

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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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**Fourth Opinion on Germany  
adopted on 19 March 2015**

**EXECUTIVE SUMMARY**

The institutional framework of protection of minority rights in Germany has been strengthened in recent years. The authorities at federal and *Land* level continue to provide substantial support to the preservation and development of minority languages and cultures. Steps have been taken to increase support provided to Danish minority schools as well as to teaching in and of Sorbian and Frisian in the traditional settlement areas of these national minorities. The Federal Anti-Discrimination Agency has made considerable efforts to raise awareness of the anti-discrimination legislation in place.

While the adoption of a package of measures to promote the integration and participation of Sinti and Roma in Germany is welcome, more emphasis is needed on achieving full and effective equality in practice and on evaluating the implementation of this package. There have been worrying developments as regards public manifestations of racism and xenophobia. Despite counter-demonstrations as well as statements of condemnation by the authorities, manifestations of antisemitism, anti-Gypsyism, and anti-Muslim and anti-immigrant sentiments are reported to be rising, as well as attacks against asylum-seekers.

Outside the traditional settlement areas of national minorities, the general public's awareness of minority cultures and languages remains low. Access to media in minority languages and the use of minority languages in contacts with local administrative authorities remain problematic, and further efforts are needed to ensure that the offer of teaching in and of minority languages, especially Sorbian and Frisian, is adequate and sustainable.

**Recommendations for immediate action:**

- **review and strengthen the General Equal Treatment Act in order to ensure that it provides effective protection against discrimination; continue supporting efforts to raise awareness of the contents of this Act and the avenues of redress available against discrimination, including when committed by public actors; consider broadening the powers of the Federal Anti-Discrimination Agency and ensure that it has sufficient resources to allow it to carry out its duties effectively;**
- **actively promote the effective equality of Sinti and Roma in socio-economic life through targeted, evidence-based measures, designed, implemented and evaluated in full consultation with representatives of Sinti and Roma and based on clear benchmarks; take resolute measures to put an end to discrimination against Sinti and Roma children in the education system, including ending the unjustified placement of Sinti and Roma children in special schools, and to create an inclusive education system;**
- **pursue efforts to combat racism and intolerance and prevent right-wing extremism; take a proactive stance embracing the diversity of German society; review the legal provisions prohibiting incitement to hatred, in particular in the context of election campaigns, and the policy and procedures in place concerning the investigation and prosecution of the dissemination of ideas based on racial superiority, with a view to strengthening their effectiveness.**

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## **I. KEY FINDINGS**

### **Monitoring process**

1. This fourth-cycle Opinion on the implementation of the Framework Convention by Germany was adopted in accordance with Article 26(1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the [fourth State Report](#), submitted by the authorities on 11 March 2014, and other written sources, as well as on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Berlin, Hanover and Flensburg on 26-30 January 2015.

2. The Advisory Committee welcomes the considerable assistance provided by the authorities before, during and after the visit and their constructive approach to the fourth-cycle monitoring process. It regrets, however, that the Framework Convention remains little known in Germany beyond the persons and groups that may be directly interested in the protection that it offers. It expects that the authorities will translate, publish and disseminate the present Opinion and corresponding Resolution of the Committee of Ministers. It welcomes the practice of holding an annual conference on the implementation of the Framework Convention and the European Charter on Regional or Minority Languages, at the invitation of the Federal Ministry of the Interior and including representatives of the federal government, governments of the *Länder* and national minorities, as an important opportunity for fostering debate on the results of monitoring and identifying ways to strengthen the implementation of these instruments.

### **General overview of the present situation**

3. Representatives of national minorities in Germany consider that the overall level of protection of their rights is relatively high. The institutional framework of protection of minority rights has moreover been strengthened in recent years through adoption of new constitutional provisions with respect to Danes, Frisians, Sinti and Roma in Schleswig-Holstein and Sorbs in Brandenburg, as well as the revision of the Sorbs/Wends Act of this *Land*. However, efforts to advance the realisation of minority rights are at times complicated by the division of responsibilities for minority issues within Germany. There are still problems regarding access to media in minority languages and difficulties in realising the right of persons belonging to national minorities to use their language in contacts with local authorities. Further efforts are also needed to ensure that the offer of teaching in and of minority languages, especially Sorbian and Frisian, is adequate and sustainable. There have been some welcome steps forward in recent years to strengthen the participation of Sinti and Roma in decision-making on issues of concern to them, notably through the establishment of consultative mechanisms at federal and *Land* level, and the conclusion of some agreements placing support provided to this minority on a more secure footing.

4. There have been worrying developments as regards public manifestations of racism and xenophobia. While there have been strong counter-demonstrations as well as statements by the authorities in support of diversity and mutual respect, sustained efforts are still needed to foster a climate of tolerance and intercultural dialogue. Further efforts are also needed to build the confidence of persons belonging to minorities in the police, which has been shaken by continuing practices of ethnic profiling as well as revelations of serious lacunae in the investigation of a series of cases involving extreme right-wing and racist elements.

### **Assessment of measures taken to implement the third-cycle recommendations for immediate action**

5. The Federal Anti-Discrimination Agency has made considerable efforts to raise awareness of the anti-discrimination legislation in place in Germany and of the legal remedies available, and to increase the accessibility of the latter to the public, including through supporting the establishment of a network of anti-discrimination offices outside the capital. The authorities have however not addressed weaknesses in the anti-discrimination legislation itself, and the provisions in place remain insufficiently known and underused.

6. Continued efforts have been made to promote tolerance, combat racism and prevent right-wing extremism in German society, notably through school programmes. Manifestations of antisemitism and anti-Muslim and anti-immigrant sentiments are however reported to be rising, as well as attacks against asylum-seekers. Debates on so-called “poverty migration” have also had a damaging effect, and racist slogans targeting Sinti and Roma have also been used in election campaigns without being found to breach the prohibition on incitement to hatred. Welcome proposals to amend the Criminal Code in order expressly to make racist or xenophobic motivations an aggravating circumstance are currently being examined by the federal parliament.

7. The creation of new consultative mechanisms for Sinti and Roma at federal level and in some *Länder* is a welcome step towards improving the participation of Sinti and Roma in public life, as is the conclusion of agreements between certain *Länder* and the corresponding regional associations of Sinti and Roma that place support to this minority on a more secure footing. The adoption of an integrated package of measures to promote the integration and participation of Sinti and Roma in Germany is welcome, although more emphasis on achieving full and effective equality in practice is needed, and the package lacks tools to enable its evaluation. Although the situation appears to be gradually improving, Sinti and Roma children are reportedly still overrepresented in special schools and experience lower education outcomes.

### **Assessment of measures taken to implement the further recommendations from the third cycle**

8. There is still an overall lack of qualitative and quantitative equality data, due to reluctance on the part of both the authorities and minorities to gather sensitive ethnic data. Existing research and studies could assist the authorities in responding more effectively to the needs expressed by national minorities. Ways of gathering data on the access to rights of persons belonging to national minorities, while fully respecting international standards on the protection of personal data, should be explored and are important as part of a process of raising awareness about minority rights.

9. The authorities at various levels have continued to provide substantial support to the preservation and development of national minority languages and cultures, basing the support provided on the needs expressed by the latter in their requests for institutional or project-based funding. Particular attention should be paid in this context to ensuring transparency as to the way in which such needs are assessed, and to ensuring that the long-term needs of national minorities are adequately taken into account. Although legal guarantees are in place, possible relocations of villages within the traditional settlement area of Sorbs in order to accommodate lignite mining operations also continue to give rise to concerns regarding the preservation of Sorbian language, culture and history.

10. Outside the traditional settlement areas of national minorities, the general public’s awareness of minority culture and languages remains low. There has been progress as regards

access to broadcasting in Danish and Frisian in Schleswig-Holstein, but more locally produced television programmes in Danish are needed, and there remains a need to increase public radio broadcasting in Frisian. Better representation of minorities on media regulatory boards may allow for such concerns to be taken into account more effectively. The legal frameworks in place in the relevant *Länder* provide for the use of Sorbian and Frisian in contacts with local authorities, but implementation of this possibility in practice is hindered by the low number of speakers of these minority languages employed by the administrative authorities. Some welcome steps are however now being taken to address these issues. Additional possibilities for promoting the use of minority languages in contacts with local and regional administrative authorities through e-administration and e-governance could also be explored. There are still difficulties as regards the use of Sorbian names, and the authorities are encouraged to build further on the steps already taken to promote the use of bilingual topographical signs.

11. There have been some encouraging steps taken to strengthen the public support provided to Danish minority schools as well as to teaching in and of Sorbian and Frisian in the traditional settlement areas of persons belonging to these minorities. However, it is important to consolidate the teaching of Sorbian and Frisian and ensure that it is implemented on a sustainable basis. Efforts to promote the availability of qualified teachers for teaching in and of Sorbian and Frisian need to be pursued and strengthened.

12. The institutional arrangements at federal level to promote the participation of minorities in public life have been strengthened through the establishment of a Consultative Committee on Issues concerning German Sinti and Roma, similar to those already in place for the three other national minorities recognised in Germany and involving both of the national umbrella organisations of Sinti and Roma in Germany. Several *Länder* have also strengthened the legal frameworks and mechanisms in place to promote the participation of Sinti and Roma in decision-making on issues of concern to them. Welcome steps have been taken in Brandenburg to strengthen the participation of Sorbs in decision-making processes in this *Land*.

## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 3 of the Framework Convention

#### Scope of application of the Framework Convention

##### *Present situation*

13. The Advisory Committee notes that there have been no developments since the previous monitoring cycle in the position of the German authorities concerning the scope of application of the Framework Convention<sup>1</sup> or the issue of data collection (see below, Article 4, on the latter point).

14. As noted in the Advisory Committee's previous opinion, persons with links to Polish culture or language now live in Germany as a result of various waves of migration during the last two centuries, especially the 19th century.<sup>2</sup> The Advisory Committee also observes that persons of Polish origin used to have national minority status in the past.

15. The Advisory Committee notes that in the view of the federal authorities, the wording of the 1991 Treaty on Good Neighbourly Relations and Friendly Co-operation between Poland and Germany demonstrates that both states consider that while a German national minority is recognised in Poland, no such status has been accorded to Poles in Germany.<sup>3</sup> The federal authorities moreover deem that citizens of Polish origin in Germany do not fulfil the criteria for recognition as a national minority in Germany, as they are not traditionally resident in Germany and do not live in traditional settlement areas. The authorities point out that persons of Polish descent with German nationality living in Germany have the same rights as persons belonging to the German minority in Poland as regards freely expressing, preserving and developing their ethnic, cultural, linguistic and religious identities. However, they cannot invoke the additional rights pertaining to national minorities.<sup>4</sup> The authorities nonetheless set aside some €300 000 every year to support the Polish language and culture.

16. The Advisory Committee also takes note that some representatives of the Polish community contest the authorities' interpretation of the above Treaty and consider that there are no legal obstacles to recognising, as was the case in the past, the existence of a Polish minority in Germany. It further notes that the situation of persons of Polish descent in Germany has been the subject of several discussions in the federal parliament in recent years<sup>5</sup> and understands that the

<sup>1</sup> According to the declaration made by Germany in the instrument of ratification, deposited on 10 September 1997: "The Framework Convention contains no definition of the notion of national minorities. It is therefore up to the individual Contracting Parties to determine the groups to which it shall apply after ratification. National Minorities in the Federal Republic of Germany are the Danes of German citizenship and the members of the Sorbian people with German citizenship. The Framework Convention will also be applied to members of the ethnic groups traditionally resident in Germany, the Frisians of German citizenship and the Sinti and Roma of German citizenship."

<sup>2</sup> Some Poles also emigrated to the Ruhr area early in the 20th century to look for work. Sizeable Polish communities sprang up in the larger cities such as Hamburg and Berlin. Many population groups were also displaced in the wake of border changes after World War II or migrated following the end of the Cold War. Representatives met by the Advisory Committee estimated the number of persons of Polish origin living in Germany and holding German nationality at around 1.5-2 million. In the 2011 census, 2 006 410 persons declared themselves as having a migration background from present-day Poland, of whom 382 391 held Polish citizenship.

<sup>3</sup> The Treaty refers, on the one hand, to "members of the German minority living in the Republic of Poland", and, on the other, to "persons of Polish descent with German nationality living in the Federal Republic of Germany".

<sup>4</sup> See State Report, item D.I.

<sup>5</sup> See inter alia Drucksachen 17/6145 of 9 June 2011, 17/10189 of 27 June 2012 and 17/14665 of 30 August 2013 of the German Parliament.

question of recognition as a national minority may, amongst other issues, be examined at a future Round Table on the implementation of the above-mentioned Treaty.<sup>6</sup> In the meantime, one Polish association has brought legal proceedings for the recognition of Poles as a national minority, which are now pending before the German courts.<sup>7</sup>

17. As regards East Frisians, the Advisory Committee notes that the situation has not changed since its previous opinion. East Frisians are not in principle excluded from the scope of application of the Framework Convention, which applies to the Frisian ethnic group without further specification. However, they are not considered as having a language of their own<sup>8</sup> and receive no particular support for the preservation of their culture and history.<sup>9</sup> The Advisory Committee again draws attention to the shared perception expressed by East Frisians of belonging to a group that is different from the majority population by virtue of its culture and history, with a need to preserve that culture and history by specific provisions (see also below, Article 5).

