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

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**Second Opinion on Poland,  
adopted on 20 March 2009**

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## EXECUTIVE SUMMARY

Since the adoption of the first Opinion of the Advisory Committee on Poland on 27 November 2003, Poland has continued to pay attention to the protection of national minorities. A number of positive steps have been taken in this area, such as the adoption of the Act on National and Ethnic Minorities and on Regional Language and the setting up of the Government structure for combating discrimination. National minorities continue to enjoy a high level of protection and relations between national minorities and the majority are characterised by a climate of mutual understanding and tolerance.

The above-mentioned Act provides for the opportunity to use the minority language as “supporting language” in administration and for topographical indications in the municipalities where the number of residents declaring their belonging to a national minority is not lower than 20%. This significantly increases the scope of linguistic rights enjoyed by persons belonging to national minorities.

Minority language teaching continues to constitute a main priority for the authorities. The educational subsidy for each pupil belonging to a national minority has been substantially increased to one and a half times the applicable amount for a pupil in a public school of the same type in the same municipality. Roma pupils benefit from targeted assistance in the form of Roma educational assistants and scholarships specifically earmarked for them. The authorities are integrating Roma pupils into ordinary schools and almost all separate Roma classes have been abolished.

National minorities participate actively in social and economic life and in public affairs in Poland. A significant number of representatives of national minorities were elected to local councils at all levels. Wide consultative prerogatives of the Joint Commission of Government and National and Ethnic Minorities enable it to influence significantly the debate on national minority issues and create a useful channel of communication with the authorities.

Funding for the protection, preservation and development of the cultural identity of minorities in Poland has increased considerably in the last few years.

There remain, however, shortcomings in the implementation of the Framework Convention. There has been an increase in the number of racially-motivated offences committed in the last few years in Poland. Adequate measures to combat racist incidents committed especially prior to, during and after sporting events have not been taken.

There are concerns about obstacles created at the local level, which result in persons belonging to national minorities being unable to exercise their rights, as well as about provocative statements, and the conditioning of respect for minority rights on reciprocity in neighbouring countries.

Further steps should be taken, in co-operation with those concerned, to address the difficulties faced by many Roma in housing, employment, and healthcare. Additional efforts should be made to find solutions to the problems they face in fields such as education and, more generally, in combating their social exclusion and marginalisation.

The actual number of municipalities using a minority language as “supporting language” in administration and displaying traditional local names, street names and other topographical indications in a minority language remains low. In addition, the right to use the “supporting language” in administration is restricted to municipal self-government authorities and does not extend to the police, health care services, the post office or the State administration at the local level.

In addition, there is a need to pursue a more inclusive approach and a wider dialogue at the domestic level with regard to the personal scope of application given to the Framework Convention in Poland.

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

**SECOND OPINION ON POLAND**

1. The Advisory Committee adopted the present Opinion on 20 March 2009 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 State Report (hereinafter the State Report), received on 8 November 2007, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Warsaw, Gdańsk and Opole from 1 to 4 December 2008.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Poland. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
3. Both sections make extensive reference to the follow-up given to the findings of the first cycle of monitoring of the Framework Convention, contained in the Advisory Committee's first Opinion on Poland, adopted on 27 November 2003, and in the Committee of Ministers' corresponding Resolution, adopted on 30 September 2004.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Poland.
5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Poland as well as with representatives of national minorities and others involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the present Opinion public upon its receipt.

## I. MAIN FINDINGS

### Monitoring process

6. Poland has adopted a positive approach to the Framework Convention's monitoring process. In September 2005, the authorities organised a follow-up seminar in Warsaw with representatives of the national minorities and the Advisory Committee, to discuss ways of putting into practice the findings of the first monitoring cycle. The Resolution of the Committee of Ministers has been translated into Polish and is available on the web-page of the Department of Denominations and National and Ethnic Minorities of the Ministry of the Interior and Administration. This department is the principal public authority responsible for the implementation of the State policy with respect to national minorities at the central level.

7. The Advisory Committee welcomes the consultation of representatives of national minorities in the preparation of the second State Report. It also welcomes the fact that the comments made by national minority representatives which were not incorporated into the State Report were nonetheless submitted as an Appendix. It also notes that the Advisory Committee's first Opinion, together with the Resolution of the Committee of Ministers, seems to be widely known by representatives of national minorities and State interlocutors.

### Institutional and legislative framework

8. The Advisory Committee welcomes the fact that the comprehensive Act on National and Ethnic Minorities and on Regional Language, which had been under discussion for a decade, was adopted by the *Sejm*<sup>1</sup> on 6 January 2005 filling the existing gap in the legal and institutional framework pertaining to national minorities in Poland. The Advisory Committee is pleased to note that representatives of national minorities expressed their general satisfaction with the provisions of the Act and its implementation.

9. The Joint Commission of Government and National and Ethnic Minorities, established by the aforementioned Act, has a wide range of consultative responsibilities, which include the allocation of grants, draft legislation, implementation of minority programmes, non-discrimination measures and giving opinions on the exercise of minority rights. The composition of the Commission, as stipulated in the Act, guarantees to each minority recognised in Poland a set number of representatives (one or two per minority). The Advisory Committee notes with satisfaction that the Joint Commission, after a period of inactivity in the second half of 2007, resumed regular meetings in 2008 and is working well, as attested by representatives of national minorities.

10. The Advisory Committee strongly welcomes the active role played by the Parliamentary National and Ethnic Minorities Committee in stimulating public awareness of national minorities' history, culture, tradition, as well as their role played in Polish history and current affairs. It has provided a framework for discussion of national minority issues and for making proposals with a view to resolving the outstanding issues affecting national minorities. The Advisory Committee especially welcomes the Parliamentary Committee's active role in raising

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<sup>1</sup> *Sejm* is the lower chamber of the bi-cameral Polish Parliament.

unresolved and controversial issues, such as the status of persons who have identified themselves as Silesians.<sup>2</sup>

11. The Advisory Committee welcomes the translation of the Act on National and Ethnic Minorities and on Regional Language into the languages of all the recognised minorities in Poland. Furthermore it welcomes the fact that it was made accessible, together with various other acts concerning national minorities, on the web-page of the National Minorities Division in the Department of Denominations and National Minorities of the Ministry of the Interior and Administration.

### **Equality and protection against discrimination**

12. Poland has continued to develop its legislative framework to combat discrimination. Upon accession to the European Union, Poland transposed the EU Racial Equality and Employment Equality Directives into its domestic legislation. The Labour Code was amended in 2001 and 2003 to bring it in line with the provisions of the above listed Directives. In addition, in 2004 Poland adopted the Act on the Promotion of Employment and Labour Market Institutions which prohibits employment agencies from discriminating *inter alia* on the basis of ethnic origin. While welcoming these legislative advancements, the Advisory Committee urges Poland to ensure that these provisions do not remain on paper only and that they are fully implemented in practice. It further notes that no court cases have been initiated thus far based on the new legal provisions.

13. In March 2008, following the change of Government in Poland, the Bureau of the Government Plenipotentiary for Equal Treatment was established. The Ordinance establishing the Plenipotentiary obliges it to combat discrimination on the grounds of gender, race, ethnic origin, nationality, religion or belief, political opinion, age, sexual orientation, civil and family status.

14. The Commissioner for Civil Rights Protection (hereinafter: Ombudsman) has continued to play an active role in raising awareness of minorities' rights and in seeking solutions to outstanding problems. The Advisory Committee welcomes the interventions of the Ombudsman on behalf of the Roma and Ukrainian minorities. The Advisory Committee further notes the initiative of the Ombudsman to establish minority contact persons within his office in order to encourage the lodging of applications by persons belonging to national minorities.

### **Support for minority cultures**

15. Poland has continued to support the preservation and development of the identity and culture of persons belonging to national minorities, notably by allocating grants to minority cultural projects and by supporting minority cultural centres. Nevertheless, efforts should be increased in order to return cultural centres belonging to national minorities' cultural associations confiscated by the communist regime to their rightful owners. More generally, funding procedures should be adapted to allow small organisations to compete effectively for grants.

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<sup>2</sup> See Bulletin of the *Sejm* N° 1588/Vikad. Report on the 30<sup>th</sup> Sitting of the Parliamentary National and Ethnic Minorities Committee of 3 December 2008.

## **Tolerance and intercultural dialogue**

16. The Advisory Committee notes that a general climate of tolerance and understanding between national minorities and the majority prevails in Poland. The Polish authorities and civil society are engaged in combating anti-Semitism, xenophobia and intolerance. The Polish authorities have taken numerous steps to address the painful historical legacy of World War II and its aftermath, by erecting memorials to commemorate war victims belonging to national minorities and establishing military cemeteries.

17. Notwithstanding the positive effects of substantial decentralisation in Poland in the last twenty years, the Advisory Committee notes with concern, that according to information obtained from national minority representatives, there are occasionally obstacles at the local level, which result in persons belonging to national minorities being unable to exercise their rights. In the case of the Ukrainian and Lemko minorities discriminatory attitudes have been demonstrated by local authorities against the remaining population in places where these national minorities resided traditionally in large numbers before their forcible resettlement in 1947.

18. Official figures indicate that there has been an increase in the number of recorded racially-motivated offences committed in the last few years in Poland. These offences range from anti-Semitic graffiti, and the destruction of tomb-stones in Jewish cemeteries to incitement to racial hatred on the internet and shouting of anti-Semitic slogans and insults at public gatherings. Also, according to reliable media reports, football stadium racist and anti-Semitic chants, slogans and gestures rarely evoke any reaction on the part of the players, referees, or the law enforcement bodies. Vigorous action should be taken by the competent authorities to investigate and prosecute the perpetrators of these offences.

## **Media**

19. The Polish public radio and television services continue to broadcast programmes addressed to national minorities, including in the languages of national minorities. Nevertheless, despite relevant legislative provisions, there are cases where no representatives of national minorities are appointed to public radio and television programming councils in those regions where national minorities live traditionally in large numbers. Also, the radio and television programmes for national minorities are not accessible in all the regions where the minorities live. The authorities should pay greater attention to this issue which is of paramount importance to all national minorities.

## **Use of minority languages in the public sphere**

20. The Act on National and Ethnic Minorities and on Regional Language introduced the possibility of using the minority language as “supporting language” in administration, in the municipalities where the number of residents declaring their affiliation with a national minority is not lower than 20% of all residents. The Act also introduces the possibility to display traditional local names, street names and other topographical indications intended for the public in minority languages.

21. A number of municipalities with the required number of residents belonging to national minorities have introduced minority languages (German, Kashub, Lithuanian or Belarusian) as a “supporting language”. The number of towns and villages which displayed place names in a minority language alongside Polish language signs stood at two hundred and eighty-eight at the end of 2008.

22. The right of persons belonging to national minorities to use the “supporting language” in administration applies to the municipal self-government authorities only and does not provide for the right to use the minority language in contacts with the police, health care services, the post office or the State administration at the local level. It is important that the authorities display a more flexible approach in this respect.

### **Minority language teaching**

23. There are adequate opportunities for pupils belonging to national minorities to receive instruction of or in their mother tongue. The law provides for public financing of all types of schools, both public and private in equal measure. The amount of subsidy for each pupil belonging to a national minority has been increased to one and a half times the applicable subsidy for a pupil in a public school of the same type in the same municipality.

