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Federal Republic of Germany

under Article 25, paragraph 2, of the
Council of Europe's
Framework Convention for the Protection
of National Minorities

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Part A Introduction

A.1 General Situation

1. The Federal Republic of Germany attaches great importance to the protection of national minorities. The Council of Europe's Framework Convention for the Protection of National Minorities was signed by Germany on 11 May 1995. By the Act (to implement the Convention) of 22 July 1997, the German *Bundestag*, with the consent of the *Bundesrat* ["Federal Council": Chamber of the *Länder*], approved the Framework Convention. That Act was promulgated in the Federal Law Gazette on 22 July 1997, and the instrument of ratification was deposited with the Council of Europe on 10 September 1997. For Germany, the Framework Convention entered into force on 23 July 1997. Under the Federal Act ratifying the Framework Convention, the Convention ranks in Germany as a federal law which takes precedence over subordinate law - including *Land* laws - and, as a matter of principle, is to be applied as the more specific law overriding other federal laws. Full compliance with the Framework Convention at the national level is legally guaranteed.

2. Germany – like an encouragingly large number of other Member States of the Council of Europe – is among the countries that have ratified the Framework Convention; and it also belongs to the – regrettably fewer – countries that have ratified the European Charter for Regional or Minority Languages (Regional/Minority Language Charter). In Germany, the Regional/Minority Language Charter is applied to the languages spoken by national minorities – the Danish of the Danes, the North Frisian and the Saterland Frisian of the Frisians, the Lower and Upper Sorbian languages of the Sorbs and the Romany language of German Sinti and Roma – as well as to the regional language Low German. In German legal practice – both at the level of government agencies and among national minorities - the two conventions are perceived as legal instruments designed, first and foremost, to protect national minorities and their languages. As both instruments were drawn up by the Council of Europe and both were ratified by Germany within a short space of time of each other and as both pursue comparable objectives regarding the languages of national minorities, the two conventions together represent the authoritative legal instruments for the benefit of national minorities. This implies that the two conventions will be interpreted and applied concordantly.

On account of the fact that the two conventions have been formulated according to different legal principles, difficulties emerge in respect of the concordant application of the two instruments and therefore are also encountered by the competent committees of the Council of Europe in examining whether they are being properly applied. Whereas all the articles of the Framework Convention call for unqualified and uniform application, the Regional/Minority Language Charter, designed as a so-called "menu convention", in its

Part III, leaves it to the discretion of the ratifying States to decide what obligations they undertake as regards the range, scope and depth of these obligations as well as their territorial application and their scope of application with respect to minorities. While, for example, Article 11 of the Regional/Minority Language Charter allows measures to be taken in respect of programmes broadcast on TV and/or on the radio in the respective minority or regional language, it gives the option to broadcast them as a full programme or as occasional programmes in this language; last but not least, the various options are expressed in the verbs used which are "*to ensure*", "*to facilitate*", "*to make adequate provision*" and "*to encourage*".

These two Council of Europe conventions have become part of the German legal system, both as regards the personal scope of application as designated in the respective declaration accompanying the ratification document deposited with the Council of Europe and in respect of the minority and regional-specific obligations undertaken under Part III of the Charter for Regional or Minority Languages.

The identical objectives pursued by both conventions regarding the languages of national minorities and the authorship of the Council of Europe in both cases explain why the two instruments in question are interpreted and applied concordantly in Germany. This can also be an important aspect as regards evaluation of whether the respective competent legislative or administrative bodies consider themselves to have met the obligations ensuing from these conventions.

Germany once more suggests that the DH-MIN [Committee of Experts, Minorities], a body set up to deal with minority law issues, which - regrettably - has not been convened in the past few years, should discuss this matter in depth; it would be appropriate and expedient to have the Advisory Committee on the Framework Convention (AFCF) and the Committee of Experts on the Regional/Minority Language Charter (MIN-Lang) take part in these discussions.

3. As regards the request by the Central Council of German Sinti and Roma that the Committee of Experts DH-MIN should submit a draft convention covering actionable rights in the cultural field and involve the respective minorities in this project (cf. Part D, Comments by the Central Council of German Sinti and Roma), it should be noted that anticipating the Council of Europe's decision on the reinstatement of DH-MIN and on the committee's terms of reference is out of the question.

A.2 Application of the Framework Convention in Germany

A.2.1 Scope of application

4. In Germany, only the following national minorities are protected under the Framework Convention: the Danish minority, the Sorbian people, the Frisians in Germany, and the German Sinti and Roma.