18. The Advisory Committee further notes that large numbers of persons living in Germany have different ethnic origins, a fact that Germany has recognised and sought to take on board through initiatives such as integration programmes<sup>10</sup> as well as the publication of an annual migration report.<sup>11</sup> In the light of the growing cultural diversity of German society, the Advisory Committee observes that protection under the Framework Convention might in the future usefully be extended to certain groups, including Roma without German citizenship, that do not currently enjoy such protection. In particular, the established criteria, such as the citizenship criterion, should not have the effect of arbitrarily excluding certain groups or persons from the benefits of the provisions of the Framework Convention. In this context, the Advisory Committee is of the view that the German authorities should consider extending the protection of specific articles of the Framework Convention to groups that express an interest in such protection, in order to facilitate access to the rights that this instrument enshrines. The Advisory Committee underlines in this respect that the Framework Convention was conceived as a flexible instrument to be applicable in highly diverse social, cultural and economic contexts, and in evolving situations. The application of certain of its provisions to specific groups does not therefore require the latter's formal recognition as a "national minority", nor imply a specific legal status for such groups of persons.

#### *Recommendation*

19. The Advisory Committee encourages the authorities to pursue an active, open and dialogue-based approach in their relations with persons and groups having expressed an interest in benefiting from the protection of the Framework Convention, such as persons of Polish origin, language or culture and persons identifying with the East Frisian group. In addition, it invites the

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<sup>6</sup> The next such Round Table is planned for early 2015; however, the Advisory Committee understands that the question of recognition of the Poles as a national minority in Germany is unlikely to be discussed until a subsequent Round Table meeting.

<sup>7</sup> Case no. VG 33 K 409.14, lodged in 2014.

<sup>8</sup> East Frisians are mostly speakers of Low German, a language spoken across large areas of northern Germany and covered by the European Charter on Regional or Minority Languages in Germany.

<sup>9</sup> There are no specific provisions in the Constitution of Lower Saxony recognising the presence of any national minorities on its territory. However, Sater Frisians, present in the Saterland area of Lower Saxony, benefit from specific support to the preservation of their language and culture (see Articles 5 and 14 below).

<sup>10</sup> See inter alia ECRI, Report on Germany (fourth monitoring cycle), CRI(2009)19 and Report on Germany (fifth monitoring cycle), CRI(2014)2.

<sup>11</sup> Published annually by the Federal Office for Migration and Refugees; see e.g. *Migrationsbericht* 2013, published 21 January 2015; Migration Report 2013 Central Conclusions also available in English.



authorities to review the impact in practice of the application of the citizenship criterion as regards access to minority rights.

### **Self-identification of Sinti and Roma**

#### *Present situation*

20. Differing views exist amongst Sinti and Roma as to whether the recognition by Germany, when ratifying the Framework Convention, of a single minority of German Sinti and Roma adequately corresponds to the manner in which persons belonging to this minority identify themselves. The Advisory Committee regrets that as a result of these fundamental and unresolved questions about self-identification, progress on realising the minority rights of the persons concerned has been slowed down. It hopes that the establishment in 2015 of a federal Consultative Committee on Issues concerning German Sinti and Roma, involving both of the national umbrella organisations of Sinti and Roma, will provide an opportunity for constructive dialogue on the implementation in Germany of the rights of Sinti and Roma under the Framework Convention (see further below, Article 15).

#### *Recommendation*

21. The Advisory Committee encourages the authorities to pursue constructive dialogue with Sinti and Roma on the protection of their rights under the Framework Convention, while fully respecting the right to free self-identification.

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

#### **Legislative and institutional framework against discrimination**

#### *Present situation*

22. The General Equal Treatment Act, enacted in 2006, has now been in force for more than eight years. The Advisory Committee remains concerned that the Act includes many exceptions, weakening its impact in practice. Moreover, it applies only to private law relationships; accordingly, acts of public bodies, including for example the police and education authorities, are not covered by its provisions (see further below, Articles 6 and 12). In cases where discriminatory acts have been committed by public bodies, the only option for complainants is to bring proceedings in the administrative courts, invoking the constitutional principle of equality before the law enshrined in Article 3(3) of the Constitution. However, in contrast with the remedies available under the General Equal Treatment Act, there is no possibility of obtaining the award of damages in such proceedings. Persons belonging to national minorities continue to express concern at this state of affairs. Civil society actors more generally have also repeatedly pointed to the need to strengthen the General Equal Treatment Act itself, as well as the institutional position, independence and resources of the Federal Anti-Discrimination Agency.<sup>12</sup>

23. The Advisory Committee welcomes the considerable efforts made in recent years, notably by this Agency, to make anti-discrimination legislation and the relevant remedies more accessible to the public. A network of ten anti-discrimination offices has been established in cities outside Berlin, with support from the Agency, as part of a pilot project. Ten of the *Länder* have also joined

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<sup>12</sup> See for example Doris Liebscher and Alexander Klose, *Vorschläge zur Novellierung des Allgemeinen Gleichbehandlungsgesetzes (AGG)*, Büro zur Umsetzung von Gleichbehandlung (BUG) e.V., Berlin, March 2014; on the low level of resources attributed to the Agency, see ECRI Report on Germany (fifth monitoring cycle), CRI(2014)2, §§90-91.

the Coalition against Discrimination launched by the Agency in 2011, with the aim of engaging *Land* and local authorities more directly in the fight against discrimination.<sup>13</sup> The Agency has also pursued its research work, inter alia conducting a large-scale study on attitudes to Sinti and Roma as part of its thematic year on ethnic discrimination in 2014 (see further below, Article 6).

24. The Advisory Committee notes with regret that the General Equal Treatment Act remains as yet insufficiently known by the general public, despite the welcome awareness-raising efforts referred to above.<sup>14</sup> It is also reported that few lawyers are familiar with the Act, although training for lawyers organised by the German Institute for Human Rights in recent years may be changing that. The weak role attributed to the Agency and to non-governmental organisations in individual cases also creates obstacles to using the Act in practice.<sup>15</sup> The Advisory Committee underlines that victims of discrimination are frequently vulnerable and lacking financial resources. While legal aid may be available to them, legal aid cases are not generally attractive to lawyers, in particular in fields of law with which they are unfamiliar. The Advisory Committee shares the concerns repeatedly voiced by civil society that this overall situation hinders the use of the General Equal Treatment Act, including by persons belonging to national minorities. It emphasises that the very nature of discrimination, which strikes at the heart of persons' essential and inalienable characteristics, makes it particularly important that access to justice for victims of discriminatory acts be as simple as possible.

25. The Federal Anti-Discrimination Agency has indicated that out of 19 700 inquiries referred to it since 2006, only six concerned discrimination against persons belonging to national minorities (all of them concerning Sinti and Roma). There are no overall figures regarding the number of cases in which a victim belonging to a national minority chose to seek advice from other structures. However, the Advisory Committee notes that the Rhineland-Palatinate section of the Association of German Sinti and Roma reports receiving an average of 50 complaints of discrimination per year. The Advisory Committee has also received reports of discrimination against Sinti and Roma in access to education, employment and housing (see further below, comments with respect to Articles 12 and 15). As noted in the previous monitoring cycle, the Advisory Committee regrets that the lack of any overall statistics on cases brought under the General Equal Treatment Act makes it difficult to assess the impact of this law on the fight against discrimination based on ethnic origin or affiliation with a national minority.

#### *Recommendations*

26. The Advisory Committee calls on the German authorities to review the impact in practice of the General Equal Treatment Act with a view to strengthening it in order to ensure that it provides effective protection against discrimination. Such a review should encompass inter alia the fields of law covered by the Act, the actors subject to its provisions, the impact of exceptions on its effectiveness in practice, and the representation of victims in court, including the possibility of bringing representative or collective actions.

27. The Advisory Committee strongly encourages the authorities to continue supporting efforts to raise the awareness both of the general public and of legal professionals to the contents

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<sup>13</sup> Baden-Württemberg, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Rhineland-Palatinate, Schleswig-Holstein and Thuringia.

<sup>14</sup> According to information provided by the Federal Anti-Discrimination Agency, approximately 20% of people surveyed state that they are already aware of its existence.

<sup>15</sup> The Agency and NGOs can provide legal advice and counselling to victims of discrimination, but they are precluded from acting as victims' legal representative in court, where their role is essentially limited to providing moral support. The General Equal Treatment Act also does not provide for the possibility of bringing representative or collective actions in the absence of an individual victim.

of the General Equal Treatment Act and the avenues of redress available to victims of discrimination, including when such discrimination was committed by public actors.

28. The Advisory Committee reiterates its call on the authorities to consider broadening the powers of the Federal Anti-Discrimination Agency so that it can act more effectively against discrimination. It also calls on them to ensure that the Agency has sufficient resources to allow it to carry out its duties effectively.

### **Equality data**

#### *Present situation*

29. The Advisory Committee is aware that the authorities are reluctant to gather or disclose sensitive personal data, especially as regards ethnic origin, given the past abuse made of such data by the National Socialist regime. It also acknowledges that many persons belonging to national minorities share these reservations. Accordingly, there are no official statistics regarding the number of persons belonging to national minorities in Germany.<sup>16</sup> Nor are there reliable data regarding the equality of access to rights of persons belonging to national minorities.

30. The Advisory Committee observes that, while the historical reasons for the lack of such data are well known, the absence of the latter makes it difficult to analyse the situation of persons belonging to national minorities as regards equal access to rights and to design targeted policies to promote their full and effective equality. It again cautions against assuming, in the absence of equality data broken down by ethnic affiliation or minority status, that membership of a national minority has no impact on a person's economic, social or cultural status. This concern is reflected in fields such as equal access to education, employment and housing (see comments with respect to Articles 12 and 15 below). It moreover notes that there exist means of obtaining reliable statistical data related to the minority population while fully respecting international standards on the protection of personal data – in particular the principles of voluntariness, anonymity and free self-identification – and allowing for multiple and situational identification. The Advisory Committee considers that these possibilities should be explored, in full consultation with the representatives of national minorities.<sup>17</sup>

31. The Advisory Committee also notes that some qualitative data on the situation of persons belonging to national minorities do exist, thanks inter alia to research and studies conducted by non-governmental organisations and to the regular publication in some *Länder* of reports on the situation of persons belonging to national minorities in their jurisdiction. These sources may provide information regarding the extent to which persons belonging to national minorities are able to exercise their rights, which may assist the authorities to respond better to the needs expressed by national minorities.

#### *Recommendation*

32. The Advisory Committee encourages the authorities to make appropriate use of existing data to assist them in designing measures to promote the full and effective equality of persons belonging to national minorities. It further invites them to seek additional means of gathering

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<sup>16</sup> During the 2011 census, data was gathered on individuals' migration background, through questions regarding citizenship and country of origin. However, national minorities remained invisible in this context, since, in line with the citizenship criterion applied in Germany, only persons holding German citizenship may be considered as belonging to a national minority.

<sup>17</sup> For a detailed examination of these issues and existing practices in Europe, see e.g. Patrick Simon, "Ethnic" statistics and data protection in the Council of Europe countries: Study Report, Strasbourg, 2007. See also Report of the Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing, [http://unstats.un.org/unsd/censuskb/attachments/CES\\_2010\\_Census\\_Recommendations](http://unstats.un.org/unsd/censuskb/attachments/CES_2010_Census_Recommendations).

reliable quantitative and qualitative equality data with respect to the access to rights of persons belonging to national minorities, while fully respecting international standards on the protection of personal data.

### **Institutional and legal framework for the protection and promotion of minority rights**

#### *Present situation*

33. The Advisory Committee welcomes the recent strengthening of important parts of the legal framework in place to guarantee the protection of minority rights in Germany. Following amendments introduced in the Constitution of Schleswig-Holstein in December 2014, constitutional recognition is now granted in Schleswig-Holstein not only to the Danish minority and Frisian ethnic group but also to the German Sinti and Roma minority.<sup>18</sup> The Advisory Committee regrets, however, that when amending the Constitution of Brandenburg to strengthen its anti-racism and anti-discrimination content,<sup>19</sup> similar constitutional recognition of Sinti and Roma was not introduced in this *Land*, which continues to expressly recognise only the rights of the Sorbian minority.<sup>20</sup> While the primary concern of the Advisory Committee is access to rights in practice (see also above, Article 3), it emphasises that where constitutional recognition of minorities is granted, this should be done without arbitrary distinctions.

34. In Brandenburg, the Sorbs/Wends Act was strengthened in some important regards through amendments that came into force in June 2014. These have inter alia led to the appointment of a Commissioner for Sorbian/Wendish Affairs with the rank of State Secretary, assisted by a full-time staff member (see further below, Article 15); created a clear legal basis for using bilingual signs on public buildings and buildings of public interest in the traditional settlement area of Sorbs; introduced the possibility for bringing collective claims; and broadened the definition of the traditional settlement area of Sorbs, which no longer requires both the language and culture of Sorbs/Wends to have been kept alive in the locality in question but only one or the other.<sup>21</sup> The Advisory Committee notes however that municipalities that may fall within the new, expanded definition are not automatically included in the traditional settlement area of Sorbs; interested towns or villages, or the Council for Sorbian Affairs of the *Land* Parliament, must apply to the competent Ministry within two years of the entry into force of the amendments (i.e. by May 2016) for the relevant localities to be included in the traditional settlement area of Sorbs.<sup>22</sup>

35. The Advisory Committee welcomes recent efforts made by certain *Länder* to provide a clearer and more secure legal framework for their work on issues of concern to Sinti and Roma. It notes with interest in this regard the Treaty signed in November 2013 between the authorities of the *Land* of Baden-Württemberg and the Baden-Württemberg Association of German Sinti and Roma, which came into effect in January 2014 (see further below, Articles 5 and 15).<sup>23</sup> It also

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<sup>18</sup> See Article 6(2) of the amended Constitution of Schleswig-Holstein. For a history of the lengthy process leading to this amendment, see Tove H. Malloy, “Achieving Equality for the Sinti and Roma of Schleswig-Holstein”, *European Yearbook of Minority Issues*, Vol 11, 2012, pp. 329-344.

<sup>19</sup> See the new Article 7a and amended Article 12(2) of the Constitution of Brandenburg.

<sup>20</sup> See Article 25 of the Constitution of Brandenburg. The Advisory Committee understands that a proposal to insert such a provision was defeated in parliament.