24. Notwithstanding this positive approach demonstrated by the authorities, the Advisory Committee has received reports of significant gaps in the school curricula as regards national minority language teaching as well as teaching the history and culture of minorities and their “kin-States” and that the choice of available textbooks is limited.

### **Participation in public affairs**

25. National minorities continue to demonstrate a strong interest in participation in public affairs. Over four hundred representatives of Belarusian, Lemko, Lithuanian, German and Ukrainian minorities were elected to local councils at all levels. Over thirty representatives of national minorities were directly elected to positions of *voits* (an elected mayor of a rural municipality) and town mayors at the local level. On the national level, legislation creates favourable conditions for the election of minority representatives to the *Sejm* and the Senate by exempting parties of national minorities from the 5% electoral threshold for the allocation of seats. However, given the geographic dispersal of minorities and their relatively small numbers, this provision resulted in the election of just one representative of the German minority to the *Sejm* in the last election in November 2007. The Advisory Committee is concerned that the authorities have not proposed any measures to create the necessary conditions for the political representation of minorities in the *Sejm* and the Senate to reflect more adequately the composition of Polish society.

26. The establishment of the Joint Commission of Government and National and Ethnic Minorities is a welcome development. Its wide consultative prerogatives, including on the allocation of grants, draft legislation, implementation of minority programmes, non-discrimination measures and giving opinions on the exercise of minority rights, enable it to influence significantly the debate on national minority issues and to create an efficient channel of communication with the authorities.



## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 1 of the Framework Convention

#### **Protection of the Rights and Freedoms of Persons belonging to National Minorities Ratification of the European Charter for Regional or Minority Languages**

##### *Present situation*

27. Poland ratified the European Charter for Regional or Minority Languages in February 2009 and this treaty will enter into force in respect of this country on 1 June 2009. In its Declaration contained in the instrument of ratification, Poland declared that the provisions of the Charter shall apply to the following languages of national and ethnic minorities: Belarusian, Czech, Hebrew, Yiddish, Karaim, Lithuanian, Lemko, German, Armenian, Romani, Russian, Slovak, Tatar and Ukrainian and to the regional Kashub language.

### Article 3 of the Framework Convention

#### **Personal scope of application of the Framework Convention**

##### *Findings of the first cycle*

28. In its first Opinion, the Advisory Committee noted that Poland, in a declaration deposited at the moment of ratification of the Framework Convention, stated that only citizens of Poland would be protected by the provisions of this Convention. It encouraged the authorities to consider the inclusion of persons belonging to other groups, including non-citizens, as appropriate, in the application of the Convention on an article-by-article basis. It further reminded the Polish authorities that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

29. The Advisory Committee further urged the Polish authorities to continue their dialogue with the Silesians and to ensure that persons claiming to belong to the Silesian group are able to express their identity.

##### *Present situation*

#### a) Positive developments

30. The Act on National and Ethnic Minorities and on Regional Language of 6 January 2005 provides a definition of a national and ethnic minority in domestic legislation in Poland. The essential difference between the two concepts, according to the Act, is the existence of a “kin-nation” organised in its own State, which is a necessary attribute of a “national” minority as compared to an “ethnic” minority. The Act enumerates nine recognised national minorities (Armenians, Belarusians, Czechs, Germans, Jews, Lithuanians, Russians, Slovaks and Ukrainians) and four ethnic minorities (Karaim, Lemko, Roma and Tatars). The Advisory Committee takes note that, according to the State Report, all provisions of the Act extend to recognised national and ethnic minorities in equal measure.

31. While Kashubs are not considered to be an ethnic minority under the terms of the Act, they are identified as a group of Polish nationals speaking a regional language to whom some language and culture rights contained therein shall apply. The Advisory Committee considers this to be a positive development.

32. As regards the status of Silesians, who are seeking recognition as a minority group, the Advisory Committee is pleased to take note of the open attitude adopted by the Parliamentary National and Ethnic Minorities Committee, which has taken the initiative to organise an open hearing on their identity, linguistic aspirations and national identification. The Advisory Committee is particularly encouraged by the initiative proposed by some members of Parliament to introduce a private members' bill amending current legislation with a view to recognising the Silesian language as a regional language in Poland.<sup>3</sup>

b) Outstanding issues

33. The Advisory Committee acknowledges that the Contracting Parties have a margin of appreciation in determining the personal scope of application of the Framework Convention. It considers, however, that it is part of its duty to examine the personal scope of application given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made.

34. The Advisory Committee notes that there are persons belonging to other groups in Poland that have expressed an interest in the protection of the Framework Convention. The Advisory Committee considers that, while citizenship may be a legitimate requirement in fields such as representation in Parliament, general application of this criterion nevertheless remains problematic in relation to the guarantees associated with other important fields covered by the Framework Convention, such as non-discrimination and equality, as well as certain cultural and linguistic rights.

35. The Advisory Committee has been informed by representatives of Silesians of their ongoing activities, aimed at the recognition of their language, culture and ultimately national identity. The Advisory Committee recalls that the ruling of the European Court of Human Rights which found no violation of the freedom of association by the refusal of the Polish authorities to register the "Union of People of Silesian Nationality" (*Związek Ludności Narodowości Śląskiej*) did not express an opinion on whether or not the Silesians are a national minority.<sup>4</sup>

36. The Advisory Committee regrets that, in spite of the substantial number of persons declaring, in the last census, their Silesian nationality<sup>5</sup> and their use of the Silesian language<sup>6</sup> at home, the legislation adopted in 2005 does not address the issue of the Silesians as a national minority. The Advisory Committee considers it regrettable that the authorities have not considered the matter since the first monitoring cycle.

*Recommendations*

37. The Advisory Committee considers that the authorities should favour a more flexible and open approach to the scope of application of the Framework Convention. It considers that it would be possible to examine, in consultation with those concerned, the possibility of including persons belonging to groups currently not afforded the protection offered by the Act on National and Ethnic Minorities and on Regional Language including non-citizens where appropriate, in

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<sup>3</sup> See page 32 of the Bulletin of the *Sejm* N° 1588/VIkad. Report on the 30<sup>th</sup> Sitting of the Parliamentary National and Ethnic Minorities Committee of 3 December 2008.

<sup>4</sup> See the judgment of 20 December 2001 in the case of *Goźdelik and others v. Poland* and in particular para. 62, as confirmed by the Grand Chamber judgment on 17 February 2004.

<sup>5</sup> 173,153 persons declared Silesian nationality in the 2002 census.

<sup>6</sup> 56,643 persons declared speaking the Silesian language at home in the 2002 census.

the application of the Framework Convention, in particular as regards their linguistic and cultural interests.

38. In particular, the authorities are encouraged to open a dialogue with persons having expressed an interest in the protection afforded by the Convention, such as the Silesians, on the possibility of including them in the scope of application of the Framework Convention. At the same time, the authorities should adopt measures to support the preservation of the culture and identity of those concerned.

### **Data collection and self-identification**

#### *Findings of the first cycle*

39. In its first Opinion on Poland, the Advisory Committee considered that the compulsory nature of the replies to the questions in the 2002 census on ethnic origin and on the language used at home were not compatible with the right not to be treated as a person belonging to a national minority. It also urged caution on the part of the authorities when interpreting the census figures due to allegations of irregularities in the conduct of the census and the reliability of its results.

#### *Present situation*

##### a) Positive developments

40. The Advisory Committee notes that a new population census is scheduled for 2011 in Poland, and that the authorities have already begun preparations for this. The Advisory Committee welcomes the information that the preparation for the census, in as much as it concerns national minorities, were discussed at a meeting of the Joint Commission of Government and National and Ethnic Minorities in September 2008. It is understood that among the questions will be an optional one on ethnic origin (nationality) and on the mother tongue or the language used at home.

##### b) Outstanding issues

41. The Advisory Committee notes that, notwithstanding the compulsory nature of the replies, when the previous census took place, approximately 2% of the interviewees did not give a reply to the question on their ethnic origin. The Advisory Committee emphasizes that, as it results from the principles set out in Article 3 of the Framework Convention, the decision on whether or not to reply is one to be appreciated solely by the persons being questioned. This being said, it wishes to emphasise that reliable information about the ethnic composition of the population is an essential condition for implementing effective policies and measures to protect minorities and for helping to preserve and assert their identity.<sup>7</sup> It therefore considers it essential to prepare and inform the population correctly of the implications and methodology of the census, so that, when the next census is carried out in 2011, a maximum number of persons may give an informed and free reply to the questions relating to their ethnic origin and knowledge and/or use of minority languages.

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<sup>7</sup> See the Advisory Committee's "Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs" adopted on 27 February 2008.

*Recommendations*

42. During the preparatory phase for the next census, the authorities should continue to consult the representatives of minorities about the questions relating to a person's affiliation with a national minority and to his or her mother tongue.

43. The Advisory Committee encourages the authorities to take specific initiatives to include persons belonging to minorities, and persons speaking a minority or a regional language among the census officials. It also encourages the use of bilingual forms during the forthcoming census in the municipalities where a minority language enjoys a "supporting language" status.

44. The authorities should undertake awareness-raising activities among the persons belonging to national minorities well in advance of the next census, in co-operation with minority representatives. These activities should relate to the importance and usefulness of the collection of information about the ethnic composition of the population, as well as about the national safeguards and international standards for the protection of personal data. Ethnic data collection should be conducted in close co-operation with national minority representatives and with full respect for the safeguards, notably those related to the protection of personal data, the specific and limited use of such data by the authorities, and the free, informed and unambiguous consent of the persons concerned, as laid down in the Committee of Ministers Recommendation (97) 18 concerning the protection of personal data.

**Article 4 of the Framework Convention**

**Legal and institutional protection against discrimination**

*Findings of the first cycle*

45. In its first Opinion, the Advisory Committee noted that Poland, having made some progress in adopting anti-discrimination legislation, needed to pursue efforts in this area to ensure that not only the legislative framework prohibiting discrimination in all areas of life is in place, but also that effective remedies are available to victims of discrimination.

*Present situation*

a) Positive developments

46. Article 6 of the Act on National and Ethnic Minorities and Regional Language prohibits discrimination resulting from affiliation with a national or ethnic minority. The Act obliges the public authorities to institute appropriate measures in order to support full and effective equality in the area of economic, social, political and cultural life and to protect those who are targets of discrimination, hostility or violence. Although the prohibition of discrimination contained in Article 6 refers to "national and ethnic minorities" as defined by the Act, the Advisory Committee considers that it is self-evident that persons not covered by the limited scope of this definition are covered by existing anti-discrimination laws. Article 37 of the Constitution of the Republic of Poland guarantees to everyone who is within the jurisdiction of the Polish State, the enjoyment of rights and freedoms enshrined in the Constitution. Article 32 of the Constitution prohibits discrimination for any reason whatsoever in political, social and economic life.

47. The Advisory Committee welcomes the transposition of the European Council Directive on Racial Equality (2000/43/EC) and European Council Directive on Employment Equality (2000/78/EC) into Polish domestic legislation. Notably, the amendments to the Labour Code of

24 August 2001 and 14 November 2003 brought the Polish labour law in line with the respective Equality Directives. The Act on the Promotion of Employment and Labour Market Institutions, adopted on 1 June 2004, also introduces the prohibition of discrimination against job-seekers *inter alia* on the basis of ethnic origin.

48. The Advisory Committee welcomes the establishment in March 2008, of the Bureau of the Government Plenipotentiary for Equal Treatment. The Ordinance establishing the Plenipotentiary obliges it to combat discrimination on the grounds of gender, race, ethnic origin, nationality, religion or belief, political opinion, age, sexual orientation, civil and family status. The Plenipotentiary coordinates the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance.