5. The suggestion given by the Advisory Committee (ACFC) in their "Opinion on Germany" [CM(2002)43, no. 73] - i.e. to consider the inclusion of persons belonging to other groups in the scope of the Framework Convention on an article-by-article basis - called for the following clarifying remarks:

The Framework Convention does not contain any definition of the term "national minorities". In view of this legal situation, Germany invokes the competency to define the term as regards the application of the Convention to the groups in question. Only those groups of the population who meet the following five criteria are considered national minorities:

- their members are German nationals;
- they differ from the majority population insofar as they have their own language, culture and history - in other words, they have their own identity;
- they wish to maintain this identity;
- they are traditionally resident in Germany; and
- they live in the traditional settlement areas.

(As regards the last criterium, an exception is made only with reference to the German Sinti and Roma. Pursuant to the Declaration notified by the Federal Republic at the time of signature, this minority is protected under the Framework Convention although its members live - mostly as small groups - in almost all parts of Germany and do not have their own specific settlement areas.)

Application of the Convention, on this basis, to the Danes, Frisians, Sorbs, and Sinti and Roma thus ensures inclusion of all ethnic groups traditionally resident in Germany. (The Jewish community in Germany do not consider themselves a minority, but a denominational group.)

6. The definition of national minorities laid down by Germany is not dissimilar to that laid down by other Member States of the Council of Europe (cf. for instance the Comments made by the Danish Government, CM(2000)166 Addendum).

Also, the nationality reference chosen by Germany in relation to the protection of national minorities within the scope of the Council of Europe is also recognised in the protection

concept of Parliamentary Assembly Recommendation 1201 (1993) – see Article 1, *lit.* a, of the draft Protocol contained in that Recommendation.

Reference is also made to the Regional/Minority Language Charter that stipulates in its Article 1(a): "*the term ... 'regional or minority languages' ... does not include ... the languages of migrants.*"

7. Since this means that Germany, on the one hand, has manifestly laid down a clearly abstract definition of the term "national minorities" for legal applications in Germany and, on the other, has - without any objections being raised by the Contracting States - designated the groups to whom this definition applies, application, even on an article-by-article basis, of the Framework Convention to ethnic groups that *fail* to meet the above-mentioned criteria is precluded in Germany. This goes, for example, for "migrants" and "immigrants" as well as for all "non-citizens".

8. The chosen restrictive definition of the term 'national minorities - and thus of the Convention's scope of application - is also in line with the purpose of the Framework Convention: As already expressed in its title, the objective of the Framework Convention is *to protect national minorities*; it is not a general human rights instrument for all groups of the population that differ from the majority population in one or several respects (ancestry, race, language, culture, homeland, origin, nationality, creed, religious or political beliefs, sexual preferences, etc.). Rather, the members of the latter groups are protected by the general human rights and – if they are nationals – by the guaranteed civil rights. In Germany, these rights have been sufficiently established by national law and underpinned by the ratification of a wide range of relevant international instruments.

The article-by-article approach would not just dilute the specific objective of the Framework Convention, i.e. the protection of national minorities; it would also entail the risk of creating 'first-class' and 'second-class' national minorities - that is, minorities that would benefit from the protection of *all* rights, and those who would be only granted selective rights.

9. The aforementioned reasons also preclude application of the Convention on the basis of a wider definition, as desired by the Central Council of German Sinti and Roma (cf. the Central Council's comments in Part D), and stated in a previous resolution adopted by almost all of the parliamentary groups of the German *Bundestag* (*Bundestag* printed paper 12/5227). Rather, the Convention's scope of application as regards Germany in terms of international law follows from the declaration notified by the Federal Republic of Germany at the time of signature on 11 May 1995; this declaration was based on the Memorandum to the Framework Convention (*Bundestag* printed paper 13/6912) which

later also formed the basis of the Act ratifying the Framework Convention, i.e. of the act that conferred legal force to the Convention in Germany.

A.2.2 Compliance with the reporting obligations under the Framework Convention

10. In compliance with its reporting obligations under international law and in accordance with Article 25, para. 1, of the Framework Convention, the Federal Republic of Germany on 24 February 2000 submitted its **First State Report** on the implementation measures in Germany to the Council of Europe.

11. The Council of Europe's Advisory Committee on the Framework Convention [ACFC] for the Protection of National Minorities visited Germany during the period 26 to 29 June 2001 and during this stay had talks with representatives of the *Bund* [Federation], the *Länder* and local governments, and representatives of the organisations of national minorities. On the basis of the information obtained on this occasion and of the information provided in Germany's First State Report, the Committee drafted a report of 01 March 2002 on the implementation of the Framework Convention in Germany (Monitoring Report: "Opinion on Germany" - CM(2002)43).

12. In July 2002, Germany sent its initial comments on the Monitoring Report to the Council of Europe.

13. The **Committee of Ministers** of the Council of Europe, on 15 January 2003, notified its **recommendations** on further measures for the implementation of the Framework Convention in Germany [ResCMN(2003)3] as follows:

"The Committee of Ministers,

.....