<sup>21</sup> See Article 3(2) of the Sorbs/Wends Act as amended on 11 February 2014, with effect from 1 June 2014.

<sup>22</sup> See Article 13c of the Sorbs/Wends Act as amended on 11 February 2014, with effect from 1 June 2014.

<sup>23</sup> *Vertrag des Landes Baden-Württemberg mit dem Verband Deutscher Sinti und Roma, Landesverband Baden-Württemberg e. V.*, 28 November 2013, approved by the Parliament of Baden-Württemberg on 18 December 2013.

notes with interest the signing in March 2014 of a framework agreement between the government of Hesse and the Hesse Association of German Sinti and Roma (see further below, Article 5).<sup>24</sup>

36. The Advisory Committee welcomes the fact that a number of structures are in place at federal and *Land* level to guarantee the effective protection of minority rights (see further below, Article 15). However, it notes with regret that efforts to advance the realisation of minority rights are at times complicated by the division of responsibilities for minority issues within Germany (see for example below, Article 13, Danish minority schools). It is pleased to note efforts made at the federal level to engage all the *Länder* authorities in the implementation of the rights set out in the Framework Convention, and notes with interest in this context the annual implementation conference, held at the invitation of the Federal Ministry of the Interior and including representatives of the federal government, governments of the *Länder* and national minorities. It also welcomes the organisation in Berlin in November 2014, under the patronage of the Speaker of the Federal Parliament, of a high-level conference on the languages covered by the European Charter for Regional or Minority Languages in Germany. It regrets, however, that no *Länder* signed up to the policy document jointly presented on this occasion by the Council for National Minorities and the Federal Commissioner for National Minorities.<sup>25</sup> It understands that the Federal Commissioner for National Minorities is supporting the efforts of representatives of national minorities to have this document examined by the Federal Parliament, and emphasises that while the authorities of the *Länder* may be responsible for enacting legislation and implementing the necessary measures in practice, the federal authorities have a crucial role to play in ensuring that the standards for which they are responsible under international law are translated into reality throughout the territory of Germany.

#### *Recommendations*

37. The Advisory Committee encourages the authorities to ensure that where minorities are granted constitutional recognition, this is done without arbitrary distinctions. German Sinti and Roma should in particular be recognised on an equal footing with other national minorities.

38. It invites the authorities of Brandenburg to take a flexible and inclusive approach with respect to applications for inclusion of additional localities in the traditional settlement area of Sorbs.

39. It encourages the federal authorities to use to the full their right to exercise oversight over the actions of the *Länder* and issue instructions<sup>26</sup> in order to ensure that the rights of persons belonging to national minorities are properly implemented throughout Germany.

### **Promotion of full and effective equality of Sinti and Roma**

#### *Present situation*

40. The Advisory Committee takes note of the Integrated Packages of Measures to Promote the Integration and Participation of Sinti and Roma in Germany submitted by Germany to the European Commission in 2011 in the context of the EU Framework for National Roma Integration

<sup>24</sup> *Rahmenvereinbarung zwischen der Hessischen Landesregierung und dem Verband Deutscher Sinti und Roma, Landesverband Hessen*, 12 March 2014.

<sup>25</sup> Charter Languages in Germany: Shared Responsibility (*Charta-Sprachen in Deutschland: Gemeinsame Verantwortung*), available in German only.

<sup>26</sup> See Article 84 of the Federal Constitution.

Strategies up to 2020.<sup>27</sup> This essentially contains an overview of the various measures and strategies already in place in 2011 at the level of Germany and the *Länder* to promote the access of Sinti and Roma to education, employment, healthcare and housing. The Advisory Committee takes note of the logic underlying the distinctions made by the authorities in this document between German Sinti and Roma and various categories of “foreign Roma”, who may have access to different levels of protection depending notably on whether they are citizens of EU member states or are so-called “third-country” nationals. However, it regrets that this logic tends to focus on drawing distinctions between the measures to which different groups may have access, rather than on finding ways to achieve, as far as possible, full and effective equality. It cautions against concluding, for example, that because German Sinti and Roma are subject to the same rules and have access to the same measures as other German citizens, it is necessarily the case that enough has been done to ensure that they are fully integrated in both theory and practice.<sup>28</sup>

41. While positive measures to promote the effective equality of Sinti and Roma such as those described in the appendices to the Integrated Packages of Measures are welcome, the Advisory Committee regrets that this document – which should have provided an opportunity to take an in-depth look at barriers to effective equality of Sinti and Roma and means to overcome such barriers – lacks both evidence-based analyses of the issues at stake and benchmarks for evaluating the extent to which the measures taken have improved the situation.<sup>29</sup> It recalls in this context its earlier examination of the issues surrounding the lack of equality data (see above).

#### *Recommendation*

42. The Advisory Committee urges the authorities to ensure that efforts to promote the effective equality of Sinti and Roma take an evidence-based approach focusing on targeted measures to overcome barriers to equality. Benchmarks enabling the impact of measures taken to be evaluated should be set and the measures to be adjusted as necessary on the basis of such evaluations, in full consultation with representatives of Sinti and Roma.

### **Article 5 of the Framework Convention**

#### **Preservation and promotion of the culture of persons belonging to national minorities**

##### *Present situation*

43. The Advisory Committee notes with satisfaction that the authorities at various levels have continued to support the preservation and development of national minority languages and cultures.<sup>30</sup> It notes with interest the information provided by the federal authorities that, in the absence of reliable figures on the number of persons belonging to any given national minority (see above, Article 3), funding provided to support national minorities is based on the needs expressed

<sup>27</sup> Bundesministerium des Innern [Federal Ministry of the Interior], Report from the Federal Republic of Germany to the European Commission: An EU Framework for National Roma Integration Strategies up to 2020 – Integrated Packages of Measures to Promote the Integration and Participation of Sinti and Roma in Germany, 2011.

<sup>28</sup> For example, analysis as regards access to healthcare is limited to the statement that German Roma and Sinti enjoy guaranteed healthcare in the same way as any other category of insured persons. Ibid, p44.

<sup>29</sup> See also the assessment made by the European Commission in Spring 2014 on the progress made by Germany in the implementation of the National Roma Integration Strategy.

<sup>30</sup> In addition to the arrangements with respect to Sorbs, Frisians and Sinti and Roma discussed below, the Danish minority currently receives approximately €37M annually from the *Land* of Schleswig-Holstein to run Danish minority schools (see further below, Article 13). Several hundred thousand euros are provided annually by both the *Land* and the federal government to support Danish cultural activities, with €491 000 being budgeted by the *Land* of Schleswig-Holstein for Danish cultural activities in both 2014 and 2015 (*Landeshaushaltsplan Schleswig-Holstein, Haushaltsjahr 2015, Einzelplan 03: Ministerpräsident, Staatskanzlei*).

by the latter in their requests for institutional or project-based support. The authorities consider that this method of working has proved satisfactory to date. However, it notes that there are wide disparities in the funding arrangements applied and in the amounts of funding provided to each minority, meaning that the system of support overall lacks transparency.

44. Until 2013, support to the Sorbian minority was provided through grants made to the Foundation for the Sorbian People and redistributed by this Foundation to various Sorbian associations, on the basis of the agreement reached in 2009 between the federal authorities and the *Länder* of Saxony and Brandenburg.<sup>31</sup> The Advisory Committee understands that since 2013, the mechanism and guaranteed funding have been tacitly renewed on a year-to-year basis, with additional funding being awarded in the course of the year to take account notably of inflation.<sup>32</sup> This has created certain management difficulties, due to the short-term nature of the funding and uncertainty as to the final amount concerned. The Advisory Committee notes with interest that a new agreement is to be negotiated for the 2016-2020 period.

45. As regards Frisians, the Advisory Committee notes that North Frisians receive support for the preservation and promotion of their culture from the *Land* of Schleswig-Holstein<sup>33</sup>, and notes with interest the agreement reached with the authorities of Schleswig-Holstein for longer-term funding awarded to the North Frisian Institute from 2013, for several years. Sater Frisians receive support from the *Land* of Lower Saxony and local authorities.<sup>34</sup> The federal authorities also provide support for the preservation and promotion of the culture of North and Sater Frisians.<sup>35</sup> The Advisory Committee notes that much of the funding in support of Sater Frisian culture has been used towards creating a bilingual Sater Frisian-German dictionary, a project that is important for Sater Frisians but that they consider should not be conducted to the exclusion of other measures in support of their culture. Advisory Committee also notes that there have been longstanding differences of view between representatives of Frisians and the federal authorities regarding the overall amount of federal funding provided in support of the preservation and promotion of the various forms of Frisian culture present in Germany, in particular as regards possibilities for supporting East Frisian culture. It hopes that these issues can be rapidly addressed, and notes with interest in this context recent positive signs on the part of the federal authorities of openness to increased co-operation with Frisians.

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<sup>31</sup> This agreement was initially concluded for 2009-2013, with the possibility of an extension for one year. The federal authorities provided approximately half of the total funding, with Saxony and Brandenburg dividing the remaining half in a ratio of approximately 2:1.

<sup>32</sup> *Zweites Abkommen über die gemeinsame Finanzierung der „Stiftung für das sorbische Volk“*, Article 4. A total of approximately €17M was allocated to the Foundation in 2009-2013. In 2014 this amount was increased by approximately €1M, and a similar budget was prepared for 2015. This includes inter alia funding for property maintenance, language revitalisation and language centres, cultural associations, the Domowina publishing house, investments and projects.

<sup>33</sup> The budget of the *Land* of Schleswig-Holstein provides for institutional funding to the North Frisian Institute of €290 200 in 2014 and €360 200 in 2015 (up from €230 200 in 2013), additional funding of €53 400 in 2014 and €71 300 in 2015 allocated to cultural activities, on a project basis, and €15 000 in support to the Frisian Council. (*Landeshaushaltsplan Schleswig-Holstein, Haushaltsjahr 2015, Einzelplan 03: Ministerpräsident, Staatskanzlei*). The Advisory Committee understands that these amounts do not include funding for Frisian language teaching, as this is subsumed within the overall education budget of the *Land*.

<sup>34</sup> Approximately €25 000 annually from the *Land* of Lower Saxony, and €5 000 from the local authorities. Again, the Advisory Committee understands that these amounts do not include funding for Frisian language teaching, as this is subsumed within the overall education budget of the *Land*.

<sup>35</sup> In the form of project funding, amounting in 2014 to approximately €285 000 for North Frisians and €25 000 for Sater Frisians.

46. The Advisory Committee notes with interest that the agreements signed between the authorities of Baden-Württemberg (in 2013) and Hesse (in 2014) with regional associations of Sinti and Roma increased the funding available for their work and placed it on a more secure footing.<sup>36</sup> The Advisory Committee also welcomes the continued support given by the federal and some *Länder* authorities to certain Sinti and Roma organisations that play a significant role on behalf of these communities, and trusts that such support will continue. However, it emphasises once more the importance of recognising, including through arrangements for financial support to Sinti and Roma organisations, the diversity that exists within this minority, and ensuring that such diversity is not perceived as a barrier to the development of policies for the support of the minority as a whole. It also emphasises the important role played by local and regional Sinti and Roma organisations. In this context, the Advisory Committee notes with interest that in addition to the framework agreement signed by the Rhineland-Palatinate authorities with the relevant regional association of German Sinti and Roma in 2005, the government of this *Land* has since 2009 also been providing support to projects carried out by the regional branch of the Sinti Alliance. It also welcomes the long-awaited establishment in early 2015 of a federal Consultative Committee on Issues concerning German Sinti and Roma, involving both of the national umbrella organisations of Sinti and Roma (see further below, Article 15).

47. The Advisory Committee observes that the support provided to the preservation and promotion of the cultures of the four recognised national minorities in Germany covers widely varying structures, institutions and needs; is distributed via different mechanisms and comes from different federal ministries depending on the minority in question. The Advisory Committee welcomes the fact that the authorities take an essentially needs-based approach, responding to the needs expressed by the different minorities as regards the preservation and promotion of their cultures. However, it underlines the importance of ensuring transparency as regards the way in which such needs are assessed. Moreover, it observes that the capacity of minorities to express their needs depends to some extent on the structures and institutional links that they are able to maintain and the degree to which their resources are consumed by the obligation to apply regularly for project-based funding. In addition, it underlines that where project funding is delivered after a considerable delay, this hampers the implementation of the projects concerned, and considers that minority organisations should not be penalised for diminished outcomes that result from such delays. The Advisory Committee welcomes in this context the fact that institutional funding to some minority structures has increased in the past few years, and, bearing in mind that the preservation and promotion of minority cultures is necessarily a long-term affair, hopes that this trend may be further strengthened in future.

#### *Recommendations*

48. The Advisory Committee encourages the authorities to continue supporting the preservation and promotion of national minority cultures, in close co-operation with the representatives of these minorities. It calls on them to pay particular attention in this context to the long-term needs of persons belonging to national minorities and to ensure that funding arrangements, in particular in support of Sorbian and Frisian culture, allow for sustainable action to be taken. It further invites the authorities to seek means to make the funding process more transparent.

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<sup>36</sup> The 2013 Treaty between the authorities of Baden-Württemberg and Sinti and Roma provides for increased funding to be made available to the Sinti and Roma Association of this *Land*, with institutional funding to be increased to a total of €500 000 per year to support its work on anti-Gypsyism research, promotion of national minority culture and integration of non-German Roma. Under the March 2014 framework agreement between the government of Hesse and the Hesse Association of German Sinti and Roma, institutional support from the *Land* authorities has been increased to €200 000 per year, and project funding to the amount of €54 000 is also available.



49. The Advisory Committee strongly encourages the authorities at all levels to ensure that public funding arrangements for the preservation and promotion of the Sinti and Roma culture take due account of the diversity within this minority and of the importance of supporting organisations at local level.