49. The Advisory Committee is pleased to note the continued active role played by the Ombudsman in raising awareness of minorities' rights and in seeking solutions to outstanding problems. The Advisory Committee welcomes the interventions of the Ombudsman aimed at improving the harsh living conditions of Roma inhabitants in some settlements in the Podkarpackie region. It also welcomes his interventions on behalf of the Ukrainian minority who have sought, for over 18 years, restitution of the Ukrainian National Home in Przemyśl which had been confiscated by the communist regime in 1947 (see comments under Article 5 below). The Advisory Committee further notes the initiative of the Ombudsman to establish minority contact persons within his office in order to encourage the lodging of applications by persons belonging to national minorities.

#### b) Outstanding issues

50. The Advisory Committee notes that no court cases have been initiated thus far based on the provisions of the new anti-discrimination legislation. In this context, the Advisory Committee calls on the authorities to ensure that these provisions do not remain on paper only and that they are implemented in practice.

51. The State Report did not provide specific data, going beyond the information obtained in the census of 2002, other than that concerning the education of minorities. The Advisory Committee is of the opinion that the lack of reliable statistics, disaggregated by age, sex and geographical distribution, especially in the field of employment, leads to increased difficulties in elaborating targeted minority policies. It considers that collecting such statistical data in a way that conforms to international standards on data protection is indispensable to design well-targeted and sustainable measures, which meet the needs of persons belonging to national minorities. The Advisory Committee wishes to emphasise the importance of such data for the preparation, implementation and monitoring of public policies with regard to the protection of minorities and especially disadvantaged groups. Awareness-raising among national minorities of the necessity to collect such data for the elaboration of adequate policies is also desirable.

#### *Recommendations*

52. The Office of the Government Plenipotentiary for Equal Treatment should be given appropriate resources, including the financial means which would allow it to intensify monitoring of alleged cases of discrimination, hostility on ethnic and national grounds and racial or ethnic hatred.

53. The authorities should adopt measures aimed at collecting reliable socio-economic data, disaggregated by age, sex and geographical distribution, in particular in relation to employment, so as to be in a position to elaborate targeted minority policies in this field.

## **Implementation of the principles of equal treatment and non-discrimination in respect of the Roma**

### *Findings of the first cycle*

54. The Advisory Committee encouraged the authorities to make available the necessary resources for the implementation of the Programme for the Roma Community in Poland in full consultation with the Roma community and representatives of civil society.

55. The Advisory Committee also concluded that Roma are discriminated against in the fields of employment and medical care. It called on the authorities to combat discrimination by taking action as regards both the legislative framework and its implementation in practice.

### *Present situation*

#### a) Positive developments

56. The Government continued to implement measures aimed at alleviating difficulties faced by the Roma community in housing conditions, employment, healthcare, safety, culture and education. Building upon the generally positive experience gathered in implementing the Pilot Programme for the Roma Community in the Małopolskie Region in 2001-2003, Poland adopted a ten-year Programme for the Roma Community in 2003-2013.

57. This Programme, composed of projects in all pertinent areas of economic, social, political and cultural life, aims particularly at improving the living conditions and education opportunities of the Roma community (see related comments under Article 15 below).

58. The Advisory Committee is pleased to note the progress achieved in the education of Roma children. The introduction of Roma educational assistants, scholarships specifically earmarked for Roma students and the almost complete abolition of separate Roma classes has contributed significantly to a higher attendance, lower drop-out rate and higher results of Roma children (see related comments under Article 12 below).

#### b) Outstanding issues

59. Despite the progress achieved in some fields, in particular in the schooling of Roma children, the situation of Roma, in respect of health, employment and housing, is still a matter of serious concern. Efforts undertaken in the framework of the National Programme for the Roma Community to improve the living conditions, in particular the roads, water pipes and sewage facilities in some particularly disadvantaged settlements in the Małopolskie Region, have not yielded the anticipated results.

60. The Advisory Committee was deeply concerned to learn that, in the Maszkowice Primary School, Roma children attending one of the few remaining segregated Roma classes were required to use a separate entry to the building. In another instance a Roma educational assistant was not allowed access to the teachers' office. These incidents, while isolated and vigorously condemned by the authorities, are not compatible with the principles enshrined in Article 4 of the Framework Convention.

*Recommendation*

61. The authorities should tackle vigorously any discriminatory practices affecting Roma pupils and teachers, including through public awareness-raising campaigns and training programmes for persons concerned.

**Article 5 of the Framework Convention****Legal guarantees and support for the preservation of the culture of persons belonging to national minorities***Findings of the first cycle*

62. In its first Opinion, the Advisory Committee encouraged the authorities to provide the necessary financial resources for setting up cultural centres, museums and libraries of particular importance to national minorities. It further considered that, with regard to the consequences of the *Operation "Wisła"*,<sup>8</sup> the authorities should step up their efforts to return property confiscated by the communist regime and preserve cultural sites in the traditional areas of settlement in south-east Poland from where Ukrainians and Lemkos were forcibly displaced.

*Present situation*

## a) Positive developments

63. The adoption of the Act on National and Ethnic Minorities and on Regional Language in 2005 created a sound legal basis for a State policy aimed at protecting, preserving and developing the cultural identity of minorities in Poland. The Act enumerates policy objectives which the State should pursue when targeting subsidies, assigning responsibility for disbursement and when establishing procedures for the allocation of grants to minority NGOs.

64. The funds allocated to the Minister of the Interior and Administration, who is responsible for disbursement of subsidies and the allocation of grants to national minority NGOs, have increased considerably in the last few years. In 2006, the grants disbursed to minority NGOs amounted to 10,944,000 PLN (€ 2,809,000),<sup>9</sup> in 2007, to 11,581,000 PLN (€ 3,060,000)<sup>10</sup> and in 2008, to 13,454,000 PLN (€ 3,830,000).<sup>11</sup> The Advisory Committee welcomes the active consultation process, in particular through the Joint Commission of Government and National and Ethnic Minorities, which has been established to make the grant allocation procedure transparent and fair.

65. The Advisory Committee welcomes the continued active support of the Polish authorities to the Museum of Jewish Culture in Tykocin, the Centre of Jewish Culture in Cracow and the initiative to support the construction in Warsaw of the Museum of the History of Polish Jews, in a prestigious location in the direct vicinity of the Monument to the Ghetto Uprising of 1943.

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<sup>8</sup> *Operation "Wisła"* was the codename for the 1947 deportation from south-east Poland of Ukrainian and Lemko populations and their resettlement in the north and west parts of the country. The operation was named after the Vistula River, Wisła in Polish.

<sup>9</sup> Average exchange rate in 2006: 1€ = 3,8960 PLN

<sup>10</sup> Average exchange rate in 2007: 1€ = 3,7843 PLN

<sup>11</sup> Average exchange rate in 2008: 1€ = 3,5128 PLN

b) Outstanding issues

66. In the twenty years that have passed from the fall of the communist regime in Poland, no comprehensive law on the restitution of property has been adopted. Partial restitution or compensation is possible, only on the basis of an administrative decision or a court judgment, in cases where it could be demonstrated that the property was confiscated by the communists unlawfully, i.e. in breach of communist legislation on nationalisation.

67. Partial compensation was afforded, on a case by case basis, to some categories of claimants. Church property claims have been examined and decided upon by “Property Commissions” established on the basis of legislative acts regulating relations between the State and the Church. Persons who were forced to abandon their property in the territories annexed to the USSR at the end of World War II (“property beyond the river Bug”), and who subsequently repatriated to the present territory of Poland, have been able to claim compensation from the Polish authorities on the basis of the “Republican Agreements” between Poland and respectively the Soviet Socialist Republics: Belarus (of 9 September 1944), Ukraine (of 9 September 1944) and Lithuania (of 22 September 1944), as confirmed by the *Broniowski v. Poland* case, adjudicated by the European Court of Human Rights on 22 June 2004.<sup>12</sup>

68. The Advisory Committee notes that no legal framework was ever created to compensate Polish citizens belonging to the Ukrainian and Lemko minorities, who were forcibly resettled to the northern and western parts of the country by the communist regime in 1947. In this context, the Advisory Committee notes that a draft Law on compensation for prejudice suffered as a result of nationalisation acts in the years 1944-1962<sup>13</sup> is currently under consideration.

69. In the last two decades, substantial decentralisation has been undertaken in Poland, with key competencies in the field of zoning by-laws, transport, and transport infrastructure, education, culture, social welfare being transferred to the regional and local authorities. The Advisory Committee welcomes these positive developments which allow democracy to be exercised at local and regional levels. It notes, however, with concern, that according to information obtained from national minority representatives, whereas at the central level the authorities display a positive attitude to national minorities’ requests, there have been occasionally obstacles at the local level, which resulted in persons belonging to national minorities being unable to exercise their rights. In the case of the Ukrainian and Lemko minorities, discriminatory attitudes have been demonstrated by local authorities against the remaining population in places where these national minorities resided traditionally in large numbers before their forcible resettlement in 1947.

70. The Advisory Committee notes with concern that despite the repeated efforts of the Polish Government, including initiatives of the Ministry of the Interior and Administration and of the Parliamentary National and Ethnic Minorities Committee, the local authorities have not returned the Ukrainian National Home in Przemyśl and the Ruska Bursa building in Gorlice to their rightful owners.

71. The Advisory Committee underlines that representatives of several national minorities attach great importance to State support for the development of their cultural activities, in particular to establishing cultural centres. Notwithstanding the increase in the funds allocated by the Minister of the Interior and Administration to protect, preserve and develop the cultural

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<sup>12</sup> Judgment in the case of *Broniowski v. Poland* (Application N° 31443/96)

<sup>13</sup> Draft text of 9 December 2008, accessible on the website of the Ministry of the Treasury



identity of minorities in Poland, the Advisory Committee obtained consistent information from representatives of various minorities that the financial support for cultural projects and institutions remains insufficient and that the accounting, reporting and auditing procedures are impossible to fulfil, especially for small organisations, given the lack of personnel and of financial means, as well as the very strict application of the relevant rules. The Advisory Committee, while fully recognising the necessity to apply the financial regulations in force and to combat corruption at every level, considers that the authorities should take into account staffing and financial problems encountered by the minority institutions, especially the small ones, in implementing publically funded projects.

#### *Recommendations*

72. The Polish authorities should continue their efforts to return properties confiscated by the communist regime to cultural associations of national minorities and to ensure that compensation afforded in the framework of the draft Act on compensation for prejudice suffered as a result of nationalisation acts in the years 1944-1962 will take due account of the claims of Ukrainian and Lemko victims of the *Operation "Wista"* of 1947.

73. The Polish authorities should strengthen their support for initiatives aimed at protecting, preserving and developing cultural identity of minorities, including seeking ways of adapting funding procedures to allow small organisations to compete effectively for grants. In particular, the authorities should ensure that accountancy and other administrative requirements do not result in disproportionate obstacles for national minority organisations applying for State support.

74. Further measures should be developed to assist national minority associations to establish and maintain cultural centres. The authorities should in particular organise appropriate training workshops for representatives of the cultural organisations of national minorities on applicable accounting, reporting and auditing procedures.

