legal Affairs of the German *Bundestag* have lead responsibility for matters concerning national minorities. Aspects of the protection of minorities which come within specific areas of activity are also dealt with by other Committees of the German *Bundestag*. Within the *Bundesrat* [consisting of members of the *Land* Governments], a similar approach is taken to the division of responsibilities. Within the *Land* Parliaments, lead responsibility for minority issues lies with the committees responsible for the functional area of the Ministry which is in overall charge of minority matters within the respective *Land* Government. A special parliamentary body for matters concerning the Sorbs exists in the *Land* of Brandenburg and is planned to be set up in the Free State of Saxony as well (in this respect, cf. the comments under Article 5, para. 1, no. 3.2.2, above).

Moreover, the German *Bundestag* and the *Land* Parliaments have petitions committees which, however, have different designations (including, for instance: "Committee for Citizens' Initiatives, Other Petitions, and Hearings on Initiatives originated by the People"). The Committees have been established by parliamentary decision.

5. Cultural autonomy of the minorities has great significance for the minorities and ethnic groups in Germany which - based mainly on state-provided funding - ensures autonomous organisation of cultural life in the broadest sense, on the basis of private associations, foundations and other institutions, without any government intervention. As regards the structure of this cultural autonomy, the organisations set up by the groups protected under the Framework Convention and the activities of these organisations, cf. the comments under Articles 5 and 7 above.

## Article 16

The Parties shall **refrain from measures which alter the proportions of the population in areas** inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present Framework Convention.

1. In Germany, there are, on principle, no governmental or other measures which would alter the proportions of the population in the settlement areas of the national minorities. However, changes in the population figures of the various communities and regions are entailed by the general mobility which, in particular, is also due to the economic structure in some regions, by out-migration to conurbations, or by the incoming migration of "late repatriates" (i.e. persons who formerly belonged to German minorities, especially in states of the former Soviet Union, and who resettled in Germany). These movements to a certain extent also affect the proportions of the groups protected under the Framework Convention as a percentage of the respective local population. This, however, neither is directed against the exercise of the rights of these groups nor does it have an influence on the participation of their members in decision-making on matters affecting them.

The changes regarding the borders and areas of local-government administrative districts entailed by the general territorial reorganisation of local government in the Free State of Saxony and in the *Land* of Brandenburg, however, have also reduced the Sorbian inhabitants' proportions of the population in some *Kreise* and *Gemeinden*. In the context of the territorial reorganisation, it was not possible to take all the concerns and interests of the affected communities, local-authority associations and Sorbian minority organisations into account. In some cases, the local self-administration units have designated Commissioners (cf. the comments under Article 5, para. 1, no. 3.1, above).

2. In connection with alterations of the population structure, one of the subjects of public discussion were the legally regulated dissolution of Horno *Gemeinde* and, as a corollary, the resettlement of the German-Sorbian population of this community in Lower Lusatia in Brandenburg, which had to yield its place to brown coal mining.

Lignite mining and the energy industry relying on it are important key industries of the *Land* of Brandenburg, which substantially contribute to the economic development of this *Land*. In the *Land* of Brandenburg there are no economically exploitable lignite beds or deposits outside built-up areas and thus outside settlements. Consequently, decisions regarding brown coal open-cast mining require prior discussion of the problem of any resettlement entailed by mining.

The main lignite coal mines in Brandenburg are in Lower Lusatia. This is the traditional settlement area of the Sorbian (Wendish) people. Due to the one-sided focus of the power-supply industry of the former GDR on the use of brown coal, many people living in

the then GDR [German Democratic Republic] had to leave their home villages since these were claimed for purposes of open-cast lignite mining. This also affected many Sorbs. The inhabitants of these places were, without any regard for their ethnic origin and identity, resettled - often even dispersed - in other places, mainly in the city of Cottbus and its suburbs. In these places, it was rather difficult to preserve the traditional identity. Society's pressure for assimilation set in or was substantially increased.

As a deliberate departure from this policy, the *Land* of Brandenburg pursues the aim of avoiding further losses of Sorbian (Wendish) identity. The legal bases for resettlement in connection with brown coal open-cast mining are the Brandenburg Town and Country Planning Act of 20 July 1995 and the Brandenburg Act on Lignite Mining Policy of 7 July 1997.

The principle enshrined in Section 3, para. 2, no. 8, of the *Land* of Brandenburg Town and Country Planning Act that the concerns of the Sorbian (Wendish) population in Lusatia and their history, language and culture are to be considered in all plans and measures is implemented in town and country planning without any restrictions. This principle also was adopted in the Regional Policy Plan. This ensures, also in conformity with the Act to regulate the substance of the Sorbs' (Wends') rights in the *Land* of Brandenburg, [SWG - Sorbs (Wends) Act], that the concerns of the Sorbian (Wendish) population in Lusatia will be taken account of in all plans and measures. In Schleswig-Holstein, the Minister-President ordered that the Border Region Commissioner is to be involved in all minority matters and that in all laws and ordinances a reference is to be included concerning any minority rights that might be affected.