### **Impact of lignite mining on the preservation of Sorbian language and culture**

#### *Present situation*

50. The Advisory Committee understands that it is planned to continue developing further open-cut lignite-mining operations in Germany in coming years, including in areas traditionally inhabited by Sorbs. It again notes the conflicts of interest that this prospect entails, as the need to ensure Germany's energy supply and economic interests are set against the risk of weakening or losing the linguistic, cultural and historical heritage of the Sorbian minority, in particular where relocations of entire villages in the heart of the traditional settlement area of the Sorbian minority are involved. The concerns of the Sorbian minority are moreover heightened at present by the announcement that the mining company currently operating the relevant mines is planning to sell these operations in the near future, generating additional uncertainty about the continued applicability of agreements reached with the current operator.

51. The Advisory Committee notes that the authorities consider that the legal framework in place is sufficient to mitigate effectively the impact on the preservation of Sorbian language and culture of new relocations of villages due to lignite mining, including if the mining operations are sold to a different company. It welcomes the information provided by the authorities that the same rules would apply to a new operator as the current one, and that a new operator would be bound to honour agreements signed by its predecessor. It shares nonetheless the concerns expressed by the Sorbian minority as regards the preservation of their language, culture and in particular history in a context where parts of their traditional settlement area are to be bulldozed in order to allow for the expansion of open-cut mining operations. It emphasises that Sorbs subject to relocation measures are confronted with particular difficulties due to the fact that their access to minority rights is contingent on their remaining within their traditional settlement area: this makes relocation an even more complex matter for persons belonging to the Sorbian minority than for the majority. It draws attention to the special duty of the authorities to play their role as guarantors of the rights of national minorities effectively in such a context, in particular in protecting them against assimilation. It also underlines the particular difficulties that may be faced by a minority seeking to preserve its collective history, language and culture in a context where households are required to negotiate individually and separately with a mining company and where the standard terms of agreements reached require them to refrain from disclosing to other parties engaged in similar negotiations the details of such agreements.

#### *Recommendation*

52. The Advisory Committee strongly urges the authorities to pay close attention to the interests of persons belonging to the Sorbian minority in all matters related to possible relocations of the population. Such relocations should be contemplated only where no other viable alternative exists and the individuals concerned must be closely involved from the earliest stage in preparing for such relocations and identifying effective solutions in order to safeguard the history, language and culture of the Sorbian minority in the affected areas.

## Article 6 of the Framework Convention

### Tolerance and intercultural dialogue

#### *Present situation*

53. The Advisory Committee welcomes the continued, wide-reaching efforts made by the authorities to promote tolerance in German society, notably through school programmes for tolerance as well as for the prevention of right-wing extremism.<sup>37</sup> It notes however that according to some of its interlocutors, while considerable attention is given in schools to studying past expressions of organised right-wing extremism during the National Socialist period, there is often insufficient attention paid to the ways in which racism, xenophobia, antisemitism and related forms of intolerance are expressed today, which may include hostile or discriminatory acts or statements made by individuals not clearly affiliated with any organised group.

54. The Advisory Committee notes with concern that worrying attitudes remain present in German society towards a variety of ethnic and religious groups. A recent, comprehensive study conducted by the Federal Anti-Discrimination Agency on the attitude of the general population towards Sinti and Roma found ignorance about these groups to be widespread and the prevailing attitudes towards them to range from indifference to rejection. Despite awareness, particularly among older age groups, of the Nazi crimes committed against Sinti and Roma, the study revealed that stereotypes of Sinti and Roma as foreigners, beggars and undesirable neighbours are strong, and social rejection of Sinti and Roma far higher than for any other group in German society.<sup>38</sup> The Advisory Committee notes with deep concern that certain political parties have instrumentalised such sentiments in election campaigns, with one non-parliamentary party in the 2013 federal elections directly scapegoating Sinti and Roma through the slogan “Money for Grandma, not for Sinti and Roma”, which moreover was found not to be in breach of the law.<sup>39</sup> This raises questions as to the adequacy of the law to protect against incitement to hatred. The Advisory Committee also notes with regret that the term “poverty migration” has been increasingly used to refer implicitly to the migration to Germany, perceived as undesirable by those using the expression, by Sinti and Roma from other countries in Europe.

55. The Advisory Committee notes that a decision of the Cologne regional court in June 2012 that a doctor who had circumcised a boy for religious reasons could be accused of committing bodily injury, as well as ensuing, highly charged public debates about the legality of circumcision, led many Muslims and Jews to question the extent to which it would remain possible to observe their religious practices in Germany, and more generally, the extent to which their faiths were accepted within German society. The Advisory Committee welcomes the authorities’ rapid moves to amend the Civil Code to ensure legal clarity in this field and that the circumcision of boys would remain possible in accordance with the law.<sup>40</sup> However, it notes with concern that there is a strong perception amongst the Jewish community that antisemitism has risen in recent years, with antisemitism on the internet, expressions of hostility towards Jews in the street or other public

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<sup>37</sup> See State Report, pp. 38-43.

<sup>38</sup> Federal Anti-Discrimination Agency, *Between indifference and rejection – Population’s attitudes towards Sinti and Roma (Zwischen Gleichgültigkeit und Ablehnung – Bevölkerungseinstellungen gegenüber Sinti und Roma)*, September 2014.

<sup>39</sup> Some mayors removed these posters, considering them to fall foul of the prohibition of incitement to hatred, but were later ordered by a court to replace them. The court found that although the slogans were tasteless, they did not amount to a criminal offence. VG Kassel, Beschl. v. 09.09.2013 – 4 L 1117/13.KS – „Der Wahlwerbeslogan ‚Geld für die Oma statt für Sinti und Roma‘ unterfällt der Meinungsfreiheit“.

<sup>40</sup> See § 1631d of the Civil Code (Bürgerliches Gesetzbuch), inserted on 20 December 2012.

places and desecration of Jewish cemeteries being considered the three biggest problems in Germany. Reporting of antisemitic harassment and discrimination however remain low.<sup>41</sup> The Advisory Committee also notes with concern a series of anti-Israel demonstrations held in various cities in Germany in mid-2014, at which overtly antisemitic slogans were displayed and chanted; in one case, protestors attempted to attack a synagogue.

56. The Advisory Committee is concerned that anti-Muslim sentiment has grown, as have negative attitudes towards immigrants and asylum-seekers.<sup>42</sup> It is alarmed at the holding in recent months of regular marches in Dresden, attended by thousands of persons, under the banner “Patriotic Europeans against the Islamisation of the West” (“Pegida”, in its German acronym). It moreover notes with concern that similarly xenophobic marches have been held in a number of other cities in Germany, with discourse revolving around the exclusion of those having a different religious or ethnic origin. These demonstrations stigmatise immigrants, asylum-seekers and Muslims, feeding on and further fuelling prejudices against these groups. The demonstrations also create a climate in which Muslims and persons with a migration or minority background feel unsafe. The heinous fatal stabbing of an Eritrean man in Dresden on the evening of one such demonstration, just three days after the door of his flat had had a swastika painted on it, is particularly disturbing in this context.

57. The Advisory Committee welcomes the fact that some leading politicians, including the Federal Chancellor, have condemned these demonstrations.<sup>43</sup> It is also pleased to note that counter-demonstrations in support of diversity and tolerance, organised in Dresden and other cities, have frequently brought together more people than those of the “Pegida” movement. Some important symbolic stances against them have also been taken: a number of Land, city and church administrations have switched off their lights, as well as the lighting of prominent landmarks, to signal their disagreement when such demonstrations were held in their cities.

58. The Advisory Committee notes that open support for far right-wing political parties appears to have declined to some extent in recent years, in so far as some far right parties have lost seats in recent elections. However, this does not mean that xenophobic ideas pose less of a risk than previously, as such ideas have in many cases simply been repackaged and resold by other parties under less obvious colours. Moreover, electoral results in some seats tend to show that the latter parties have at the same time gained support from voters who previously gave their support to mainstream parties.

59. The Advisory Committee observes that the above-mentioned demonstrations and counter-demonstrations have prompted debate in German society about what it means to promote and defend a tolerant and open society. It emphasises in this context that the necessary fight against right-wing extremism must not be allowed to overshadow the need also to combat everyday xenophobic attitudes and actions. It also stresses the importance of building a society that goes beyond mere tolerance and that is accepting of different ethnic, religious and cultural backgrounds.

### *Recommendations*

60. The Advisory Committee strongly recommends that the authorities continue their programmes both in schools and vis-à-vis the general public to combat racism and intolerance and

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<sup>41</sup> European Union Agency for Fundamental Rights (FRA), *Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism*, 2013.

<sup>42</sup> See for example Friedrich Ebert Stiftung, *Fragile Mitte – Feindselige Zustände*, November 2014.

<sup>43</sup> See notably the Federal Chancellor’s New Year’s Eve speech on 31 December 2014.

prevent right-wing extremism. It urges the authorities to ensure that such programmes do not focus exclusively on right-wing extremism but serve to equip their targets with the knowledge and understanding to identify and combat intolerance and prejudice, whatever the level at which they occur.

61. The Advisory Committee invites the authorities to review the adequacy of the legal provisions prohibiting incitement to hatred, in particular in the context of election campaigns.

62. It calls on political leaders to denounce racism and intolerance in all their forms and to take a proactive stance embracing the diversity of German society.

### **Media, Internet and social media networks**

#### *Present situation*

63. The Advisory Committee observes that media reporting on questions relating to Islam, asylum-seekers and so-called “poverty migration” has frequently amplified discriminatory discourse and reinforced prejudice. Muslims are often stereotyped in the media, portrayed as poorly integrated and associated with terrorism.<sup>44</sup> A detailed 2014 study on anti-Gypsyism in the media also found that the media’s portrayal of Sinti and Roma frequently served to perpetuate stereotypes, inter alia through the choice of images used to illustrate stories on Roma and frequent associations made between Roma and poverty and/or crime.<sup>45</sup> These trends are mirrored on internet and social media networks; moreover, as noted above, antisemitism on the internet is considered by Jews to be one of the main problems they currently face in Germany.<sup>46</sup>

64. The Advisory Committee notes that in a 2013 opinion in a case involving the publication by a cultural magazine of an interview with a politician, the United Nations Committee on the Elimination of Racial Discrimination found that Germany had failed to investigate effectively the dissemination of ideas based on racial superiority and recommended that it review its policy and procedures concerning the prosecution of such cases.<sup>47</sup> It regrets that, according to information provided to the Advisory Committee, no such review has been carried out.

#### *Recommendations*

65. The Advisory Committee calls on the authorities, whilst fully respecting the editorial independence of the media, to take initiatives to encourage both national and regional media outlets to promote more balanced and objective reporting on issues related to diversity within German society and to strengthen the training of journalists and other media professionals in this regard.

66. It calls on the authorities to review the policy and procedures in place concerning the investigation and prosecution of the dissemination of ideas based on racial superiority, with a view to increasing their effectiveness.

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<sup>44</sup> Zick and Heeren, *Muslims in the European Mediascape: German Report*, 2011.

<sup>45</sup> Markus End, *Antiziganismus in der Deutschen Öffentlichkeit: Strategien und Mechanismen medialer Kommunikation*, Dokumentations- und Kulturzentrum Deutscher Sinti und Roma, 2014.

<sup>46</sup> European Union Agency for Fundamental Rights (FRA), *Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism*, 2013.

<sup>47</sup> CERD/C/82/D/48/2010, Opinion of 26 February 2013 on the publication of an interview with a prominent politician entitled “Class instead of Mass: from the capital city of Social Services to the Metropolis of the Elite”.

## **Combating racism and hate crimes**

### *Present situation*

67. The Advisory Committee has received reports of hate crimes committed against Sinti and Roma, including the sending of threatening letters, attacks against the premises of Sinti and Roma associations and memorials, and physical attacks against persons. A series of threats and attempts at intimidation targeting Sorbs was also reported in Saxony in late 2014.<sup>48</sup>

68. The Advisory Committee notes that a total of 4 647 hate-motivated offences, including hate crimes, incitement to hatred and propaganda offences, were recorded by the police in 2013. 587 of these offences involved violence. In 2012, a comparable figure of 4 514 such crimes were recorded. The figures for these two years were however significantly higher than those for the preceding two years (4 040 offences recorded in 2011 and 3 770 in 2010).<sup>49</sup> It is not clear whether the recent rise in the number of hate-motivated offences recorded by the police is due to a higher number of incidents occurring, increased reporting of such incidents by victims (on this point, however, see further below as regards confidence in the police), improved recording of such offences by the police, or a combination of such factors. NGOs also reported numerous cases of physical assaults against individuals with racist, xenophobic or anti-Semitic motivations, including some cases involving serious injuries, as well as many cases of damage to property, notably religious property. Victims included Jews, Muslims, Chinese, persons of African descent and persons of Turkish background; there were several arson attacks against houses for asylum seekers, as well as incidents of desecration of memorial sites and plaques.<sup>50</sup>

69. The Advisory Committee notes with interest that amendments to § 46 of Germany's Criminal Code, expressly making racist or xenophobic motivations for an offence an aggravating circumstance to be taken into account in sentencing, are currently being examined by the federal parliament. The Advisory Committee emphasises the need also to ensure, in the light of the findings of the inquiry into the handling of the series of murders committed by an extreme right-wing German terrorist group (the so-called "National Socialist Underground" (NSU)), that adequate structural changes will be made within the criminal justice system to ensure that possible racist elements of offences are systematically taken into account.

### *Recommendation*

70. The Advisory Committee strongly encourages the authorities to bring to completion as soon as possible the process of amending § 46 of the Criminal Code in order to mention expressly that racist motivations of an offence are to be taken into account as an aggravating circumstance in sentencing.