### **Article 6 of the Framework Convention**

#### **Tolerance and intercultural dialogue**

##### *Findings of the first cycle*

75. In its first Opinion, the Advisory Committee, while noting Poland's long experience of handling ethnic and cultural diversity, found that negative stereotypes stigmatising some minorities, in particular the Roma but also the Ukrainians and the Germans, continue to appear in the media and within the education system. The Advisory Committee recommended that the authorities take additional steps to promote intercultural dialogue, to sensitise pupils to the existence of national minorities and, as far as possible to promote objective treatment of painful historical events.

##### *Present situation*

##### a) Positive developments

76. The Advisory Committee notes that a general climate of tolerance and understanding between national minorities and the majority prevails in Poland. Polish civil society is engaged in combating xenophobia in many creative ways; through art exhibitions, education and research projects. Since 1998, young Polish people have joined the Jewish teenagers walking in the "March of the Living" in the Auschwitz Birkenau German Nazi Concentration and

Extermination Camp. In the city of Łódź, for years plagued by anti-Semitic graffiti, the Colourful Tolerance Project has for a number of years attempted to create a climate of tolerance and to fight xenophobia and anti-Semitism.

77. The Advisory Committee notes that Poland is experiencing increased migratory movements. According to official figures provided by the Foreigners' Office over eight thousand persons asked for refugee status in Poland in 2008. The majority of them were citizens of the Russian Federation, mostly of Chechen origin. Some NGOs estimate that the number of Vietnamese, Armenian and Turkish immigrants in Poland stands in tens of thousands. In this regard, the Advisory Committee notes that State Parties to the Framework Convention should promote mutual respect, understanding and co-operation among all who live in their territory.

78. The Polish authorities have taken numerous steps to address the painful historical legacy of World War II and its aftermath. In 2006, the Polish and Ukrainian Presidents commemorated the Ukrainian villagers of Pawłokoma in south-east Poland, killed in 1945, by a Polish military group. This followed an earlier commemoration in 2001 of the murder, in July 1941, of the Jewish inhabitants of Jedwabne by some Polish inhabitants of the town.

79. The Plenipotentiary for Equal Treatment has been entrusted with the coordination of the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance (2004-2009). In the framework of this Programme, a wide range of training activities, publications and other awareness-raising activities, aimed at public administration, local authorities and law enforcement bodies, have been implemented. The Advisory Committee welcomes these efforts and encourages the authorities to continue the programme beyond 2009 and to expand further training and awareness-raising activities in order to ensure that law-enforcement officers and public officials are well equipped for working in a multicultural environment.

80. The National Programme for the Roma Community in Poland, which the authorities have been implementing since 2004, aims *inter alia* at preventing racist offences against Roma.

#### b) Outstanding issues

81. The Advisory Committee has been informed, in particular by representatives of the Lithuanian and Ukrainian minorities, that certain local representatives continue to make provocative statements, conditioning respect for minority rights on reciprocity to be applied to the "kin-minority" by the neighbouring State, or by the local authorities on the other side of the border. The Advisory Committee finds such practices unacceptable and recalls in this context that it is every State Party's obligation to apply the Framework Convention in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States, and that in no circumstances should policies in respect of national minorities be contingent on inter-State relations.

#### *Recommendations*

82. The authorities should increase their efforts to raise public awareness of the history and cultural heritage of the various ethnic and religious groups.

83. The authorities should make further efforts to combat the subsisting manifestations of intolerance, racism, anti-Semitism and xenophobia in society.

84. The authorities should ensure that adequate efforts are made at all levels, i.e. central, regional and local to implement the obligations undertaken by Poland under the Framework Convention, and avoid conditioning respect for minority rights on reciprocity with bordering States.

85. In order to enhance a spirit of tolerance, intercultural dialogue and co-operation in society, the Advisory Committee encourages the authorities to take an inclusive approach in the application of the Framework Convention and to consider extending the protection of specific provisions of the Convention to persons belonging to groups that are not covered as such by the Convention, including, as appropriate, non-citizens (see related comments in paragraphs 34 and 37).

### **Efforts to combat hostility or violence on ethnic grounds**

#### *Findings of the first cycle*

86. The Advisory Committee recommended that the authorities strengthen legislative and other measures to combat production and dissemination, in electronic or written form, of works that are clearly anti-Semitic, insulting or offensive to particular national minorities or which incite racial hatred. The Advisory Committee considered that criminal provisions on the “absence of significant social harm” should be handled with extreme caution in such cases.

#### *Present situation*

##### a) Positive developments

87. A number of institutional measures were taken in Poland to combat hostility or violence on ethnic grounds. In 2003, the Prosecutor General appointed a Prosecutor in the Bureau for Preparatory Proceedings of the National Prosecutor’s Office to coordinate legal measures taken in connection with offences involving the violation of freedom or incitement to hatred motivated by race, ethnicity, nationality or religion. In 2004, a team for Monitoring Racism and Xenophobia was established within the Ministry of the Interior and Administration. Also in 2004, Plenipotentiaries for Human Rights Protection were appointed within the General Headquarters of the Police in all 16 Regions, in the Warsaw Metropolitan Police headquarters and in all police schools.

88. The Bureau for Preparatory Proceedings of the National Prosecutor’s Office monitors the number of offences committed with a racial or xenophobic motive and analyses trends in this context.

##### b) Outstanding issues

89. The Polish electronic media, according to the information provided by the Plenipotentiary for Equal Treatment, are not monitored for the dissemination of programmes containing racist, xenophobic or anti-Semitic content. Materials in electronic or written form that are insulting or offensive to particular national minorities or which incite racial hatred continue to be readily available from numerous book-sellers. Additionally, they are accessible on a host of websites in full view of the prosecuting bodies, which seldom take any action.

90. An amendment to Article 256 of the Criminal Code, aimed at extending and strengthening penalties for the production, acquisition, possession or distribution of works inciting racial, ethnic or religious hatred and which would make it easier for the authorities to

confiscate such works, was being considered by the *Sejm* at the time of the drafting of the first Opinion by the Advisory Committee, but was not enacted.

91. The Advisory Committee is deeply concerned by the number of racist and anti-Semitic incidents which continue to be reported by national minority and human rights organisations. In 2007, the Foundation for the Preservation of Jewish Heritage in Poland reported to the police and the prosecutors' offices 14 cases of anti-Semitic acts ranging from anti-Semitic graffiti, and destruction of tomb-stones in Jewish cemeteries to incitement to racial hatred on the internet and shouting of anti-Semitic slogans and insults at public gatherings.

92. Official figures provided by the Bureau for Preparatory Proceedings of the National Prosecutor's Office confirm the information provided by the Foundation for the Preservation of Jewish Heritage in Poland. According to these figures, there has been a significant increase in the number of racially-motivated incidents in the last few years. One hundred and twenty-three such cases (ninety-eight of them new) were investigated in 2008 by Prosecutors' Offices in Poland, as compared to sixty-two cases (forty-one of them new) in 2007 and sixty (forty-eight new) in 2006. The number of cases brought before the courts has also increased from twelve in 2006, and from nineteen in 2007 to twenty-eight in 2008. While the number of unresolved cases remains rather high (twenty-four out of one-hundred and two closed cases in 2008), no single case of a crime committed with a racial or xenophobic motive has been discontinued on the account of "absence of significant social harm".

93. The Advisory Committee is concerned by reports indicating that racism and anti-Semitism continue to plague Polish football stadiums. According to reliable media reports, racist and anti-Semitic chants, slogans and gestures rarely evoke any reaction on the part of the players, referees, the Polish Football Union or the law enforcement bodies. The Advisory Committee notes with concern that measures to combat racist acts advocated by the European Commission against Racism and Intolerance (ECRI)<sup>14</sup> and already spelled out in Recommendation Rec(2001)6 of the Committee of Ministers of the Council of Europe to member States on the prevention of racism, xenophobia and racial intolerance in sport have not been applied in Poland. Such measures include expulsion from the stadium, cancellation of any season tickets, ban on future access, and matches played behind closed doors.

#### *Recommendations*

94. The authorities should step up their efforts to combat all manifestations of intolerance, racism, anti-Semitism and xenophobia. In particular, the Advisory Committee urges the authorities to take further legislative measures and policies to combat racist manifestations in the media, in the spirit of the Committee of Ministers' Recommendation N° R(97)20 on "Hate Speech".

95. While fully respecting the editorial independence of the media, the authorities should take the necessary steps to prosecute incitement to ethnic or religious hatred, so as to prevent such breaches in the future. Due attention should be paid to the existing codes of ethics of the media and journalists.

96. The authorities should intensify awareness-raising measures for law enforcement officials, the media, and the judiciary on tolerance and anti-discrimination issues.

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<sup>14</sup> See ECRI General Policy Recommendation N°12 on Combating Racism and Racial Discrimination in the Field of Sport, adopted on 19 March 2009

97. The Advisory Committee encourages the authorities to ensure that more vigorous action is taken to prevent, investigate and prosecute perpetrators of offences committed with racial, anti-Semitic or xenophobic motives and to provide for constant monitoring of this phenomenon within society.

98. The authorities should take decisive action against racist and anti-Semitic acts perpetrated prior, during and after football matches in the spirit of the Committee of Ministers Recommendation R(2001)6 on the prevention of racism, xenophobia and racial intolerance in sport. The Advisory Committee also encourages the authorities to increase public-awareness of the problem and encourage fans to condemn racist attitudes and behaviour.

### **Memorials to war victims**

99. In its first Opinion, the Advisory Committee noted that erecting and/or renovating memorials to war victims was a source of tension. It encouraged the authorities to continue dialogue with minorities and to adopt a non-discriminatory approach particularly as regards language requirements pertaining to inscriptions.

#### *Present situation*

##### a) Positive developments

100. At present preservation, renovation and erection of memorials to war victims in Poland is regulated by international law, bilateral agreements between Poland and her neighbours and partially by the Law of 21 January 1988 establishing the Council for the Protection of Memory of Combat and Martyrdom. The Council's approval is required on the text and language of inscriptions, the symbols used and the design of the monument.

101. In the Opolskie and Śląskie regions where, as the Advisory Committee noted in its first Opinion, there were tensions between the authorities and representatives of the German minority caused by the erection and/or renovation of memorials to war victims, mutually satisfying solutions have been found. Each year, remains of around six thousand German soldiers killed in World War II are exhumed and properly buried in military cemeteries constructed in co-operation with the German War Graves Commission (*Volksbund Deutsche Kriegsgräberfürsorge*).

102. In south eastern Poland, a number of memorials, whose construction for years was a subject of controversy, were erected to commemorate victims belonging to national minorities killed by Polish military or para-military formations during World War II and in its aftermath. Similar memorials to Ukrainian victims were erected in Pawłokoma and Piskorowice and are planned in Sahryń and to Belarusian victims in Białystok.

##### b) Outstanding issues

103. The erecting and renovation of memorials to war victims continues to cause tensions between the Government and representatives of some minorities, particularly in relations with Ukrainians wishing to erect memorials in Bircza, Liszna, Kalisz, Łańcut and Terki. Such tensions also occur with Lithuanians and Slovaks who (as the Advisory Committee learned from their representatives, media reports and transcripts of the sitting of the Parliamentary National and Ethnic Minorities Committee)<sup>15</sup> find inscriptions on the memorials to the Polish war victims

<sup>15</sup> See Bulletin of the *Sejm* N° 957/VIkad. Report on the 19<sup>th</sup> Sitting of the Parliamentary National and Ethnic Minorities Committee of 10 July 2008.

erected in Berżniki and Zakopane not conducive to reconciliation and improved inter-ethnic community relations.