In addition, the Brandenburg Act on Lignite Mining Policy contains a number of general provisions on brown coal mining and, in particular, on the social sustainability of resettlements that cannot be avoided. In this respect, however, resettlement is not a measure that exclusively affects the affairs and interests of the Sorbian (Wendish) minority but also has the same impact on the majority population, for instance the inhabitants of Kausche, a community outside the Sorbs' settlement area. But if such use of a Sorbian or German-Sorbian settlement cannot be avoided, special attention must be paid to the requirements of the protection of minorities, as defined in legal provisions. Therefore, if a Sorbian or German-Sorbian settlement must be used for mining purposes, the aim is to resettle the affected inhabitants, as a body, in the traditional settlement area and thus to maintain the life environment in which the persons concerned can preserve their national traditions and can, to the greatest extent possible, avoid the assimilation pressure exerted by an unfamiliar environment. In each individual case, an attempt is made to find solutions in mutual agreement.

In order to ensure consideration of the Sorbs' (Wends') interests within the framework of lignite-mining and rehabilitation/renewal planning in practice, Section 1, para. 3, no. 6, of the *Ordinance on the Establishment of the Brown Coal Committee of the Land of Brandenburg* of 5 April 1992 provides that one representative of *Domowina - Zwajsk Łužiskich Serbow, z.t.* [Federation of Lusatian Sorbs, reg'd association] is to be delegated, as

a voting member, to the Brown Coal Committee of the *Land* of Brandenburg and is to actively participate in the decisions of this Committee. Moreover, the Sorbian (Wendish) associations are involved in the development of lignite-mining and rehabilitation/renewal plans. Also, the Sorbs (Wends) take part in all decision-making by the institution responsible for regional planning. Representatives of *Domowina* are advisory members of the Regional Assembly of the Lusatia-Spreewald Regional Planning Association.

The resettlement issue became a matter of topical interest especially in connection with open-cast mining in Jänschwalde. Continuation of these open pit mines requires use of the area of Horno *Gemeinde*. Under the Act on Lignite Mining Policy and the relevant Lignite-Mining Plan, German and Sorbian inhabitants who objected to relocation were offered possibilities of being jointly resettled within the traditional Sorbian settlement area. Under the relevant law, Horno *Gemeinde* was dissolved and, under local government law, was incorporated in Jänschwalde *Gemeinde* on 27 September 1998; the inhabitants are expected to resettle in the period 2000 - 2002. The legally prescribed hearing of the inhabitants on the prospective site of resettlement has taken place in the meantime. The hearing showed that the majority of the Horno citizens preferred the town of Forst (Lusatia) over Jänschwalde as a resettlement site. Forst is located within the traditional settlement area of the Sorbs/Wends. The preparations for resettlement in this town are underway.

The Act on Lignite Mining Policy, Article 2 of which regulates the dissolution of Horno *Gemeinde*, was the subject of five legal proceedings before the *Land* of Brandenburg Constitutional Court. These were an avoidance petition [for judicial review of statutes or administrative acts] submitted by a parliamentary group of the Brandenburg *Landtag*, and constitutional complaints [complaints of unconstitutionality] filed by *Domowina* (the umbrella organisation of Sorbian (Wendish) associations), by the *Council for Sorbian (Wendish) Affairs* established at the Brandenburg *Landtag*, by Horno *Gemeinde*, and by an inhabitant of Horno. In its decision of 18 June 1998, the *Land* Constitutional Court, however, found that, in view of the special importance of lignite mining for structural improvements, job security and energy supply, the legislator's decision to dissolve Horno *Gemeinde* and to use its area for open-cast lignite mining is constitutional - notwithstanding the importance attached by the Court to the state's aim as stipulated in Article 25, para. 1, 1<sup>st</sup> sentence, of the *Land* Constitution, namely the protection, preservation and cultivation of the Sorbs' (Wends') settlement area. The Court's decision took special account of the supplementary provisions of this Act, calling for a maximum of considerate treatment of the inhabitants of the community and, in particular, for joint resettlement within the Sorbian settlement area.

## Article 17

(1) The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain **free and peaceful contacts across frontiers** with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

(2) The Parties undertake not to interfere with the right of persons belonging to national minorities to **participate in the activities of non-governmental organisations**, both at the national and international levels.