## **Conduct of law-enforcement officials**

### *Present situation*

71. In November 2011 it was revealed that a series of murders against persons with a migration background<sup>51</sup> had been committed by the NSU (see also above) over several years without the possible racist motivations of the murderers ever having been investigated. These revelations

<sup>48</sup> <http://www.minderheitensekretariat.de/aktuelles/a/artikel/detail/rechtsextreme-uebergreifend-auf-sorbische-jugendliche/>

<sup>49</sup> OSCE-ODIHR Hate Crimes Reporting, <http://hatecrime.osce.org/germany>.

<sup>50</sup> OSCE-ODIHR Hate Crimes Reporting, <http://hatecrime.osce.org/germany>, for figures from 2013, and OSCE-ODIHR, Hate Crimes in the OSCE Region: Incidents and Responses: Annual Report for 2012, pp. 46-47.

<sup>51</sup> The victims were eight Turks, one Greek and one German policewoman.

exposed deep flaws in the handling of criminal cases in which the victims had a migration background: the police investigations in these cases, which were moreover for a long time widely referred to as the “kebab murders”, stigmatised and were biased against the Turkish victims, focusing on the hypothesis that they may have been engaged in Turkish mafia dealings. In the linked case of the murder of a German policewoman, the police also rapidly indicated to the media that evidence pointed to the so-called “Gypsy/Traveller milieu”, and failed to correct this information when it became clear that it was based on bungled DNA samples. The Advisory Committee notes with interest that a commission of inquiry was set up in the federal parliament in order to pinpoint the failings that had allowed this series of racist murders to remain unidentified for so long. It welcomes the fact that the recommendations made by this commission in its 2013 report on its inquiry addressed the wide-ranging changes needed to eliminate racism and discrimination within the criminal justice system, and were supported by all the parliamentary parties.<sup>52</sup> As regards the police, these recommendations emphasised, for example, the need for any elements that may point to racist or political motivations of an offence to be taken systematically into account; the need to review the application of the notion of “politically motivated criminality”, and the categories identified within that overall notion;<sup>53</sup> the need for better co-ordination and co-operation among police departments; and greater diversity within the police.

72. The Advisory Committee notes with regret that police powers to conduct identity checks for migration control purposes in airports, railway stations, trains and up to 30km inside the German border, even in the absence of any suspicion of wrongdoing,<sup>54</sup> and similar powers applicable in areas designated as high-crime areas, lead directly to ethnic profiling.<sup>55</sup> Individuals who consider themselves victims of such profiling cannot complain of discrimination under the General Equal Treatment Act, however, since the police are a public authority and excluded from the remit of the Act (see above, Article 4). Despite a successful administrative complaint lodged in one case, in which the appeal court found in 2012 that using the skin colour of a person as the decisive factor in proceeding to carry out an identity check was clearly in breach of the equality and non-discrimination provisions of Article 3(3) of the Constitution,<sup>56</sup> this practice reportedly continues unabated. A subsequent case in which the administrative court concerned again found against the federal police was moreover decided on other grounds, and the issue of ethnic profiling was not dealt with.<sup>57</sup>

73. Many of the Advisory Committee’s interlocutors during its visit emphasised that as long as it remains possible for the federal or Land police to carry out identity checks in the absence of any suspicion of wrongdoing, efforts to eradicate ethnic profiling will prove fruitless. The Advisory Committee moreover underlines that beyond the individual harm caused to persons subjected to this practice, it tends to stigmatise the groups of persons targeted in the eyes of the general public, generates feelings of humiliation, injustice and resentment amongst these groups, and leads to a direct loss of trust in the police on their part. Crucially, minorities who lack confidence in the police due to ethnic profiling practices will be particularly reluctant to turn to

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<sup>52</sup> German parliamentary records (*Plenarprotokoll* 18/17), 20 February 2014, 1237(D).

<sup>53</sup> For example, anti-Muslim and anti-Gypsy motivations are not specifically recognised on this list, but targeting someone on account of their veganism is. See document no. 17/14751 of the federal parliament.

<sup>54</sup> See notably §§22 and 23 of the Federal Police Act.

<sup>55</sup> See also on this issue ECRI’s General Policy Recommendation No. 11.

<sup>56</sup> Higher Administrative Court (OVG) Rhineland-Palatinate, 29.10.2012, 7 A 10532 / 12.OVG.

<sup>57</sup> Essentially, the federal police had acted *ultra vires* in carrying out an identity check under their migration control powers in a regional train that crossed no borders and stopped at no airports or ports. See Verwaltungsgerichts Koblenz, 23 October 2014, 1 K 294/14.KO.

the latter in cases where they have been victims of racist offences, meaning that such crimes may go unpunished. The Advisory Committee also observes that victims of police abuse generally lack confidence in internal police investigation mechanisms; it regrets in this context that there is no independent police complaints mechanism in Germany empowered to investigate allegations of misconduct by the police.

74. Awareness-raising measures have been implemented for police or trainee police officers in *Länder* such as Hamburg, Rhineland-Palatinate, Hesse and Schleswig-Holstein in order to help overcome institutional bias and strengthen police skills in handling diversity.<sup>58</sup> Such training has for example been compulsory in Berlin since 2007. The Advisory Committee welcomes these steps, although it is not in a position to assess their impact in practice. It also welcomes steps taken to increase the recruitment of persons belonging to ethnic minorities in some police forces, for example in Berlin.

#### *Recommendations*

75. The Advisory Committee urges the authorities to follow up rapidly on the findings of the 2013 parliamentary commission of inquiry into the NSU murders as regards the functioning of the criminal justice system. It emphasises in particular in this context the need to ensure that all possible racist elements of criminal offences are systematically taken into account, from the earliest stage of investigations, and that the procedures and structures in place encourage this.

76. The Advisory Committee calls on the authorities to take definitive steps to eradicate ethnic profiling. The possibility of carrying out identity checks for migration control purposes in the absence of any suspicion of wrongdoing should be eliminated and police trained to avoid the use of ethnic origin as a criterion in carrying out such checks.

77. It calls on the authorities to take active steps to build trust between persons belonging to minorities and the police. These could include pursuing efforts to increase diversity in the recruitment of police, intensifying the provision of training on cultural diversity and introducing an independent police complaints mechanism.

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

#### **Access of the Danish and Frisian minorities to the media**

##### *Present situation*

78. The Advisory Committee is pleased to note that difficulties experienced by persons belonging to the Danish minority in accessing Danish television channels following the switch to digital television appear largely to have been resolved, although some problems are still reported in areas without hybrid or cable television, and copyright issues hamper the broadcasting of a certain number of programmes made in Denmark. The Advisory Committee again underlines that there is still a need for locally produced television programming in Danish that would speak to the specific concerns of the Danish minority in Germany, allowing persons belonging to this minority to identify not only with the language but also with the contents of the programming. It regrets in this context the axing of a bilingual programme broadcast in recent years by NDR, with one German and one Danish presenter and subtitled both ways, although it understands that even this programme gave little space to matters of specific interest to minorities. It notes that in a

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<sup>58</sup> See State Report.

recent communication to the Schleswig-Holstein parliament,<sup>59</sup> the regional television broadcaster NDR stated that it considered it was fulfilling its obligations under the *Land* broadcasting agreement by which it is bound<sup>60</sup> and that creating additional programming in minority languages would require either additional funds or a cut in other programmes.

79. As regards radio programming in Danish, news is broadcast daily in Danish on the private radio station Radio Schleswig-Holstein, which is co-owned by the Danish-language daily newspaper *Flensborg Avis*. Representatives of the Danish minority have indicated that they hope that the planned establishment of five new local radio stations (two private, three public) in Schleswig-Holstein will provide an additional opportunity to offer programming in Danish as well as in Frisian and Low German.<sup>61</sup> The Advisory Committee notes in this context that the radio stations established in areas where regional or minority languages are spoken will be legally required merely to take these languages into account. It draws attention to the fact that the grant of a licence could legitimately be made conditional on the extent to which the relevant application accommodates the rights and needs of specific audiences, such as speakers of minority languages.<sup>62</sup>

80. As regards the Frisian minority, the Advisory Committee welcomes the availability of one hour of radio broadcasting in Frisian on weekday mornings, on the FriiskFunk radio station, launched on Föhr Island in September 2010. This is provided via the community radio station Offene Kanal Westküste, with support from federal funding and private contributions. It also welcomes in this context initiatives taken in schools where Frisian is taught to involve schoolchildren in radio broadcasting in Frisian. The Advisory Committee observes nonetheless that the audience reached via community radio is limited. It regrets, moreover, that on public radio, there are still only three minutes of broadcasting in Frisian per week.<sup>63</sup> There is no television programming in Frisian and on the rare occasions when a person speaking Frisian is filmed for television, the practice of dubbing into German means that the opportunity to hear spoken Frisian is lost.

81. The Advisory Committee underlines that in order for public service broadcasting to reflect the cultural and linguistic diversity existing within society, it must guarantee an adequate presence of persons belonging to national minorities and their languages. This is especially important for languages spoken only by a small number of speakers, where the media may play a central role in a long-term process of revitalisation. The Advisory Committee emphasises in this context that without support for public broadcasting in minority languages or in the form of incentives to private broadcasting companies to provide such programming, it may be particularly difficult for numerically smaller minorities to establish and maintain a presence in the media sector, which is resource-intensive and highly competitive. This is all the more the case for minorities that are reliant solely on locally produced programming. The Advisory Committee again underlines that it is aware of the need to respect the freedom of the media and of the fact that competences in the field of media lie essentially with the *Länder*. However, it observes that the question of the inclusion of national minorities in the media could be dealt with in the agreements between the *Länder* that regulate the organisation of the audiovisual media in Germany and are adopted by the

<sup>59</sup> *Schleswig-Holsteinischer Landtag Umdruck* 18/3918, dated 21 January 2015.

<sup>60</sup> *NDR Staatsvertrag*.

<sup>61</sup> See *Gesetz zum Fünften Medienänderungsstaatsvertrag HSH*, 2 December 2014, HmbGVBl. Nr. 60, p490-491.

<sup>62</sup> See ECtHR, *Informationsverein Lentia and Others v. Austria*, application nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90, judgment of 24 November 1993.

<sup>63</sup> Public radio station NDR1 Welle Nord includes three minutes of broadcasting in Frisian in its Wednesday evening programme *Von Binnenland und Waterkant*, from 8:05pm to 9pm.



*Land* parliaments, in line with Article 9 of the Framework Convention and without breaching the principle of editorial freedom in the media.

### *Recommendations*

82. The Advisory Committee recommends that the authorities support the development of Danish language radio and TV programmes produced in Germany, in order to meet more effectively the needs of persons belonging to this minority.

83. It recommends that the authorities increase public support to the development of Frisian-language programmes, in order to respond adequately to the needs expressed by persons belonging to this minority.

84. The Advisory Committee strongly encourages the authorities to use the opportunity created by the planned opening of new local radio stations in Schleswig-Holstein to provide an opportunity to offer programming in Danish as well as Frisian, for example by making the grant of a licence conditional on the extent to which the application for such a licence accommodates the rights and needs of speakers of minority languages in the relevant area.

### **Representation of minorities in media regulatory bodies**

#### *Present situation*

85. The Advisory Committee understands that although no seat is reserved for a representative of national minorities on the Broadcasting Council of the regional broadcaster NDR (which broadcasts *inter alia* in Schleswig-Holstein and Lower Saxony), representatives of the Danish minority consider that there is currently scope for this minority to be involved in the work of this Council. There is no Frisian member of this Council. Representatives of the Frisian minority consider the most urgent current issue in the field of media to be increasing the amount of broadcasting in Frisian. However, they have also pointed to the fact that the possibility of modifying the NDR broadcasting agreement in 2017, including as regards the composition of the Broadcasting Council, would provide a welcome opportunity to strengthen the participation of Frisians in this body and ensure that the concerns of minorities could be taken adequately into account.<sup>64</sup>

86. The Advisory Committee further notes that the Sorbian minority does not have a guaranteed seat on the Broadcasting Council of the regional broadcaster MDR, which broadcasts *inter alia* in Saxony. While a new application process is due to take place in 2015, it is not clear whether it will be possible for a Sorbian representative to be appointed in this process.<sup>65</sup>

87. The Advisory Committee welcomes the fact that in accordance with the 2013 broadcasting agreement of Baden-Württemberg and Rhineland-Palatinate, one seat is reserved for a representative of the Rhineland-Palatinate association of Sinti and Roma on the Broadcasting Council of the regional broadcaster SWR, as well as on the State Broadcasting Council of Rhineland-Palatinate.<sup>66</sup> A representative of the Rhineland-Palatinate association of Sinti and

<sup>64</sup> See *NDR Staatsvertrag*, §17, Composition of the Broadcasting Council. This body has 58 members. No provision is made in this agreement for any flexibility in the bodies that may be represented in this Council, which are exhaustively listed, with no mention made of associations of national minorities. The Advisory Committee understands that in order for a representative of a national minority to be appointed, they must therefore fall into one of the other categories of appointees: for example, as one of the elected members of a Land parliament.

<sup>65</sup> See *MDR Staatsvertrag*, §19, Composition of the Broadcasting Council. This body has 43 members. No seat is reserved under §19(1)-(15) for a Sorbian association. The requirements set out under §19(16) therefore apply. To be represented on this Council, a Sorbian association must apply to the Parliament of Saxony and be one of the four associations appointed based on proportional representation, using the d'Hondt highest average method.

<sup>66</sup> See, *SWR Staatsvertrag* of 3 July 2013, §14(3)(13). This agreement came into force on 1 January 2014. One seat is also reserved for a representative of the Muslim associations of Baden-Württemberg – see §14(2)(5).

Roma also sits on the private media board of this *Land*. The Advisory Committee welcomes these developments and notes that the opportunity for direct participation on such bodies, including through reserved seats, allows for the concerns of national minorities to be more effectively taken into account.