104. According to information provided by representatives of national minorities, the position taken by the Council for the Protection of Memory of Combat and Martyrdom as regards inscriptions, symbols and designs of monuments was subject to criticism within minority communities and in the media. The Advisory Committee notes in this context, that a legislative change is currently being considered by the *Sejm*, which would abolish this Council and establish an Office for the Protection of Places of National Remembrance.

#### *Recommendations*

105. The Advisory Committee urges the Polish authorities to deal with the erection and/or renovation of memorials by promoting a continuing dialogue, including consultation with the representatives of the national minorities concerned. Furthermore, the Polish authorities are encouraged to adopt a non-discriminatory approach particularly as regards language requirements of inscriptions.

106. The draft law, establishing the Office for the Protection of Places of National Remembrance, should be discussed with the Joint Commission of Government and National and Ethnic Minorities and the Parliamentary National and Ethnic Minorities Committee. The spirit of the law should reflect the recommendations made in the Parliamentary Assembly Resolution 1652 (2009) on the Attitude to memorials exposed to different historical interpretations in Council of Europe member states.

### **Article 8 of the Framework Convention**

#### **The right to manifest religion or belief**

##### *Findings of the first cycle*

107. In its first Opinion, the Advisory Committee noted that several minorities have a different religion from the majority of the Polish population and called on the authorities to take that dimension sufficiently into account when deciding upon measures and policies intended for these national minorities.

##### *Present situation*

###### a) Positive developments

108. The Advisory Committee has been informed that in the Podlaskie Region, in the areas inhabited traditionally by the Belarusian minority, most school calendars take due account of the Orthodox holidays, which is the religion of the majority of persons belonging to the Belarusian minority. The Advisory Committee welcomes the positive attitude displayed, for example by the University of Białystok and the Białystok Polytechnic which close for Easter and Christmas, as celebrated according to the Julian calendar.<sup>16</sup>

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<sup>16</sup> The Julian calendar used by the Orthodox Church is also used by the Greek Catholic Church, to which a large number of persons belonging to the Ukrainian national minority living in Poland belong.

## b) Outstanding issues

109. Article 42 of the Act on Guarantees of Freedom of Conscience and of Religion of 17 May 1989 specifies that persons belonging to churches and other faith communities,<sup>17</sup> which celebrate religious holidays on days which are not by law non-working days, may at their request be given time off work or study, on the condition that they work on another day to compensate for the absence from work. The Advisory Committee has been informed by a representative of the Karaim minority, that in practice, this right was not respected with regard to their community.

110. The obligation to work on another day to compensate for the absence from work on religious holidays which are not by law non-working days is perceived by some persons belonging to national minorities as an infringement of their freedom of religion, as no corresponding obligation is placed on the persons celebrating Roman Catholic holidays, which are by law public holidays. Also, the Advisory Committee has been informed that compulsory exams and tests are being organised on the religious holidays celebrated by religious communities of which the national minorities are largely members.

111. The Advisory Committee appreciates that the authorities are aware of the problem and have engaged in discussions with representatives of the minorities concerned. The Advisory Committee welcomes the open approach taken by the Government and the ongoing discussion within the Joint Commission of Government and National and Ethnic Minorities and the Parliamentary National and Ethnic Minorities Committee aimed at finding a suitable solution to this problem.

### *Recommendation*

112. The authorities are encouraged to continue the dialogue with representatives of churches and national minorities celebrating religious holidays on days which are not by law non-working days in order to find appropriate solutions to offer persons belonging to national minorities equal opportunities to benefit from their right to manifest their religion or belief.

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

### **Legislation on television and radio broadcasting in minority languages**

#### *Findings of the first cycle*

113. In its first Opinion on Poland, the Advisory Committee found that there was a general wish on the part of representatives of several national minorities to receive more broadcasts in their own languages. The Advisory Committee encouraged the authorities to address the existing shortcomings in the geographical cover of broadcasting.

114. The Advisory Committee considered that the authorities should pay more attention to involving persons belonging to national minorities in the preparation of programmes for national minorities and/or in the bodies which supervise these programmes.

#### *Present situation*

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<sup>17</sup> 151 religious denominations are registered in Poland. Relations between the State and the Roman Catholic Church are governed by the Concordat. Relations with 15 other churches are regulated by specific legislative acts, 12 of which were adopted after the fall of the communist regime in Poland.

a) Positive developments

115. The Advisory Committee notes that the Polish public radio and television services continue to broadcast programmes addressed to national minorities, including in the languages of national minorities. The Act on Radio and Television Broadcasting of 1992 was amended in 2004 to oblige public broadcasters to broadcast information programmes in the languages of national minorities. The Act also obliges directors of regional branches of public radio and television services to consider applications from persons representing national minorities when establishing programming councils.

116. According to the information provided by the National Broadcasting Council, in its Report for 2007, twelve regional branches of public radio broadcast 1302 hours of programming in national minority languages, equivalent to 0,9% of air-time, and 216 hours of programming on national minorities in the Polish language. The country-wide transmitter broadcasts 50 hours of programming on national minorities in Polish. In addition to public radio stations broadcasting programmes in national minority languages, a number of private radio stations broadcast all or part of their programmes in national minority languages.

117. The Advisory Committee also notes that, according to the same source, the country-wide public television service has not broadcast programmes on national minorities or in the languages of national minorities. However, all 16 regional branches of public television broadcast 334 hours of programming in national minority languages, equivalent to 0,3% of air-time. Almost half of this air-time was allocated to programmes broadcast in the Ukrainian language.

118. The printed media of national minorities continue to be published with the support of the Polish authorities. In 2006, subsidies allocated to publications in national minority languages amounted to € 802.000.

b) Outstanding issues

119. The Advisory Committee has taken note of the national minorities' concern with respect to the marginalisation of programming for national minorities and the lack of dialogue between the bodies of the public broadcasting service and minority representatives. The Advisory Committee notes with regret that, according to information obtained from national minorities, despite legislative provisions to that effect, no representatives of national minorities have been appointed to the programming councils in those regions where national minorities live traditionally in large numbers. By way of example, it has been observed that, in the broadcasting council of the Opole branch of the public radio, there is no representative of the German minority; in the Olsztyn broadcasting councils for public radio and television, there are no representatives of the Ukrainian minority and there is no representative of the Kashubs present either in the regional Gdańsk radio broadcasting council, or in the TV broadcasting council.

120. The Advisory Committee has also taken note of the national minorities' concern with respect to broadcasting times (usually very early in the morning or late at night) of programmes destined for their communities and of the inadequate coverage by the regional broadcaster of the areas inhabited traditionally in large numbers by national minorities. In the southern part of the Podlaskie region, inhabited by a substantial number of persons belonging to the Ukrainian minority, it is impossible to receive the programmes in Ukrainian transmitted from Białystok, and the Lublin radio-station, whose signal covers this region, does not transmit such programmes.



121. The Advisory Committee is concerned that, given the dispersal of the Ukrainian minority and the number of regional branches transmitting programmes in Ukrainian, the great majority of regional branches of public television in Poland transmit on average no more than seven minutes per week of programming in this language.

122. Another issue of concern is the inconsistent approach to financing the production of minority programmes. Whereas Article 21.1(8a) of the Act obliges the public radio and television services only to broadcast information programmes in the languages of national minorities, the practice which has evolved in the years since the adoption of the Act, has led in addition to the public radio and television services financing the production of such programmes. The Advisory Committee notes with concern that, in at least one instance, there was an attempt to change the current practice by asking national minorities to produce programmes using their own financial resources.

123. Various sources, including the representatives of national minorities, have informed the Advisory Committee about the Government's legislative initiative aimed at changing the Act on Radio and Television Broadcasting of 1992. They have underlined the importance of maintaining provisions obliging the public radio and television services to broadcast programmes in the languages of national minorities in any future legislation.

#### *Recommendations*

124. The authorities should ensure that national minorities are represented in public radio and television broadcasting councils, especially in those regions where they live in substantial numbers.

125. The authorities are encouraged to increase their efforts to ensure access of persons belonging to national minorities to the radio and television programmes aimed at them, and in particular to take the necessary measures to provide adequate radio and television coverage of the regions where national minorities live.

126. The authorities should consult with the Joint Commission of Government and National and Ethnic Minorities on any changes to the Act on Radio and Television Broadcasting of 1992 affecting national minorities, in line with the provision of Article 23.2(3) of the Act on National and Ethnic Minorities and on Regional Language. In addition, they should duly ensure that any changes introduced do not contravene the provisions of the Framework Convention.

### **Article 10 of the Framework Convention**

#### **Use of minority languages in relations with administrative authorities**

##### *Findings of the first cycle*

127. In its first Opinion, the Advisory Committee noted that the Polish legal order did not provide for the use of minority languages in relations between persons belonging to national minorities and the local administrative authorities and considered that this situation was not compatible with Article 10, paragraph 2, of the Framework Convention. The Advisory Committee urged the authorities to remedy this legislative shortcoming and to assess, in consultation with national minority representatives, the real needs and requests of minorities in this matter.

*Present situation*

a) Positive developments

128. The Advisory Committee welcomes the adoption of the Act on National and Ethnic Minorities and on Regional Language of 2005 which introduced *inter alia* a guarantee of the right to use freely minority languages in private and public life. Article 9 of the Act specifically introduces the possibility of using the minority language as “supporting language” in relations between persons belonging to national minorities and the municipal authorities, in the municipalities (*gmina*)<sup>18</sup> where the number of persons having declared their affiliation with a national minority in the last population census is not lower than 20% of all residents. The Act establishes the procedure which must be followed by the municipality wishing to introduce the “supporting language” and the registration procedure in the Official Register of Municipalities where a Supporting Language is Used.

129. The Advisory Committee notes that of the total of 2,478 municipalities in Poland, fifty-one meet the statutory 20% minority threshold requirement. There are twelve such municipalities inhabited by persons belonging to the Belarusian minority, one municipality inhabited by the Lithuanian minority, 28 municipalities inhabited by the German minority and 10 municipalities inhabited by persons speaking the Kashub language.

130. The Advisory Committee welcomes the fact that in the years 2006-2008, twenty-one municipalities introduced the minority “supporting language” in relations between the municipal authorities and persons belonging to national minorities. Seventeen of these municipalities (all of them located in the Opolskie Region) introduced the German language, two municipalities in the Pomorskie Region introduced the Kashub language, the Municipality of Puńsk in the Podlaskie Region introduced the Lithuanian language and the Municipality of Hajnówka, also in the Podlaskie Region, introduced the Belarusian language as a “supporting language”.

b) Outstanding issues

131. The current legislative framework and the practical measures for its implementation constitute significant progress with regard to the use of minority languages in relations between persons belonging to national minorities and the administrative authorities. However, the Advisory Committee notes that, four years after the entry into force of the Act on National and Ethnic Minorities and on Regional Language, less than half of the municipalities meeting the required 20% threshold introduced the minority language as the “supporting language”. For example, the Belarusian language has been introduced in only one of the twelve municipalities which meet the legislative criteria.

132. The Advisory Committee notes that the Act stipulates that the entry of a municipality in the Official Register of Municipalities where a Supporting Language is Used, is done on the basis of a resolution of a Municipal Council. It follows from this provision that the 20% threshold does not automatically qualify the municipality to be listed. It is only a pre-condition for the Municipal Council to address the issue, and to allow for a motion to go to a vote which must be approved by a simple majority in the Municipal Council to become effective.