**para. 1**

1. The right, protected under this paragraph, to establish and maintain contacts is one of the fundamental freedoms guaranteed by the Basic Law and is protected by Article 2, para. 1, of the Basic Law (general freedom of action; freedom to leave the country) and Article 11, para. 1, of the Basic Law (freedom of movement within the federal territory; freedom to enter the country).

2. The state does not interfere with these rights, but instead welcomes contacts among the members of national minorities within the nation and in other countries. Often such activities are included in governmental promotion schemes. An example are the contacts of organisations of the Sorbian people with groups of Sorbs living abroad who are members of *Domowina*, the umbrella organisation of Sorbian organisations. Another example is the state-funded, close co-operation of the *Central Council of the German Sinti and Roma* with the *Kulturverein Österreichischer Roma* [Cultural Association of Austrian Roma] in Vienna. Also, public funds are provided for the co-operation of Frisians in Germany with Frisians in the Netherlands, who have a common umbrella organisation with headquarters in Germany. There is particularly close co-operation of the Danish minority with many and various organisations in Denmark, and intensive private and cultural contacts exist between members of the Danish minority and the Kingdom of Denmark.

**para. 2**

1. The state is not allowed to impede participation in the activities of non-governmental organisations (Articles 2, para. 1, and 9, para. 1, of the Basic Law).

2. The members of the groups protected in Germany under the Framework Convention are united in various organisations and actively participate in the work of many non-governmental organisations (cf. the comments under Article 7 above). The organisations of German minorities and ethnic groups co-operate on a non-committal basis, and all of them are members of the Federal Union of European Nationalities (FUEN), which is an umbrella organisation of national minorities and traditional (autochthonous) ethnic groups in Europe, with its headquarters in Flensburg, the home of the Danish minority. FUEN is supported by the *Land* of Schleswig-Holstein and by a number of regional governments in other countries where national minorities have their settlement areas as well. Like other governments of Central and North European countries, the Federal Government (of Germany) subsidises individual FUEN projects. The youth associations of minorities in Germany are members of the Youth of European Nationalities (YEN) which receives Federal Government subsidies for individual projects.



The national minorities and ethnic groups in Germany also are members of the European Bureau for Lesser Used Languages (EBLUL) which is funded by the European Union. In the Federal Republic of Germany, its member organisations are united in a Committee, the activities of which are supported by the Federal Government.

The Federal Republic of Germany welcomes the fact that the minorities and ethnic groups in Germany co-operate and represent their interests at the international level jointly with other national minorities. This helps with the development and practical implementation of the policies regarding minorities in Europe, which takes the needs of those concerned into consideration. In Germany, FUEN and the German EBLUL Committee also participate in the implementation of the European instruments relating to the protection of minorities.

### **Article 18**

(1) The Parties shall endeavour to conclude, where necessary, **bilateral and multilateral agreements with other States**, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minority concerned.

(2) Where relevant, the Parties shall take measures to encourage **transfrontier co-operation**.

#### **para. 1**

The agreements concluded by the Federal Republic of Germany with other states on the protection of persons belonging to national minorities meet the requirements under para. 1 of Article 18.

In the treaties and other agreements concluded by the Federal Republic of Germany with the former Soviet Union, Poland, the former Czechoslovakia, Hungary, Romania and a number of other countries, the international standards with regard to human rights and the protection of minorities, particularly the stipulations of OSCE documents concerning the protection of minorities, have been agreed upon as the basis for future friendly and good-neighbourly relations. The provisions already contained in the Bonn and Copenhagen Declarations of 1955 on the policy regarding minorities in the German-Danish border region provide the basis for the realisation of the protection of minorities along the lines defined in the Framework Convention.

**para. 2**

Transfrontier co-operation among neighbouring states, including regional co-operation at the local government level, is seen by the Federal Republic of Germany as particularly important in an ever-more united Europe. Therefore, Germany supports the various political initiatives launched by the *Länder*, local authorities and other territorial corporations. It welcomes the involvement of national minorities and ethnic groups in this co-operation wherever this is possible.

In the Ems-Dollart Region [Ems-Dollard Regio], the municipalities, districts, Chambers [of Local Authorities, of Regional Authorities] and other corporations under public law in the Netherlands Provinces of Groningen and Drenthe and in the German *Landkreise* of Aurich, Leer and Wittmund, the municipality of Emden in East Friesland and in Emsland *Landkreis* have formed a special purpose association [community syndicate], which in addition to economic co-operation, also has the task to promote, support and co-ordinate the cultural affairs of this overall region in a transfrontier context. The Ems-Dollart Region covers large parts of the East Frisians' settlement area and peripheral areas of the West Frisians so that cultural co-operation also refers to the affairs of these groups. Frisians, as representatives of the local government bodies concerned, directly participate in this co-operation.