*Recommendation*

88. The Advisory Committee strongly encourages the authorities to support demands for better representation of persons belonging to national minorities in media regulatory bodies, with due regard for the independence and the cultural diversity of the bodies concerned.

**Article 10 of the Framework Convention**

**Use of minority languages in contacts with the authorities**

*Present situation*

89. As noted in the Advisory Committee's previous opinion, the legal framework allowing for the use of the Sorbian language in dealings with local administrative authorities and courts in the traditional settlement areas of Sorbs is in place;<sup>67</sup> however, this is not enough in itself to develop and support the use of this language. There are still too few public servants able to speak Sorbian, which means that in practice, the possibility of using this language in contacts with the authorities remains underused. The Advisory Committee welcomes the information that 120 public officials employed by the local authorities in Bautzen have in recent years declared their willingness to learn Sorbian and have attended Sorbian language courses, and that a positive climate has been generated around this process. It hopes that a similar operation can be launched in Brandenburg and reiterates the importance of enabling persons belonging to national minorities to use their language not only in private but also in the public sphere.

90. Representatives of North Frisians in Schleswig-Holstein similarly point to a lack of Frisian-speaking public officials, which hinders the use of their language in their contacts with the administrative authorities.<sup>68</sup> The fact of speaking Frisian should in their view be considered an advantage when applying for public employment. The Advisory Committee observes that this would not only make it easier for Frisians to use their language in their contacts with the administrative authorities, but could also encourage more Frisians to seek employment in the region. This could contribute to reversing the tendency among the most highly educated Frisians to move away from their traditional settlement areas when they reach employment age, a trend that may moreover tend to accelerate the disappearance of Frisian as a living language in Schleswig-Holstein.

91. According to information provided by representatives of Sater Frisians, the low number of speakers of Sater Frisian makes it impracticable to insist on using their language in all contacts with the local authorities.<sup>69</sup> However, they welcome the openness to using this language on the part of the local administrative authorities, where speakers of Sater Frisian are always present at

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<sup>67</sup> See, in addition to the above-mentioned Sorbs/Wends Act of Brandenburg, the Sorbs Act of Saxony (*Sächsisches Sorbengesetz – SächsSorbG, SächsGVBl. Jg. 1999, Bl.-Nr. 7, S. 161, Fsn-Nr.: 103-2*).

<sup>68</sup> As noted in the Advisory Committee's second opinion on Germany, positive measures to promote the use of Frisian in the public sphere in Schleswig-Holstein are already in place, thanks to the enactment of the Promotion of Frisian in the Public Sphere Act in 2004.

<sup>69</sup> It is estimated that there are 2 000 speakers of Sater Frisian, out of the total population of 14 000 persons in Saterland.

the Saterland town hall. The latter also displays a “We speak Sater Frisian” sign in order to encourage individuals to feel free to use this language.

92. Danish speakers also report difficulties in using Danish in contacts with administrative authorities, pointing, for example, to the heavy burden involved in translating into German the administrative documents of Danish minority schools for taxation purposes.<sup>70</sup> The authorities of Schleswig-Holstein have indicated that they are currently exploring the possibility of inserting a new §82b in the *Land* Administrative Act to provide for Danes, Frisians and other minority groups to be able to present documents to local authorities in their minority language, with translation costs to be borne by the municipality concerned.<sup>71</sup> This would in the *Land* authorities’ view have the added benefit of providing a strong incentive to local authorities to recruit staff who speak the minority languages concerned.

93. The Advisory Committee recalls generally in this context that in addition to amending the law where it acts as a barrier to the exercise of minority rights under the Framework Convention, maximum use should be made of the existing possibilities provided by law for the use of minority languages in contacts with administrative authorities at local level, for example by actively promoting the employment of speakers of minority languages. The authorities should moreover take and actively support measures that can create an environment conducive to the use of minority languages, including through the allocation of the necessary financial and human resources, as a means both of preserving the linguistic identity of minorities and raising the profile of their language among the majority population. The Advisory Committee also underlines in this context that e-administration and e-governance may provide additional possibilities for promoting the use of minority languages in contacts with local and regional administrative authorities.

#### *Recommendation*

94. The Advisory Committee again calls on the authorities to implement fully the legislation in place to promote the use of minority languages in contacts with local administrative authorities and adopt effective measures to create an environment conducive to the use and promotion of the use of the Sorbian, Danish and Frisian languages in dealings with local administrative authorities. It encourages the authorities in Schleswig-Holstein to pursue, in full consultation with representatives of minorities, the process of amending legislation at the level of the *Land* in order to facilitate the use of minority languages in contacts with the relevant administrative authorities.

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

#### **Personal names and official documents**

##### *Present situation*

95. The Advisory Committee notes that the growing use of electronic processing systems has led to complaints from representatives of Sorbs in so far as certain characters specific to the Sorbian language cannot be properly represented in such systems. This makes it increasingly difficult to register correctly the names of individuals and legal entities. The Advisory Committee notes with interest that this problem has been remedied progressively in Saxony, and indeed was

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<sup>70</sup> The Advisory Committee understands that tax returns in Germany are processed by local tax offices (*Finanzämter*), which are part of Land tax authorities.

<sup>71</sup> §82a of the Schleswig-Holstein *Land* Administrative Act (*Allgemeines Verwaltungsgesetz für das Land Schleswig-Holstein*) provides that German is the official language of Schleswig-Holstein and that translation costs of documents submitted to the authorities in a foreign language are to be borne by the person submitting the document.

expected to be resolved by April 2014. Different software being used in Brandenburg and certain other *Länder* cannot represent all diacritical marks, however; it is planned to introduce new software for all *Länder* that would resolve this problem, but this is not expected to be done until 2016. The Advisory Committee regrets that it has not been possible to resolve this issue in the meantime, and draws attention to the importance, once the new software is introduced, of ensuring that Sorbian names are correctly represented in it from the outset.

96. The Advisory Committee moreover notes with regret that the situation regarding the use of suffixes such as “-owa” in official documents for the names of women and girls belonging to the Sorbian minority has not changed, with the authorities considering that this suffix cannot be used for female names unless the relevant law is amended.<sup>72</sup> This prohibition contradicts the traditional Sorbian practice as regards gender declension names and constitutes, in the Advisory Committee’s view, discrimination against Sorbian women on the grounds of their gender and ethnic origin. Representatives of the Sorbian minority have however indicated that there appears to be no political will to change the applicable law.

97. The Advisory Committee maintains its view that this situation is not in line with Article 11, paragraph 1 and the overall principle of inclusive interpretation of the Framework Convention. It nonetheless underlines that in the meantime, nothing prevents States Parties from applying the provisions of the Framework Convention directly.

#### *Recommendations*

98. The Advisory Committee encourages the authorities to ensure that the introduction of new software for the management of electronic registers by 2016 resolves from the outset all issues related to the correct representation of names in minority languages. It further encourages them to ensure that Sorbian names that were previously represented incorrectly can be corrected in the new system, at no cost to the persons concerned.

99. The Advisory Committee recommends that the authorities amend without delay the law governing the use of names in minority languages in a way that brings it fully into line with the principles set out in Article 11 of the Framework Convention. In the meantime, it encourages them to issue guidance to the relevant administrative authorities regarding the possibility of applying the provisions of the Framework Convention directly.

### **Topographical signs**

#### *Present situation*

100. The Advisory Committee welcomes the adoption of a decree in Brandenburg in June 2014 regarding the installation of bilingual road signs and signposts. This decree recognises that the towns and villages in the traditional settlement area of Sorbs officially bear a bilingual name in German and Lower Sorbian, which must accordingly be included as a mandatory component of directional road signs (*Wegweisung*) and of signposts indicating the names of localities (*Ortstafel*). When new signposts are set up or existing ones replaced, the name must moreover be indicated in a uniform font-size in both languages.<sup>73</sup> The Advisory Committee also welcomes the indication that the *Land* of Brandenburg will henceforth take over the expense of bilingual signposting,

<sup>72</sup> See the Minorities’ Name Changes Act (*Minderheiten-Namensänderungsgesetz (MindNamÄG)*) of 22 July 1997, as amended on 19 February 2007 (BGBl.I, page 122), Articles 1 and 2, and a judgment of the Cottbus local court on 26 March 2010.

<sup>73</sup> Decree on Bilingual German-Lower Sorbian Inscriptions on Road Signs (*Erlass zur zweisprachig deutsch-niedersorbischen Beschriftung von Verkehrszeichen*), Amstblatt für Brandenburg 2014, No. 29, pp. 926-927, §§1 and 2(1). This Decree was issued following the entry into force of the Sorbs/Wends Act on 1 June 2014 (see above, Article 5).

which previously fell to local authorities and the cost of which was frequently prohibitive for them.

101. As noted above, in Brandenburg, the traditional settlement area of Sorbs is defined by the Sorbs/Wends Act, which now sets more flexible criteria in this regard (see above, Article 4), but does not provide for automatic inclusion in this area if these criteria are met. It is not clear how many additional localities will apply before the deadline of 21 May 2016 set by this Act to be included in the traditional settlement area, and may therefore meet the requirements for benefiting from bilingual topographical signs in future.

102. In Lower Saxony, while bilingual signposts at the entry to and exit from villages where Sater Frisian is spoken have been in place for a number of years, roadsigns to Saterland<sup>74</sup> remain monolingual. According to information provided by representatives of Sater Frisians, the authorities have indicated that bilingual signs could be installed on a new road being constructed around Saterland, but that the costs would not be borne by the *Land*. Sater Frisians have also requested the installation of brown tourist signs on the main north-south highway past Saterland, but without success. The Advisory Committee has also been informed that a 2009 decree of Schleswig-Holstein allowing municipalities to put in place topographical indications in minority languages has so far been implemented only sporadically.<sup>75</sup>

#### *Recommendation*

103. The Advisory Committee encourages the authorities to proceed expeditiously with installing bilingual topographical signs, in particular in Brandenburg, and to promote and actively support the installation of additional bilingual signs around Saterland and in Schleswig-Holstein, as a measure to increase the visibility and public profile of minority languages.

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

#### **Equal access to education**

##### *Present situation*

104. The Advisory Committee is deeply concerned by continuing reports of problems regarding the equal access to education of Sinti and Roma children, including disproportionately high numbers of pupils leaving school with no secondary diplomas as well as significant overrepresentation of Sinti and Roma children in the lower streams of education and in special schools.<sup>76</sup> It welcomes indications that this situation may be gradually improving,<sup>77</sup> and notes with interest that a number of *Länder* are in the process of adopting inclusive education strategies and planning to abolish special schools.<sup>78</sup> However, it emphasises that it is essential to tackle the underlying causes of disparities in education outcomes, which may for example include persisting prejudices against and discrimination experienced by Sinti and Roma children in schools, poor

<sup>74</sup> The municipality of Saterland, where Sater Frisian is spoken, was founded in 1974 by the merger of the four smaller municipalities of which it is composed: Ramsloh, Scharrel, Sedelsberg and Strücklinger.

<sup>75</sup> *Erlass des Ministeriums für Wissenschaft, Wirtschaft und Verkehr des Landes Schleswig-Holstein vom 31. März 2009 (VII 423 - 621.121.108) zur Zulassung mehrsprachiger Ortstafeln*. This decree replaced the decree of 11 June 2007 referred to in the Advisory Committee's Third Opinion.

<sup>76</sup> See Strauss (ed.), *Study on the Current Educational Situation of German Sinti and Roma: Documentation and Research Report*, Marburg, I-Verb.de, 2012. This study also outlines the difficulties inherent in obtaining clear and representative data on this subject.

<sup>77</sup> *Ibid.*, and information provided to the Advisory Committee by some Sinti and Roma representatives.

<sup>78</sup> See State Report, section C.III, pp. 28-30.

communication and/or mistrust between teachers or schools and Sinti and Roma parents, lower kindergarten attendance rates among Sinti and Roma children, and socio-economic factors that affect the amount of educational support that these children may receive at home. It underlines that unless such factors are adequately analysed and addressed, Sinti and Roma children will continue, in spite of other measures taken such as abolishing special schools, to experience discrimination and lower educational outcomes in the German education system.

105. The Advisory Committee notes with interest various programmes and projects in place to employ Sinti and Roma mediators in schools and/or provide additional educational support outside school hours, with the aim of facilitating Sinti and Roma children's path through school and improving their education outcomes.<sup>79</sup> It draws attention to the importance of placing such schemes on a sustainable footing where they already exist, and of extending them to other regions through the sharing of good practices.

106. The Advisory Committee is aware of ongoing debates regarding the best means of ensuring that children beginning school in Germany and whose first language is not German, including some Sinti and Roma children, rapidly acquire sufficient German language skills to enable them to understand and participate fully in the classroom. It underlines that a lack of language skills should not be used as a pretext for separating children into different groups, as such separation creates hierarchies between children that risk becoming permanent, and may in addition increase the exposure of children with lower language skills to bullying and discrimination. It considers other means of assisting children to acquire German rapidly but that allow them to remain in the same school and classroom, such as the employment of mediators or additional assistance outside the classroom, to be preferable in this respect.

#### *Recommendation*

107. The Advisory Committee urges the authorities to take resolute measures to put an end to discrimination against Sinti and Roma children in the education system. These should include preventing the unjustified placement of Sinti and Roma children in special schools, boosting efforts to create an inclusive education system, extending measures such as the employment of mediators that have proved successful in encouraging children to remain in the school system, and intensifying efforts to increase awareness of both teachers and other pupils about the history and culture of Sinti and Roma.

### **Intercultural education**

#### *Present situation*

108. Representatives of national minorities again drew attention to the fact that public awareness of the four national minorities recognised in Germany is low, especially outside their traditional areas of settlement. The Advisory Committee underlines that the heritage of national minorities should be seen as an integral part of the wealth and cultural diversity of the country as a whole, and not just of interest in the areas in which minorities are traditionally settled.