133. The right to use the “supporting language” entails, in accordance with the Act, the right to apply to the municipal authorities orally or in writing and to obtain an answer, orally or in

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<sup>18</sup> “*Gmina*” is the smallest territorial unit in Poland.

writing, in the “supporting language”. In practice, this restrictive interpretation of the right to use the “supporting language”, while allowing for the use of the minority language in contacts with municipal authorities, does not provide for the right to use the minority language in contacts with the police, health care services, the post office or the State administration at the local level.

134. The Advisory Committee has been informed by representatives of national minorities and of local authorities that no official documents can be delivered by the municipal authorities in the “supporting language”. In practice, this restrictive interpretation limits the right to use the “supporting language” to written cover letters only, with all the certified documents being delivered, as before, in the Polish language.

135. The Act allows for the granting of a salary supplement to municipal employees whose command of the “supporting language” is recognised officially. However, from the information obtained by the Advisory Committee, it seems that, in practice, no municipalities pay out these supplements due to financial constraints.

### *Recommendations*

136. The authorities should review the legislative and practical situation of the use of minority languages in relations with administrative authorities, on the basis of the experience gathered in the last four years, in particular as regards the number of municipalities which have introduced a “supporting language”.

137. The Advisory Committee also calls upon the authorities to provide for, in particular, the possibility to deliver upon request certified documents in the “supporting language” and to consider extending the application of the provisions on “supporting language” to cover all branches of administration at local level, including such essential areas as the police, health care services, the post office or the State administration at the local level. They are also encouraged to consider ways to introduce, where appropriate, the minority languages as support languages in municipalities that do not meet the numerical threshold established by the law.

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

### **Personal names**

#### *Present situation*

##### a) Positive developments

138. Prior legislation guaranteeing and determining the conditions of changing a surname and a first name into a version consistent with the original wording and spelling in the relevant minority language (Act on the Change of Names and Surnames of 1956 and art. 23 of the Civil Code of 1963 with later amendments) was strengthened by the adoption, in 2005, of the Act on National and Ethnic Minorities and on Regional Language. Article 7 of this Act guarantees to persons belonging to national minorities the right to use and spell, in the official register and identity documents, their first and last names according to the spelling rules of their respective minority language.

139. On 30 May 2005, the Minister of the Interior and Administration issued a regulation on transcription of first and last names of persons belonging to national and ethnic minorities, written in an alphabet other than Latin.

b) Outstanding issues

140. Although these legislative provisions have been well received by national minorities, the Advisory Committee notes that, according to the information obtained from national minority representatives, occasionally Civil Registry officials are not aware of the right of persons belonging to national minorities to use and spell their first and last names according to the spelling rules of their respective minority language in the official register and identity documents.

141. The Advisory Committee also notes that the regulation on transcription of first and last names of 2005 does not cover languages which use the Latin alphabet with language-specific diacritical marks (such as Czech, German, Lithuanian and Slovak). Consequently, according to the information provided by representatives of national minorities, there are still difficulties with spelling names correctly in some of the national minority languages.

*Recommendations*

142. The authorities should increase awareness among Civil Registry officials of the right of persons belonging to national minorities to use and spell in the official register and identity documents their first and last names according to the spelling rules of their respective minority language. This would also ensure that persons belonging to national minorities can effectively exercise the right in Article 11, paragraph 1, of the Framework Convention.

143. The authorities should ensure that the rights of persons belonging to national minorities to use and spell their first and last names according to the spelling rules of their respective minority language in the official register and identity documents is fully respected.

**Bilingual topographical indications and other inscriptions**

*Findings of the first cycle*

144. In its first Opinion, the Advisory Committee noted that there was no legal basis in Polish law allowing the display of traditional local names, street names and other topographical indications intended for the public in minority languages. The Advisory Committee considered that the existing legal framework was not compatible with Article 11, paragraph 3, of the Framework Convention and urged the Polish authorities to remedy this legislative shortcoming.

*Present situation*

a) Positive developments

145. The Advisory Committee notes that the Act on National and Ethnic Minorities and on Regional Language of 2005 filled the existing legal void by allowing the display in minority languages of traditional local names, street names and other topographical indications intended for the public. Articles 12 and 13 lay down the modalities for displaying, alongside a Polish name, the place-names of towns, villages and other localities, street names and other topographical indications in a minority language. The Act sets out conditions and a procedure for entering in the Official Register of Municipalities on whose Territory Names in a Minority Language are Used, the municipalities or specific localities located in a municipality where the number of persons declaring belonging to a national minority is not lower than 20% of the local population.

146. The Advisory Committee notes with satisfaction that in the years 2006-2008, nineteen Municipalities, in which 288 towns and villages are located, have applied and been entered in the Official Register of Municipalities on whose Territory Names in a Minority Language are Used. Fifteen of these municipalities, located in the Opolskie and Śląskie regions, display place names in the German language, two municipalities in the Pomorskie region display place names in the Kashub language, one municipality in the Podlaskie region in the Lithuanian language, and one village in the Podkarpackie region in the Lemko language.

147. The Minister of Infrastructure issued a regulation in 2005, stipulating that, in respect of signs and boards with a single place-name in Polish, the additional name in the minority language should be presented in letters of the same size as the Polish name letters. If the signs and boards present more than one place-name in Polish, the additional names in the minority language should be presented in letters smaller by one-fourth than the letters in the Polish name. Additional names should be presented using an alphabet specific to the minority language including diacritical marks used in that language. According to the information provided in the State Report, the cost of establishing additional names is divided between the State budget and that of the local self-government.

148. Street names can be displayed in a national minority language alongside the Polish name in the municipalities meeting the 20% threshold upon a vote of the Municipal Council, in accordance with the Act on Local Self-government of 8 March 1990.

#### b) Outstanding issues

149. The Advisory Committee notes that the specific name to be used in the language of the national minority, and entered in the Official Register of Municipalities on whose Territory Names in a Minority Language are Used, is decided by the Minister of the Interior and Administration, following a consultation with the Committee on Names of Places and Topographical Indications established by an Act of 29 August 2003 on the Official Names of Places and Topographical Indications. The Advisory Committee takes note of the prohibition of the use of names used in 1933-1945, given by the authorities of the German Third Reich and the Soviet Union.

150. The Advisory Committee notes that, whereas in accordance with Article 9 of the Act on the Official Names of Places and Topographical Indications of 2003, a Register of Official Names of Places has been established in the prescribed time limit of five years from the entry into force of the Act, there is no corresponding Register of Official Names of Topographical Indications, which is due to be completed by 2013.

151. According to the information which the Advisory Committee obtained from representatives of national minorities, the non-existence of the Register of Official Names of Topographical Indications creates a practical obstacle to placing such signs in a minority language.

152. Also, according to the information provided by representatives of national minorities, the aforementioned Official Register of Municipalities is used only to change the display of names of places on local roads. The signs on highways, national and regional roads are not changed accordingly.

*Recommendations*

153. The authorities should pursue their efforts to complete and publish the Register of Official Names of Topographical Indications to ensure that persons belonging to national minorities can effectively exercise the right protected in Article 11, paragraph 3, of the Framework Convention.

154. The authorities are encouraged to ensure that registering a municipality, or specific locality in that municipality, in the Official Register of Municipalities on whose Territory Names in a Minority Language are Used, results in changes to displays of names of places on all categories of roads located in the municipality or specific locality.

**Article 12 of the Framework Convention**

**Intercultural dimension of education**

*Findings of the first cycle*

155. In its first Opinion, the Advisory Committee recommended that the authorities should take further steps to increase the multicultural content of the school curriculum which all too often seemed to present Poland as an ethnically and linguistically homogeneous country.

*Present situation*

a) Positive developments

156. The current school curricula for pupils of all ages, introduced by the Regulation of the Minister of Education and Sport of 26 February 2002, set up a module on regional education and regional cultural heritage, which is taught in the framework of courses on literature, history, civic education, geography and art. This module aims to raise awareness of pupils to the historical, social and cultural aspects of the role of national minorities and their contribution to Polish society. An overwhelming majority of schools in Poland organise every year in May a "European Day" to celebrate multiculturalism and the diversity of cultural heritage of the European Union states. The Advisory Committee welcomes these initiatives which raise public awareness of national minorities and of their rich cultural heritage.

b) Outstanding issues

157. The Advisory Committee notes that in the current school curricula teaching of the history, culture and traditions of national minorities and their contribution to Polish society is a non-compulsory subject introduced on an *ad-hoc* basis in the framework of the module on regional education. This approach does not guarantee that even basic information on the history, culture and traditions of national minorities will be taught to all students in Poland.

*Recommendation*

158. The authorities should review the existing textbooks and the compulsory curriculum in consultation with minority representatives, with a view to ensuring a better reflection of the history, culture and traditions of national minorities.

## **Roma children in schools**

### *Findings of the first cycle*

159. The Advisory Committee found that the situation regarding the education of the Roma, and in particular the maintenance of “Roma classes” which were not designed specifically to develop the Roma language and culture, but rather appeared to perpetuate a form of separation, gave rise to deep concern. The Advisory Committee considered that the objective of the authorities should be to integrate Roma pupils into mainstream classes and to increase support for pre-school education for Roma children.

### *Present situation*

#### a) Positive developments

160. The Advisory Committee notes that the stated policy of the Polish authorities is to eliminate all remaining “Roma classes” and to integrate all Roma pupils into mainstream education. Significant progress has been achieved in this field, in particular through the introduction of Roma educational assistants and scholarships specifically earmarked for Roma students. Financial support has been earmarked for supplying Roma pupils with textbooks, school accessories, tickets for transport and accident insurance.

161. These measures, undertaken first in the framework of the Pilot Programme for the Roma Community in the Małopolskie Region in 2001-2003, followed by the country-wide ten-year Programme for the Roma Community in 2003-2013 led to a higher attendance rate, lower drop-out rate and better academic achievement results.

#### b) Outstanding issues

162. Various sources, including the Roma minority representatives, indicated to the Advisory Committee that the knowledge of Roma history, culture and traditions among teachers remains low. Also, according to the same sources, no efforts are made to teach majority students about the Roma and their contribution to Polish society. The lack of awareness of the Roma presence and of the contribution of Roma to society as a whole can lead to a prejudiced and stereotypical portrayal of its members, which consequently hinders the successful integration of Roma into mainstream society.

163. The Advisory Committee notes with deep concern that cases of discrimination, and the lack of any reaction at the local level, point to a disturbing complacency and condoning of discrimination within some groups in society. One example is the segregation of Roma pupils reported in the Maszkowice Primary School where they were required to use a separate entry to the building (see related comment under Article 4 above, paragraph 60).

### *Recommendations*

164. The authorities should take without delay specific measures to eliminate all separate “Roma classes” and to integrate Roma pupils into mainstream education. The situation at all levels should be closely monitored in order to avoid segregation based on ethnic affiliation.

165. The Advisory Committee calls on the authorities to make more sustained efforts to promote the Roma language, culture and traditions, and to portray a more positive image of Roma identity among other children, families and teachers.