The City of Flensburg as well as the *Kreise* of Schleswig-Flensburg and North Friesland, on the German side, and Sønderjylland *Amt*, on the Danish side, are the partners of the German-Danish Border Region of Schleswig/Sønderjylland which was set up on 16 September 1997 by an Agreement between the regional and local authorities concerned. The Agreement aims at providing the basis for long-term and intensive co-operation for enhancing the development of this overall region in a European context. The priority activities also include education (education and advanced/follow-up training as well as language instruction). In this field, the aim is to disseminate knowledge of the culture of the respective neighbours, so as to overcome cultural barriers. On the German side, transfrontier cultural projects and organised events/activities are jointly promoted by the *Kreise* of North Friesland and Schleswig-Flensburg and by the City of Flensburg. Transfrontier co-operation involves the national minorities, especially the Danish minority in Germany and the German minority in Denmark. Members of the *Regional Council* - the organisation's body with both advisory and co-ordinating functions - are, on the German side, three representatives of *Sydslesvigsk Vælgerforening* (SSV), the South Schleswig Association of Voters.

Transfrontier co-operation between local authorities and other institutions of Saxony and Brandenburg and the Slav neighbouring countries - Poland and the Czech Republic - also involves organisations and institutions of the Slav people of the Sorbs. One example are the so-called *Sächsische Tage* ["Saxon Days" festival] in Wrocław/Breslau (Poland) which in 1998 was held by the Free State of Saxony within the framework of transfrontier co-operation with the neighbouring countries. This provided the Sorbs with an opportunity to present their history and culture.

## Article 19

The Parties undertake to respect and implement the principles enshrined in the present Framework Convention making, where necessary, **only those limitations, restrictions or derogations which are provided for in international legal instruments**, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

Implementation of the stipulations of the Framework Convention is covered in the account given on the respective state of implementation in the comments to the various *Convention* Articles. In instances, these comments also cover any restrictions, limitations or derogations that might exist in the individual case. German law and the German practice regarding the implementation of the Framework Convention are in accordance with the requirements laid down in Article 19.

## Article 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present Framework Convention, any person belonging to a national minority shall **respect the national legislation and the rights of others**, in particular those of persons belonging to the majority or to other national minorities.

The provisions of national legislation are complied with and respected, in the exercise of the rights and freedoms granted to them, by the members of the groups protected under the Framework Convention. No cases are known where the rights of others were disregarded, in particular the rights of persons belonging to the majority, of members of other national minorities, or of foreigners living in Germany. Good contacts are maintained between the organisations of the national minorities and ethnic groups in Germany. They co-operate within bodies and interest groups and provide mutual support in the exercise of their rights and in preserving their identity, and particularly in relations with the media.

## Article 21

Nothing in the present Framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental **principles of international law** and in particular of the **sovereign equality, territorial integrity and political independence of States**.

Activities or acts by members of national minorities and ethnic groups in Germany, which would be contrary to the fundamental principles of international law, especially to the sovereign equality, territorial integrity and political independence of states, have never become known. Confirmation of the importance of, and respect for, these principles is em-

phasised in various Declarations of the groups protected under the Framework Convention and especially of their international umbrella organisation, the *Federal Union of European Nationalities* (FUEN). Political claims for the alteration of national borders - as put forward by the Danish minority in the years after World War II – are no longer among the aims pursued by the organisations of this minority.

## Article 22

Nothing in the present Framework Convention shall be construed as limiting or derogating from any of the **human rights and fundamental freedoms** which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

Human rights and fundamental freedoms provided for under national law in addition to those embodied in the Framework Convention are neither limited nor derogated from by the provisions of the *Convention*. Likewise, entry into force of the Framework Convention does not adversely affect those additional legal provisions concerning the protection of minorities as are laid down in various *Länder* of the Federal Republic of Germany, for instance in respect of the position of minority languages in school education or as regards governmental promotion.

## Article 23

The rights and freedoms flowing from the principles enshrined in the present Framework Convention, in so far as they are the subject of a corresponding provision in the **Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto**, shall be understood so as to conform to the latter provisions.

The rights and freedoms flowing from the obligations laid down in the Framework Convention are implemented in Germany pursuant to the relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Protocols thereto.

## Article 30

(1) Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this Framework Convention shall **apply**.

(2) Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, **extend the application** of this Framework Convention to any other territory specified in the declaration. In respect of such territory the Framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

(3) Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The **withdrawal** shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

**paras. 1 to 3**

When Germany ratified the Framework Convention, no declaration was made regarding limited territorial application. Therefore, the Convention applies to the entire territory of the Federal Republic of Germany.