109. A number of initiatives are in place in schools to promote a culture of tolerance, and several *Länder* include elements of Roma history and culture as part of their school curricula.<sup>80</sup> The Advisory Committee notes with particular interest the recent publication by the Rhineland-Palatine Association of Sinti and Roma, with support from the Rhineland-Palatine Ministry of

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<sup>79</sup> See State Report, section D.VIII.

<sup>80</sup> See State Report, section D.VIII.

Education, of documentation intended for use in schools and other educational institutions, focusing not only on the past but also on the present-day life of Roma and Sinti.<sup>81</sup> The Advisory Committee regrets however that initiatives referred to by the authorities of several *Länder* in this context are presented as concluded at the point where materials are made available on-line. It wishes to underline the important role to be played by the authorities not only in supporting and making such publications and educational materials available but also in actively promoting their use in schools, in order for them to play an effective part in counteracting prejudices against and stereotypes about persons belonging to minorities.

110. The Advisory Committee recalls that in addition to ensuring that adequate materials are available for intercultural education, teachers must be properly trained to create and promote a classroom environment in which diversity is welcomed and accepted, and to include intercultural elements effectively in their classwork. It also refers to its comments above (see Article 6) regarding efforts made to promote tolerance and prevent extremism through education. It emphasises here the importance not only of educating children about past horrors but also of drawing a link between these events and manifestations of xenophobia and related forms of intolerance.

#### *Recommendations*

111. The Advisory Committee strongly encourages the authorities to step up their efforts to ensure that teachers and pupils throughout Germany have better knowledge of the culture and history of national minorities as an integral part of German society. It again calls on the authorities to develop further projects designed to impart awareness of Sinti and Roma history and culture.

112. The Advisory Committee invites the authorities to ensure that teachers are adequately trained to create and promote a classroom environment in which diversity is welcomed and accepted, to include intercultural elements effectively in their classwork, and to address current manifestations of xenophobia and related intolerance.

### **Teacher training and textbooks for teaching in and of minority languages**

#### *Present situation*

113. The Advisory Committee notes that the lack of teachers is a significant hindrance to the provision of teaching in and of Sorbian; although new teachers are being trained, not enough qualified teachers are arriving to compensate for future retirements. Sorbian representatives in Saxony observe that the funding for teaching of Low Sorbian at the University of Leipzig (one part-time post) is currently insufficient to provide teacher training on a sustainable basis and have requested that additional measures be taken to redress this situation, such as re-training Sorbian speakers from other professions as teachers. In Brandenburg the lack of teachers is reportedly placing under threat the provision of bilingual teaching under the *Witaj* project in some kindergartens.

114. As regards Frisian, for which similar difficulties are experienced (see also below, Article 14), the Advisory Committee welcomes the forthcoming introduction at Oldenburg University (from 2016) of a new certification process for teachers of Sater Frisian, a project which the authorities hope will attract more teachers of this language. A new teaching post for Frisian studies has also been opened at the Europa University in Flensburg, although representatives of

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<sup>81</sup> “Surviving? – That wasn’t envisaged! The stories of Sinti families in Rhineland-Palatinate” (*Überleben - das war für uns nicht vorgesehen! Lebensgeschichten rheinland-pfälzischer Sinti-Familien*), published in 2013.

Frisians in Schleswig-Holstein have expressed concern that there is no requirement that the person recruited to this post be a speaker of Frisian.

115. Representatives of both Sorbs and Frisians also underline the particular weight placed on the shoulders of teachers who provide teaching in and of these minority languages to develop their own teaching materials, as there is not a wide body of pre-existing materials available. This makes it particularly important to remove obstacles to the recruitment of teachers already able and willing to provide teaching in and of these languages – for example, by providing that such competencies be considered an advantage for teachers applying for jobs in the relevant regions.

#### *Recommendation*

116. The Advisory Committee urges the authorities to pursue and intensify their efforts to increase the availability of teachers qualified to teach in minority languages at all levels of the education system, and to take positive measures to promote their appointment to areas where such skills are needed.

### **Article 13 of the Framework Convention**

#### **Danish minority schools**

##### *Present situation*

117. The Danish schools association currently runs 46 Danish minority schools and 56 kindergartens. These are essentially publicly funded, receiving considerable funding from the budget of the Land of Schleswig-Holstein.<sup>82</sup> The Advisory Committee notes with regret that between 2010 and 2012 the government of Schleswig-Holstein reduced the funding available for Danish minority schools by 15%, creating a funding gap that eventually had to be filled by the federal authorities. It welcomes the decision of the authorities of Schleswig-Holstein to restore the funding provided per pupil in Danish minority schools to the same levels as in German public schools as from 1 January 2013.<sup>83</sup> It also notes with interest that following the constitutional amendments adopted in December 2014, the principle of equal funding for Danish schools is now enshrined in the Constitution of Schleswig-Holstein.<sup>84</sup> Representatives of the Danish minority have however reported that since these changes, some local authorities have expressed reluctance to continue providing certain optional services to Danish minority schools.

118. The Advisory Committee notes that a new concern has been raised by representatives of the Danish minority as regards plans to introduce centralised final school exams. In this context they underline that the questions asked in final school exams should be in line with what students were taught in school, and point out that owing to the specificity of Danish minority schools, which seek to accommodate the requirements of both the German and Danish education systems, Danish textbooks and curricula are relied on in subjects taught in Danish. The Advisory Committee notes that this issue is currently the subject of negotiations between representatives of

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<sup>82</sup> Over €37M was allocated in the Schleswig-Holstein budget for Danish minority schools in 2014 and 2015 (see *Landeshaushaltsplan Schleswig-Holstein, Haushaltsjahr 2015, Einzelplan 07, Ministerium für Schule und Berufsbildung*), and €35.5M in 2013 (see *Land Schleswig-Holstein, Haushaltsrechnung und Vermögensübersicht für das Haushaltsjahr 2013*). This compares with €30.4M in 2012 and €27.6M in 2011 (see *Land Schleswig-Holstein, Haushaltsrechnung und Vermögensübersicht für das Haushaltsjahr 2012*).

<sup>83</sup> Representatives of the Danish minority point out that this situation is the result of a political compromise and creates formal equality only. In effect, due to the different pension contribution schemes for teachers employed as civil servants in public schools and those employed under private law contracts in Danish schools, Danish schools still receive less funding than German public schools.

<sup>84</sup> See Article 12(5) of the Constitution of Schleswig-Holstein as amended in December 2014.



the Danish minority and the Schleswig-Holstein Ministry for Education and Culture and underlines that changes to the relevant legislation must not be in conflict with the principle of non-discrimination.

*Recommendation*

119. The Advisory Committee encourages the authorities to pursue their discussions with all parties concerned and take active measures to ensure that pupils are not disadvantaged in practice because of their choice to attend Danish minority schools.

**Article 14 of the Framework Convention**

**Teaching in and of Frisian languages**

*Present situation*

120. The Advisory Committee welcomes the new constitutional protection granted to the teaching of North Frisian through amendments made to the Constitution of Schleswig-Holstein in December 2014.<sup>85</sup> In practice, however, the Advisory Committee understands that North Frisian is taught only as an optional subject in Schleswig-Holstein, in some Danish minority and German public schools, often outside school hours and at inconvenient times; moreover, due to its status as an optional subject, there is no obligation to replace teachers of North Frisian when they retire or leave a school. Continuous education in North Frisian from kindergarten to high school level is only provided on Föhr Island. Representatives of North Frisians have indicated that whereas ten years ago there were more than 1000 pupils learning North Frisian, today there are less than 900. In parallel, the circles in which individuals express themselves in North Frisian have shrunk drastically, with many North Frisians today having little contact with the North Frisian language outside their immediate family. This leads to a damaging loss of prestige for this language. Against this background, representatives of North Frisians in Schleswig-Holstein underline that there is a real need to increase the provision of teaching in North Frisian in German public schools. The Advisory Committee welcomes information provided by the authorities of Schleswig-Holstein according to which the action plan for languages and language rights to be published in 2015 will include plans to strengthen the teaching of North Frisian as a regular subject.

121. As regards the teaching of Sater Frisian in Lower Saxony, the Advisory Committee welcomes the issuing of a decree entitled “The Region and its Languages in Education”, which came into force at the beginning of the 2011/2012 school year. This decree expressly acknowledges the value of the early acquisition of lesser-used languages such as Sater Frisian and recognises the important role that primary schools can play in this area. The decree allows primary schools to provide teaching of most compulsory subjects in Sater Frisian. It also allows for the continuation of such teaching, as well as the teaching of elective subjects in Sater Frisian, at secondary level.<sup>86</sup> The Advisory Committee warmly welcomes the introduction of bilingual teaching at primary school level in the Litje Skoule Skäddel in Scharrel, and understands that other schools have established study groups for Sater Frisian as an optional subject. It also welcomes the existence of small groups in several kindergartens in which children are able to participate twice a week in activities in Sater Frisian. This possibility, initially provided essentially on a voluntary basis through the efforts of elderly or retired Sater Frisian speakers, now also benefits from the involvement of qualified teachers, and is designed to prepare the ground for children to grow up as bilingual speakers of German and Sater Frisian.

<sup>85</sup> See Article 12(6) of the Constitution of Schleswig-Holstein as amended in December 2014.

<sup>86</sup> Erl. des MK v. 2011 - 21-82101/3-2; see in particular §4 of this decree.

122. The Advisory Committee observes, however, that public support for these initiatives hangs by a thread. It is concerned that the strict application of rules on minimum class sizes may adversely affect the provision of bilingual teaching in Lower Saxony.<sup>87</sup> It also draws attention to the particular importance, given the very small number of active speakers of Sater Frisian, of taking positive measures to promote continuity in teaching – for example, to ensure that the prolonged absence of a single teacher does not lead to the interruption of teaching in or of this language in the school concerned. It shares the view of representatives of Sater Frisians that one means towards achieving this would be for the *Land* authorities to take teachers' proficiency in the Sater Frisian language into account when allocating teachers to the Saterland district. It further notes that the need for proficiency in Frisian to be taken into account when recruiting and allocating public servants to posts has also been underlined by representatives of North Frisians.

123. The Advisory Committee considers that in view of the challenges outlined above, a comprehensive strategy, developed in consultation with Frisian representatives and involving language experts and local, *Land* and federal authorities to the full extent of their respective competencies, is needed in order to enable Frisians to preserve their language and pass it on to future generations. In the field of education, this should encompass providing teaching in and of Frisian from kindergarten level to the end of school, including using bilingual teaching methodologies, as well as through adult education. Adequate tertiary instruction and continuing education must also be provided for teachers of Frisian.

#### *Recommendations*

124. The Advisory Committee calls on the authorities to step up the support provided to teaching in and of North Frisian in Schleswig-Holstein and recommends that they continue to develop the provision of teaching in and of Sater Frisian in Lower Saxony.

125. It recommends in addition that the authorities remove administrative obstacles to the provision of teaching in and of Frisian. As a positive measure to promote access to teaching in and of Frisian, account should be taken of proficiency in Frisian when appointing teachers to schools in the traditional settlement areas of Frisians, and special efforts should be made to replace teachers who provide teaching in or of Frisian where they are absent for long periods, leave the area or retire. Particular flexibility should also be applied as regards minimum class size requirements, to ensure that these do not prevent the delivery of teaching in or of Frisian where a demand for it exists.

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

#### *Present situation*

126. The Advisory Committee welcomes the continued implementation of the *Witaj* project and 2plus concept to promote early bilingual education in German and Sorbian for children, starting at kindergarten level, with the aim of revitalising the Sorbian language. It understands that both of these projects are currently being evaluated, and hopes that these evaluations will enable the projects to be strengthened further. In this respect it notes the concerns of Sorbian representatives

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<sup>87</sup> Not all parents necessarily wish their children to learn Sater Frisian at primary school. For a class to be split into two groups (one bilingual group and one monolingual (German) group), there must be a minimum of 26 pupils in the initial class. A class of 25 pupils does not meet this threshold and cannot be split into two, meaning that bilingual teaching can only be provided if all 25 pupils accept it. But bilingual teaching is particularly difficult to manage in large classes. Alternative solutions such as the offer of optional extra-curricular teaching in Sater Frisian cannot fully replace bilingual tuition as a means of revitalising such a language.

as regards the progressive decrease in teaching hours delivered in Sorbian as students advance through bilingual schooling<sup>88</sup> and a lack of continuity to the end of school education for students who attend comprehensive schools. As noted above (see Article 12), the lack of qualified teachers also continues to act as a hindrance to replacing ill or departing teachers, leading in some cases to the cancellation of classes in Sorbian for protracted periods of time. The Advisory Committee welcomes the inclusion of a new possibility in Brandenburg, following the amendment of Sorbs/Wends Act, for the umbrella organisation Domowina to attend school conferences in bilingual schools, and hopes that this will make it easier for such concerns to be heard and taken into account at an early stage.

127. The Advisory Committee emphasises in this context that the authorities should not take a passive approach, waiting for demands for education in Sorbian to be expressed before seeking ways to respond to them, but should stimulate such demand through awareness-raising among parents and pupils, and actively promote and foster possibilities for minority language teaching.<sup>89</sup>

#### *Recommendation*

128. The Advisory Committee again recommends that the authorities intensify measures to maintain a sound and sustainable network of Sorbian language schools in the area of traditional Sorbian settlement, at all levels of the educational system.

### **Teaching of Romani**

#### *Present situation*

129. The Advisory Committee notes that the teaching of Romani is a sensitive question in Germany, with representatives of some Sinti organisations holding strongly to the view that this language should be kept strictly within the Sinti community and that it is inappropriate to teach it in schools. However, the Advisory Committee notes that this view is not universally shared among Sinti and Roma representatives in Germany, and observes that where a need for the teaching of this language is expressed, it should be followed up on to the extent possible.