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

### **Private education for national minorities**

#### *Outstanding issues*

166. The Advisory Committee notes that, following the closure of several small village schools in the Municipality of Sejny, the Lithuanian community established a private school (kindergarten, primary, and secondary) with Lithuanian as the language of education. The legislation in Poland provides for public financing of all types of schools, both public and private established by local authorities, legal persons and private individuals. In accordance with the Regulation of the Minister of National Education of 21 December 2007 on the allocation of part of the education subsidy to local authorities in 2008, private schools receive from the Ministry of National Education the same amount of subsidy for each pupil enrolled as public schools run by the local authorities. The amount of subsidy for each pupil belonging to a national minority has been increased to one and a half times the applicable subsidy for a pupil in a public school of the same type in the same municipality. The Advisory Committee notes, that, according to the information provided by the representatives of the Lithuanian minority, the amount of education subsidies transmitted by the Municipal Council in Sejny is insufficient and the method for its calculation is not transparent.

#### *Recommendation*

167. The Advisory Committee calls on the authorities to examine the situation with regard to the allocation of subsidies in education and find solutions to ensure that the legislative provisions in force are effectively implemented, without discrimination.

## **Article 14 of the Framework Convention**

### **Minority language teaching**

#### *Findings of the first cycle*

168. In its first Opinion, the Advisory Committee noted that there are in Poland both legal guarantees and many opportunities available to persons belonging to national minorities for receiving instruction of and in their languages, in one form or another, as part of the public education system. The Advisory Committee also found that notwithstanding precise minimum requirements for establishing minority classes, the position was less clear as regards the closure of such classes. It urged the authorities to pay due attention to the existing thresholds and the needs of persons belonging to national minorities in this matter.

#### *Present situation*

##### a) Positive developments

169. The Act on National and Ethnic Minorities and on Regional Language of 6 January 2005 confirmed the existing guarantee, based on Article 13 of the Act on the System of Education of 7 September 1991, of the right of persons belonging to national minorities to



learn their minority language. Furthermore, on 14 November 2007, the Minister of National Education issued a Regulation on the teaching of minority languages, history and culture.<sup>19</sup>

170. Teaching of a minority language as a mother tongue is organised at the primary and lower-secondary level at the written request of the parents of seven pupils and at upper-secondary level at the request of the parents of 14 pupils.

171. In spite of the general demographic decrease, the number of national minority pupils receiving instruction of and in their language, remains stable in Poland, standing at 32,333 pupils in primary schools and 13,140 pupils in lower-secondary schools for the school year 2007/2008. The Advisory Committee is pleased to note that, for each pupil belonging to a national minority the amount of subsidy is increased to one and a half times the applicable subsidy for a pupil in a public school of the same type in the same municipality.

172. Of the 535 primary schools providing instruction of and in minority languages in the school year 2007/2008, there were 2 schools teaching Armenian, 27 - Belarusian, 261 – German, 2- Hebrew, 126 – Kashub language, 22 – Lemko, 10 – Lithuanian, 6 – Slovak and 79 – Ukrainian. Out of the total of 205 lower-secondary schools, the figures were: 14 schools teaching Belarusian, 87 – German, 2 – Hebrew, 37 – Kashub, 12 – Lemko, 4 – Lithuanian, 2 – Russian, 3 – Slovak and 44 – the Ukrainian language.

173. The Advisory Committee notes the growing number of pupils learning the Kashub language and welcomes the progress on elaboration, publication and printing of textbooks and other manuals in this language.

#### b) Outstanding issues

174. The Advisory Committee notes that the number of pupils receiving instruction of or in minority languages drops significantly in upper-secondary schools with 1,499 pupils continuing such education in 22 schools only. The main reason for this, according to the information provided by the authorities, is the fact that the pupils belonging to national minorities, just like the pupils belonging to the majority, when choosing a type of upper-secondary school, are motivated primarily by their interest and academic ability. This leads to choosing schools which are located some distance from the home environment. As a consequence, the requirement of 14 pupils is more difficult to meet and, in the absence of the corresponding subsidy,<sup>20</sup> organising minority language tuition is impossible.

175. According to the information provided by the representatives of the German minority, the obligation to pass a foreign language exam at the end of lower-secondary education prompts some parents to withdraw their request for national minority language teaching, thus enabling national minority students to pass the exam in their minority language as a “foreign-language” exam. The reduction of education subsidies for such students complicates the financial situation of schools and causes certain difficulties with regard to “foreign” language teaching, as students belonging to national minorities master these languages much better than other pupils.

176. The Advisory Committee notes that, according to the information provided by national minority representatives, there are significant gaps in the school curricula as regards national

<sup>19</sup>“Regulation on the conditions and methods for the attainment by kindergartens, schools, and public establishments of the goals of supporting the national, ethnic and linguistic identity of pupils belonging to national and ethnic minorities or to a community using the regional language”.

<sup>20</sup> See paragraph 167

minority language teaching as well as the history, culture, and traditions of the minorities and their “kin-States”. In addition, as regards school manuals, there is often no choice of alternative textbooks, forcing teachers to use the only one available.

177. The Advisory Committee notes that, notwithstanding the progress achieved in the teaching of the Kashub language, shortcomings continue to be reported in respect of the teaching materials available. The shortage in the number of qualified teachers, compounded by the lack of a Kashub Language Department at Gdańsk University which could offer a course for teachers, further exacerbates the problems in this area.

178. The Advisory Committee also notes that there are no kindergartens offering Kashub language tuition at the pre-school level. The Advisory Committee has been informed that this is primarily due to the lack of qualified teachers.

179. A number of commendable initiatives were introduced in the last decade to improve educational opportunities for Roma pupils. However, according to the information provided in the State Report, no teaching of, nor in the Romani language is organised in public schools.

#### *Recommendations*

180. The Advisory Committee is of the opinion that the authorities should pursue their dialogue with national minority representatives to analyse the demand that exists amongst national minorities to receive instruction in or of their languages and take appropriate follow-up measures.

181. The authorities should review the situation, in consultation with the representatives of national minorities, to assess whether the framework for teaching minority languages corresponds to actual needs and, where appropriate, take the necessary steps to address any shortcomings.

182. The Advisory Committee calls on the authorities to review the existing school curricula as regards national minority-specific subjects and ensure an adequate supply of school manuals and textbooks.

183. The Advisory Committee urges the authorities to increase their efforts, including financially, to make the necessary teaching material for the education of persons belonging to the Kashub minority available to the schools concerned.

184. Efforts should be intensified to ensure that a sufficient number of qualified teachers are trained to meet the needs of educational institutions which give teaching in or of minority languages.

185. The Advisory Committee considers that the authorities should help to train teaching staff in the Romani language and to develop the necessary teaching materials with a view to creating opportunities for teaching of or in the Romani language, where there is a sufficient demand.

## Article 15 of the Framework Convention

### Minority representation in elected bodies

#### *Findings of the first cycle*

186. In its first Opinion, the Advisory Committee noted that several national minorities, in particular the Germans, Ukrainians, Belarusians and Lithuanians, are well represented in elected bodies in their areas of settlement, at municipal, county and, in some cases, provincial level.

187. The Advisory Committee also considered that as regards participation at national level, national minorities were proportionately poorly represented in Parliament and urged the authorities to reinforce existing mechanisms. This was to enhance the participation of national minorities at national level, particularly in the case of the smaller and geographically dispersed minorities.

#### *Present situation*

##### a) Positive developments

188. The Advisory Committee notes that the 2001 Act on elections to the *Sejm* and the Senate exempts parties of national minorities from the 5% electoral threshold for allocation of seats. This provision resulted in the election in 2007 of one German minority representative to the *Sejm*, composed of 460 members. In addition, one member of the *Sejm* belonging to the Ukrainian minority and one belonging to the Belarusian minority were elected from the lists of other political parties. In addition, a number of members of the *Sejm* declare themselves representatives of the Silesian minority.

189. The Parliamentary National and Ethnic Minorities Committee, composed of nineteen members, plays an active role in stimulating public awareness of national minorities, creating a framework for discussion on national minority issues and for making proposals for resolving the outstanding issues affecting them. The number of sittings of the Committee in 2008 (twenty-nine), attended by a wide range of national minority representatives, academics and local authorities demonstrates the spirit of openness and its active role in promoting minority rights.

190. The local elections of 2006 confirmed the national minorities' strong interest in participation in public affairs. Over four hundred representatives of the Belarusian, Lemko, Lithuanian, German and Ukrainian minorities were elected to local councils at all levels: municipality, district and region. Over thirty representatives of national minorities were directly elected to executive positions of *voits* (elected mayors of rural municipalities) and town mayors at the local level.

##### b) Outstanding issues

191. The representation of national minorities in the *Sejm* and the Senate reflects the lack of the effectiveness of the legislative provisions which were designed to guarantee minority representation. The Advisory Committee considers that the steadily falling number of national minority members in Parliament may lead to further marginalisation of national minority issues in public debate and erode interest on the part of national minorities in Poland in participating in the democratic process at the national level.

192. The situation of the Ukrainian minority, which has been living in dispersed areas, as a result of the communist regime's Operation Wisła of 1947, has not found a satisfactory solution with regard to political representation at the national level. Moreover, the exemption of parties of national minorities from the 5% electoral threshold for allocation of seats, does not increase the chances of a representative of the Ukrainian minority to be elected on a minority party list. The Advisory Committee notes with concern that no measures have been proposed by the authorities to address this issue, in spite of the high number of persons declaring their affiliation with the Ukrainian minority, the level of organisation of this minority and the persistent interest voiced by its representatives.

193. The Advisory Committee is particularly concerned that the Roma minority is not represented in elected bodies at all at any level within the State.

#### *Recommendations*

194. The authorities are encouraged to examine, in consultation with the representatives of the national minorities, legislative and practical measures which would create the necessary conditions for the political representation of minorities in the *Sejm* and the Senate to reflect more adequately the composition of Polish society.

### **Consultative mechanisms**

#### *Findings of the first cycle*

195. In its first Opinion, the Committee considered that the existing Team for National Minority Issues played a limited role in development and coordination of government policies and measures for national minorities. It urged the authorities to consider increasing national minority representatives' participation in the Team.

#### *Present situation*

##### a) Positive developments

196. The Advisory Committee welcomes the establishment of the Joint Commission of Government and National and Ethnic Minorities. It notes that the wide consultative prerogatives of the Commission, including on the allocation of grants, draft legislation, implementation of minority programmes, non-discrimination measures and the voicing of opinions on the exercise of minority rights, enable it to influence significantly the debate on national minority issues and create a useful channel of communication with the authorities. The composition of the Commission, as stipulated in the Act, guarantees to each minority, recognised in Poland, a set number of representatives (one or two per minority). The Advisory Committee welcomes that the Joint Commission, after a period of inactivity in the second half of 2007, resumed regular meetings in 2008 and is working well, as attested by representatives of national minorities.

197. A Team on Roma Issues was created within the Joint Commission of Government and National and Ethnic Minorities to address specific issues affecting the Roma minority.

##### b) Outstanding issues

198. The Advisory Committee notes with concern the fact that the Joint Commission of Government and National and Ethnic Minorities ceased to function for eight months in 2007. The period of inactivity, contrary to Article 28 of the Act on National and Ethnic Minorities and on Regional Language which stipulates that the Joint Commission should meet at least every six

months, demonstrates that occasionally relations between the representatives of national minorities and the authorities had been strained and that this has resulted in the blockage of institutional mechanisms. On the contrary, the Advisory Committee considers that, when controversial issues are identified, the Joint Commission should be considered as a primary forum for discussion and the resolution of differences.

199. Many representatives of the national minorities find that, notwithstanding recent increases,<sup>21</sup> the State support they receive is insufficient and does not correspond to their actual needs. It stands in stark contrast, in their view, with the more considerable funds available for Poles living abroad, provided through the budget of the Polish Community (“*Wspólnota Polska*”). They suggest that the resources allocated to persons belonging to national minorities in Poland should be more substantial.

#### *Recommendations*

200. The authorities are encouraged to make full use of the potential of the Joint Commission of Government and National and Ethnic Minorities and to convene its meetings regularly, in line with the provisions of Article 28 of the Act on National and Ethnic Minorities and on Regional Language.

201. The Advisory Committee encourages the authorities to pursue and develop measures to promote Roma participation in local public life, in particular, by considering setting up consultative structures at local level in areas traditionally inhabited by them.

202. The authorities should ensure that funding provided for national minorities living in Poland effectively meets their real needs.

### **Effective participation of Roma in social and economic life**

#### *Present situation*

##### a) Positive developments

203. Since 2004, the authorities have been implementing a long-term National Programme for the Roma Community in Poland (2004-2013), which aims at developing Roma culture and maintaining their ethnic identity, improving Roma living and health conditions, preventing racist offences and reducing unemployment. Additionally, since 2006, projects aimed at improving employment and social cohesion, increasing the education level and reducing social exclusion of Roma can benefit from financing available from the European Social Fund of the European Union under the Operational Project ‘Human Capital’. In four towns with a high unemployment rate among Roma (Kraków, Szczecinek, Sławno and Olsztyn), the programme has contributed to the establishment of enterprises owned and run by Roma, ranging from wood-processing and construction work to catering and sewing.

##### b) Outstanding issues

204. In 2008, a Team for Roma Affairs was established within the framework of the Joint Commission of Government and National and Ethnic Minorities to monitor the implementation of the programme and to act as a forum for seeking solutions to the problems affecting the Roma minority. Whereas notable progress in the field of schooling of Roma children has been

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<sup>21</sup> See paragraph 64.

achieved, further sustained action in respect of health, employment and housing, is still required as Roma in some settlements continue to face harsh living conditions.

205. The Advisory Committee notes with concern in particular that, in spite of the implementation of the National Programme for the Roma Community, a number of Roma, notably in the Małopolskie Region, continue to live in settlements with substandard conditions, without roads, running water or sewage facilities. The authorities, while acknowledging the gravity of the situation, have not been able either to find appropriate solutions to improve the living conditions of these persons or to improve the technical infrastructure of these settlements.

*Recommendation*

206. The authorities should continue and increase efforts to develop policies to address the problems confronting the Roma in a number of fields, particularly in the areas of housing, employment, medical care and education, and allocate adequate resources to remedy the situation. In this connection, it is particularly important to ensure that the measures in question are geared to the needs of the Roma, by actively involving the Roma representatives in the various stages of development, implementation, monitoring and evaluation of such measures.

**Article 17 of the Framework Convention**

**Transfrontier contacts**

*Present situation*

207. The Advisory Committee has been informed that persons belonging to the Belarusian and Ukrainian minorities were facing administrative complications to maintain frequent transfrontier contacts following the entry of Poland into the Schengen Agreement and the establishment of the external Schengen border between Poland on one side and Belarus and Ukraine on the other. Long delays at the border crossings and detailed customs inspections were mentioned as the main causes of these difficulties.

*Recommendation*

208. The Advisory Committee encourages the authorities to pursue their efforts with neighbouring countries to ensure that new EU border regulations are implemented in a manner that does not cause undue restrictions on the right of persons belonging to national minorities to establish and maintain contacts across frontiers.

**Article 18 of the Framework Convention**

**Bilateral co-operation**

*Findings of the first cycle*

209. In its first Opinion, the Advisory Committee noted that Poland concluded with its neighbours numerous bilateral agreements protecting national minorities. The Advisory Committee considered that the Polish authorities should bear in mind that making the implementation of protective measures for national minorities living in Poland systematically conditional to progress recorded on similar issues in neighbouring countries was not in line with the spirit of the Framework Convention and that it could not compensate such shortcomings in the protection scheme set up under domestic law.

*Present situation*

## a) Positive developments

210. The Advisory Committee notes that, in its efforts aimed at strengthening the protection of national minorities, Poland has continued to pay considerable attention to co-operation agreements with all neighbouring countries.

## b) Outstanding issues

211. According to the information available to the Advisory Committee, local authorities and the media occasionally invoke reciprocity with neighbouring States as a condition for settling the issues under their competence. Such an approach has allegedly been demonstrated in particular with regard to the erecting of and or renovating memorials to the war victims and return of property (see also remarks under Articles 5 and 6 above).

212. The Advisory Committee notes the adoption of the Act on the Polish Card of 7 September 2007 which gives a number of rights in the field of education, culture, employment, social matters and health care to persons of Polish descent living in the countries which formed the USSR. This Act, which bestows rights on persons who are citizens of some neighbouring countries, provoked discussions at inter-State level and could therefore adversely affect bilateral relations, including on minority issues, as has already been pointed out in the Report of the Venice Commission on the Preferential Treatment of National Minorities by their Kin-State.<sup>22</sup>

*Recommendations*

213. The Advisory Committee invites the authorities to apply the existing bilateral agreements in the spirit of good neighbourliness, friendly relations and co-operation between States, without making the implementation of protective measures for national minorities living in Poland systematically conditional to progress on similar issues in neighbouring countries.

214. The Advisory Committee invites the authorities to apply the provisions of the Act on the Polish Card in the spirit of good neighbourliness, friendly relations and co-operation between States, as enshrined in Articles 2 and 18 of the Framework Convention. The authorities are also invited to continue the consultation process with the authorities of those States whose citizens may be concerned.

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<sup>22</sup> See Venice Commission Report adopted on 19-20 October 2001 (CDL-INF (2001)019).

### **III. CONCLUDING REMARKS**

215. The Advisory Committee considers that the present concluding remarks could serve as a basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Poland.

#### **Positive developments**

216. The adoption of the Act on National and Ethnic Minorities and on Regional Language, in January 2005, is to be welcomed. Other positive developments include the establishment, under the aforementioned Act, of the Joint Commission of Government and National and Ethnic Minorities with its wide range of consultative prerogatives, and the active role played by the Parliamentary National and Ethnic Minorities Committee in raising public awareness of national minorities' concerns, which have created a framework for discussion on national minority issues and making proposals for resolving the outstanding issues affecting national minorities.

217. As regards practice, relations between national minorities and the majority are characterised by a climate of mutual understanding and tolerance. The public institutions such as the Ombudsman and the Government Plenipotentiary for Equal Treatment have adopted an active approach and continued efforts to promote respect for human rights and cultural diversity in Poland.

218. In the last few years, Poland has developed a range of programmes and measures aimed at alleviating difficulties faced by the Roma community in housing, employment, and healthcare, providing solutions to the problems they face in the field of education and, more generally, combating their social exclusion and marginalisation.

219. The authorities have already consulted national minorities about the preparation for a new population census scheduled for 2011. The Advisory Committee is pleased to note that the questions on ethnic origin (nationality) and on native language or the language used at home will be optional.

#### **Issues of concern**

220. The financial support for cultural projects and institutions remains insufficient despite the recent increase in the funds allocated by the Minister of the Interior and Administration to protect, preserve and develop cultural identity of minorities in Poland. The funding procedures create significant obstacles for small national minority organisations applying for State support.

221. Although a general climate of tolerance and intercultural dialogue characterises Polish society, instances of intolerance, racism, anti-Semitism and xenophobia are still reported. Official figures indicate that there has been an increase in the number of racially-motivated offences committed in the last few years in Poland. Adequate measures to combat racist acts committed prior to, during and after football matches are not applied.

222. There are concerns about reported instances of obstacles at the local level, which result in persons belonging to national minorities being unable to exercise their rights, as well as about provocative statements, conditioning respect for minority rights on reciprocity in neighbouring countries, or by the local authorities on the other side of the border. Despite the repeated efforts of the Polish Government, the local authorities have not returned the Ukrainian National Home in Przemyśl and the Ruska Bursa building in Gorlice to their rightful owners.



223. Notwithstanding the measures taken by the authorities, the situation of Roma is still a cause for concern. A number of Roma, notably in the Małopolskie Region, continue to live in settlements in substandard conditions, without roads, running water or sewage facilities. Reported cases of discrimination, such as the segregation of Roma pupils in the Maszkowice Primary School and the lack of any reaction at the local level, point to a disturbing complacency and condoning of discrimination within some groups of society.

224. The representation of national minorities in the public radio and television programming councils, despite the existence of a legislative provision to that effect, is lacking. Also, the geographical radio and television coverage by media broadcasting in minority languages of the regions where the national minorities live, remains inadequate.

225. In the current school curricula, the teaching of the history, culture and traditions of national minorities and their contribution to Polish society is a non-compulsory subject introduced on an *ad hoc* basis in the framework of regional education. This approach does not guarantee that students in general will be provided with adequate information on the history, culture and traditions of national minorities.

226. In spite of the substantial number of persons declaring in the last census their Silesian nationality and speaking the Silesian language at home, the authorities, apart from the Parliamentary National and Ethnic Minorities Committee, have not considered the matter since the first monitoring cycle and have not entered into dialogue with the persons concerned.

227. As regards the issue of the possibility to receive education in or of a minority language, the number of the pupils receiving such instruction drops significantly in upper-secondary schools.

228. Although the law allows the use of the minority language as a “supporting language” in administration and the display in the minority language of traditional local names, street names and other topographical indications intended for the public in the municipalities inhabited by minorities, the actual number of municipalities which apply these provisions remains low. In addition, the right to use the “supporting language” in administration is restricted to the municipal self-government authorities and does not extend to the police, health care services, the post office or the State administration at the local level.

229. Legislative provisions as regards parliamentary elections, which exempt parties of national minorities from the 5% electoral threshold for allocation of seats, which at face value are favourable to the national minorities, have not in practice led to an adequate political representation of minorities.

## Recommendations

230. In addition to the measures to be taken to implement the detailed recommendations contained in Sections I and II of the Advisory Committee's Opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- Take all necessary measures to prevent, investigate and prosecute all racially-motivated offences;
- In the preparation of the census of 2011, consult the representatives of minorities about the questions on ethnic origin (nationality) and on native language or the language used at home;
- Include in this census persons belonging to national minorities, among the census officials and use bilingual forms in the municipalities where a minority language enjoys a “supporting language” status;
- Take all measures to prevent and combat incidents of intolerance and xenophobia, including during sporting events; encourage more actively respect for cultural diversity among the public;
- Make further efforts, including by the allocation of sufficient financial resources, to support and promote the preservation and development of the culture of national minorities; identify without further delay adequate solutions to the situation of cultural properties confiscated by the communist regime;
- Take enhanced measures to prevent and combat discrimination and the social exclusion of the Roma; make every effort, in consultation with those persons concerned, to improve the situation of the Roma in fields such as employment, housing and education, including eliminating segregation and increasing awareness of their culture and needs;
- Establish a dialogue with representatives of persons having expressed an interest in the protection provided by the Framework Convention;
- Ensure, in consultation with representatives of the various national minorities, access of persons belonging to national minorities to the radio and television programmes which concern them;
- Review the existing textbooks and the compulsory curriculum, in consultation with minority representatives, with a view to ensuring a more objective reflection of the history, culture and traditions of national minorities.