130. The Advisory Committee again notes with appreciation the information brought to its attention concerning the teaching of the Romani language in some schools, notably in Hamburg, offered in response to local demand and aimed generally at preserving and developing the culture and language of this community. It also notes with interest that the *Land* of Rhineland-Palatinate, acknowledging the reluctance of Sinti and Roma to have the Romani language taught officially through the state school system, has in the past supported initiatives of this minority to provide self-organised additional classes aimed at preserving and developing the culture and language of this community.<sup>90</sup> However, the latter activities were run essentially on a volunteer basis, which is not sustainable in the long term. The Advisory Committee hopes that a more secure basis for supporting the teaching of Romani, where such a need is expressed, can be found in future. It observes in this context that research points to considerable benefits for minority pupils in learning their minority language, which is not only linked to the preservation of individual identity, but

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<sup>88</sup> According to information provided by representatives of Sorbs, from a majority of time spent listening to and speaking Sorbian in bilingual kindergartens, the proportion of teaching delivered in Sorbian drops to roughly 30% by year 10.

<sup>89</sup> See Thematic Commentary No. 3, The Language Rights of Persons Belonging to National Minorities under the Framework Convention, adopted on 24 May 2012, ACFC/44DOC(2012)001 rev, paragraph 71.

<sup>90</sup> See State Report, section D.X.

also forms an important basis for the development of the individual linguistic repertoire and the acquisition of additional languages.<sup>91</sup>

*Recommendation*

131. The Advisory Committee again encourages the authorities concerned to monitor and review regularly the demand for teaching Romani, as well as Romani language teaching projects and their impact on academic achievement by Roma children, in the interests of furthering good practice in this field. The authorities should ensure the effective participation of representatives of the Roma community in these monitoring and evaluation procedures. They should also identify means by which to place successful projects in this field on a sustainable footing.

**Article 15 of the Framework Convention**

**Participation in public affairs**

*Present situation*

132. The Advisory Committee notes with interest that there are mechanisms in place to facilitate the participation of national minority parties in certain parliamentary bodies, through the exemption of national minority parties from the 5% threshold for representation in the parliaments of Schleswig-Holstein and Brandenburg, and the exemption from the same 5% threshold for the distribution of seats among *Land* lists in the federal parliament.<sup>92</sup> Persons belonging to national minorities have also been elected on mainstream party lists in these *Länder*, and the current Prime Minister of Saxony identifies himself as a Sorb. The Advisory Committee regrets, however, the low level of political representation of Sinti and Roma, and considers that more needs to be done to promote the participation of Sinti and Roma at political level, whether in dedicated or mainstream parties.

133. As regards consultation mechanisms, the Advisory Committee welcomes the efforts made by the Federal Commissioner for National Minorities in recent years to visit and establish direct contacts with all of the national minorities recognised in Germany. It notes that these efforts have not only been of symbolic significance to national minorities but have also contributed to progress made in practice, such as the establishment at federal level of a Consultative Committee on Issues concerning German Sinti and Roma (see further below). It also notes with interest the work of the Schleswig-Holstein Commissioner for National Minorities, serving as a vector for communication between the authorities and the minorities present in Schleswig-Holstein.

134. The Advisory Committee further notes as an example of good practice the annual conference on the implementation of the rights set out in the Framework Convention and the Language Charter, organised by the Federal Ministry of the Interior and including representatives of the federal government, governments of the *Länder* and national minorities. As observed in its previous opinion, this mechanism provides an effective means of ensuring that the representatives of national minorities are regularly and actively involved in the process of monitoring and dialogue with the authorities that are central to the implementation of these instruments in daily life.

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<sup>91</sup> See also in this regard OSCE HCNM, The Hague Recommendations regarding the Education Rights of National Minorities, 1996.

<sup>92</sup> Currently three members of the Schleswig-Holstein parliament are from the SSW minority party, two Danes and one Frisian. The Sorbian minority party Lausitzer Allianz has no representatives in the Brandenburg Parliament, and there are no arrangements in place to facilitate the election of Sorb minority representatives in Saxony.

135. Following lengthy discussions leading to an agreement between the federal authorities and the two main umbrella organisations of Sinti and Roma in Germany, the Advisory Committee welcomes the establishment at federal level of a Consultative Committee on Issues concerning German Sinti and Roma, which met for the first time on 18 March 2015. It understands that this body is intended to serve as a forum in which all federal domestic policy issues relevant to German Sinti and Roma can be discussed, and to function similarly to the existing Consultative Committees on Issues concerning the Danish minority, the Sorbian people and the Frisian ethnic group. It will thus include representatives of the Federal Ministry of the Interior, of the relevant *Länder* authorities (each *Land* having been invited to appoint a member) and of the Sinti and Roma minority, and will meet at least once a year.

136. As regards consultative bodies on national minority issues at the level of the *Länder*, the Advisory Committee welcomes the establishment in Baden-Württemberg of a Council for Sinti and Roma Affairs, including six representatives of the authorities and six representatives of Sinti and Roma, on the basis of the November 2013 Treaty concluded between the authorities of the *Land* of Baden-Württemberg and the Baden-Württemberg Association of German Sinti and Roma. It also welcomes information received according to which the recognition of the Sinti and Roma minority in the Constitution of Schleswig-Holstein has led to the creation of a consultative body at the level of this *Land*, similar to those already existing in Schleswig-Holstein for the Frisian and Danish minorities. The Advisory Committee sees these developments as important steps that may contribute to improving the participation of Sinti and Roma in public life. It recalls however that Sinti and Roma communities are also present, but with only limited participation, in other *Länder*, and considers that further efforts are needed to ensure that they are able to participate effectively in public life, whether through formal or information consultation mechanisms. Due regard must also be paid in this context to the diversity found within these groups.

137. The Advisory Committee welcomes the appointment in Brandenburg, on the basis of the amended Sorbs/Wends Act, of a Commissioner for Sorbian/Wendish Affairs with the rank of State Secretary, assisted by a full-time staff member. It notes, however, that some Sorbian representatives have expressed reservations regarding the new procedures in place for the election of the Council for Sorbian/Wendish Affairs, which require all persons wishing to vote to register for the electoral rolls in advance.<sup>93</sup> The Advisory Committee understands that this mechanism was introduced in order to enable persons identifying themselves as Sorbs/Wends but living outside the traditional settlement areas of this minority to vote in the elections, in addition to those persons who were already entitled to vote under the previous rules. However, and although the registration process is to be run entirely by Sorbian associations, it notes that some concerns have been voiced regarding whether individuals will accept the registration process, and the impact that such a lack of willingness among Sorbs to register might have on the legitimacy of this body.

138. Representatives of Sorbs also continue to be in a clear minority on the governing board of the Foundation for the Sorbian People, holding six of its fifteen seats. The remaining nine seats in this Foundation, which is responsible for distributing the entirety of the federal and *Land* funding of approximately €17M allocated to the preservation and promotion of Sorbian culture through education, museums, cultural and other activities (see above, Article 5), are held by six representatives of the various authorities that are the sources of the Foundation's funding and three representatives of local authorities. The Advisory Committee observes that increasing the role of Sorbs in the governing board of this Foundation would allow the latter to participate more effectively in decision-making concerning the preservation and promotion of their culture.

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<sup>93</sup> Introduced as part of the 2014 amendments to the Sorbs/Wends Act.

139. The Advisory Committee notes with interest the continued functioning, with financial support of €60 000 per annum from the federal authorities, of the Council and Secretariat for National Minorities, which represent the interests of national minorities vis-à-vis the federal parliament and government.

*Recommendations*

140. The Advisory Committee calls on the authorities to take more resolute steps to promote effective participation of Roma and Sinti in public life, in particular at political level. In the *Länder* where this has not yet been done, the Advisory Committee also recommends that the authorities establish, in close co-operation with Sinti and Roma representatives, mechanisms allowing for the effective participation of Sinti and Roma in decision-making on issues of concern to them.

141. The Advisory Committee recommends that, following the next elections to this body, the authorities review, together with representatives of the Sorbian minority, the impact of the new procedures governing the election of the Council for Sorbian/Wendish Affairs in Brandenburg, with a view to assessing the extent to which the new rules have facilitated the participation of Sorbs in this process and remedying any problems identified. It recommends that the authorities, in close co-operation with representatives of the Sorbian minority, find means to allow Sorbian representatives to participate more effectively in decision-making processes concerning the allocation of funds to the preservation and promotion of their culture.

**Participation of Sinti and Roma in socio-economic life**

*Present situation*

142. The Advisory Committee has received reports of certain patterns of behaviour towards Sinti and Roma that tend to keep them or place them at a significant disadvantage in the socio-economic sphere. Some Job Centres are for example reported regularly to use delaying tactics when dealing with applications for support from Sinti and Roma, or even to obstruct such applications. At the same time, access to jobs requiring higher education or advanced vocational training, while reportedly gradually improving, is hampered due to the discrimination faced by Sinti and Roma in the field of education (see also Article 12). In the field of housing, abusive practices by some landlords are reported to affect migrant Roma in particular.

143. The Advisory Committee regrets that no overall data are available regarding this situation, and few detailed studies appear to have been carried out. It observes that this makes it impossible to determine the extent and root causes of such problems and to address them adequately.

*Recommendation*

144. The Advisory Committee calls on the authorities to strengthen their efforts to promote the equality of Sinti and Roma in socio-economic terms, particularly as regards access to employment and housing. Measures taken in this respect should be based on a thorough evaluation of the situation of Sinti and Roma in this field.

**Article 18 of the Framework Convention**

**Bilateral agreements and regional co-operation**

*Present situation*

145. The Advisory Committee recalls the Bonn-Copenhagen Declarations of 1955 and the 1991 Treaty on Good Neighbourly Relations and Friendly Co-operation between Poland and Germany,

which aim to promote the situation of the German minority in these countries and of the respective groups in Germany (see also Article 3 with respect to the Neighbourhood Treaty with Poland). It also notes with interest the cross-border co-operation of minorities themselves, such as the continued co-operation of Frisians with the InterFrisian Council. While underlining that the primary responsibility for protecting the rights of persons belonging to national minorities rests with the authorities of the state where they reside, it nonetheless recalls that bilateral agreements as well as informal cross-border co-operation can contribute to the promotion of the rights of persons belonging to national minorities and of tolerance, stability and peace in the region.

*Recommendation*

146. The Advisory Committee encourages the authorities to pursue their efforts with respect to regional co-operation and dialogue.

### III. CONCLUSIONS

The Advisory Committee considers that the present concluding remarks and recommendations could serve as the basis for the resolution to be adopted by the Committee of Ministers with respect to the implementation of the Framework Convention by Germany.

The authorities are invited to take account of the detailed observations and recommendations contained in Sections I and II of the Advisory Committee's Fourth Opinion. In particular, they should take the following measures to improve further the implementation of the Framework Convention:

#### **Recommendations for immediate action<sup>94</sup>**

- **review and strengthen the General Equal Treatment Act in order to ensure that it provides effective protection against discrimination; continue supporting efforts to raise awareness of the contents of this Act and the avenues of redress available against discrimination, including when committed by public actors; consider broadening the powers of the Federal Anti-Discrimination Agency and ensure that it has sufficient resources to allow it to carry out its duties effectively;**
- **actively promote the effective equality of Sinti and Roma in socio-economic life through targeted, evidence-based measures, designed, implemented and evaluated in full consultation with representatives of Sinti and Roma and based on clear benchmarks; take resolute measures to put an end to discrimination against Sinti and Roma children in the education system, including ending the unjustified placement of Sinti and Roma children in special schools, and to create an inclusive education system;**
- **pursue efforts to combat racism and intolerance and prevent right-wing extremism; take a proactive stance embracing the diversity of German society; review the legal provisions prohibiting incitement to hatred, in particular in the context of election campaigns, and the policy and procedures in place concerning the investigation and prosecution of the dissemination of ideas based on racial superiority, with a view to strengthening their effectiveness;**

#### Further recommendations<sup>95</sup>

- use existing equality data to design measures to promote the full and effective equality of persons belonging to national minorities and seek additional means of gathering reliable quantitative and qualitative equality data with respect to the access to rights of persons belonging to national minorities, while fully respecting international standards on the protection of personal data;
- continue, in close co-operation with the representatives of national minorities, to support the preservation and promotion of their cultures, paying particular attention to their long-term needs, the necessity of sustainable action, and the diversity existing within minority cultures;

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<sup>94</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

<sup>95</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.



- include racist motivations as an aggravating circumstance in the Criminal Code; ensure that racist elements of criminal offences are systematically taken into account; eradicate the practice of ethnic profiling and take active steps to build trust between persons belonging to minorities and the police;
- increase support to media in minority languages and support the development of locally produced radio and television programming in minority languages; support improved representation of persons belonging to national minorities in media regulatory bodies;
- implement fully the legislation in place to promote the use of minority languages in contacts with local and regional administrative authorities; adopt effective measures to create an environment conducive to their use in this context; take the necessary steps to bring German legislation concerning the use of minority names fully in conformity with Article 11 of the Framework Convention and ensure that names in minority languages can be correctly represented in electronic registers; promote the installation of bilingual topographical signs in minority languages;
- step up efforts to ensure that teachers and pupils throughout Germany have better knowledge of the culture and history of national minorities, including Sinti and Roma, as an integral part of German society; ensure that teachers are adequately trained for intercultural education;
- pursue and intensify efforts to increase the availability of teachers qualified to teach in minority languages at all levels of the education system; take positive measures to promote their appointment to areas where such skills are needed; step up the support provided to teaching in and of Frisian and Sorbian in order to place such teaching on a sustainable footing;
- actively promote the effective participation of Sinti and Roma in public life, in particular at the political level; establish, in the *Länder* where this has not yet been done and in close co-operation with Sinti and Roma representatives, mechanisms allowing for the effective participation of Sinti and Roma in decision-making on issues of concern to them.