1. Adopts the following conclusions concerning the implementation of the Framework Convention by Germany:
 - Germany has made commendable efforts to support national minorities and their cultures, notably through the financial support provided by the federal authorities and the various measures taken by the *Länder* in the fields of education, media and cultural affairs.
 - There is scope for improvement in the media sector, in particular concerning the development of radio and television programmes for both the Danish and the Frisian minorities. The use of minority languages in relations with administrative authorities appears rather limited and there remain shortcomings in the practical implementation of existing provisions in this respect, notably in areas traditionally settled by the Sorbs.
 - Despite legal requirements to display topographical indications in the Sorbian language in areas traditionally inhabited by the Sorbs, the rate of changing monolingual to bilingual signs is progressing too slowly.

- In the field of education, the persisting threat of closure of schools providing full education in Sorbian needs to be given continuous consideration so as to secure the long-term future of traditionally established Sorbian classroom education. The current situation of the Frisian language in the educational system also merits being reviewed in order to reinforce it.
 - There is deep concern about the forced dissolution of a municipality with a Sorbian identity in order to allow lignite quarrying to continue. The forced dissolution is likely to make the preservation of the Sorbian minority identity more difficult due to the population displacement involved.
 - Despite valuable efforts, the implementation of the Framework Convention has not been fully successful for the Roma/Sinti. It is important that the *Länder's* various methods of collecting criminal data of an ethnic nature are pursued in full compliance with the principles laid down in Article 3 of the Framework Convention. Problems persist with regard to attitudes of rejection or hostility towards persons belonging to the Roma/Sinti minority and substantial efforts are needed to ensure the effective participation of this minority particularly in cultural, social and economic life. There is also reason for concern about the over-representation of, amongst other groups, Roma/Sinti children at lower secondary schools and special schools for under-achievers, a state of affairs which merits close attention and the implementation of effective remedial measures.
2. Recommends that Germany take appropriate account of the conclusions set out in section 1 above, together with the various comments in the Advisory Committee's opinion.
 3. Invites the Government of Germany, in accordance with Resolution (97) 10:
 - a. to continue the dialogue in progress with the Advisory Committee;
 - b. to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out in section 1 and 2 above.

14. In accordance with Article 25, para. 2, of the Framework Convention, the Federal Republic of Germany now presents its **Second State Report**. The Report reflects the **status as of 21 September 2004**.

In addition to generally updating the First State Report, the present report covers the specific comments in response to the observations and information requests contained in the Monitoring Report of the CoE Advisory Committee [ACFC] and to the recommendations of the Committee of Ministers with regard to the further implementation of the Convention in Germany.

In the answers to the Advisory Committee's comments on those undertakings which the Committee did not consider fulfilled, reference is made to the respective paragraph/s (number/s) of the Monitoring Report ["Opinion on Germany", CM(2002)43].

Additional questions asked recently by the Advisory Committee and for which it requested answers to be included in the present report are covered and answered in Part C, with references given to the respective paragraph number(s) of Part B of the report which covers the implementation status with regard to the various articles of the Convention.

15. The Federal Republic of Germany greatly appreciates the activities of the Advisory Committee in the process of monitoring the implementation of the Framework Convention and welcomes the Committee's efforts in assessing the achieved level of compliance with Germany's obligations arising from the Convention.

Germany notes that the Advisory Committee's comments show competent examination of the situation of the national minorities in Germany and that the Committee has in fact paid attention to important questions and problems. In this context, Germany draws attention to the fact that the available staffing and financial resources have so far been fully utilised in carrying out the respective implementation measures and that any extended efforts in these fields are kept within narrow limits on account of the tight budget situation, the emerging budgetary trends and the imperative need for budget consolidation in Germany.

16. Germany considers the fulfilment of the obligations under the Convention and the Committee's Opinions as a continued pan-European process aimed at the creation of international standards laying down the foundations for a legal regulation of relations within a community of citizens of a particular State and thus providing for sustained protection of the existing national minorities.

17. Germany's State Report on the implementation of the Framework Convention which serves as the point of departure for the monitoring mechanism is based on the principle of transparency, and Germany finds it important to maintain an open and constructive dialogue with the bodies responsible for monitoring the Convention's implementation, *i.e.* the Advisory Committee and the Committee of Ministers of the Council of Europe.

18. The Monitoring Report ["Opinion on Germany" - CM(2002)43] and the present State Report were discussed with the representatives of the minorities at an Implementation Conference. The written comments of the minorities are enclosed in the present State Report [cf. Part D]. The comments have been included regardless of whether the respective minorities call for government action - which Germany has pledged to take - or express any wishes going beyond those undertakings.

19. The members of the groups of German nationality who are protected under the Framework Convention have (with the exception of the German Sinti and Roma) their respective traditional settlement area only in some specific *Länder* [constituent States] of the Federal Republic of Germany. These are Schleswig-Holstein *Land*, the Free State of Saxony, and the *Länder* of Brandenburg and Lower Saxony. Due to this geographical distribution of the minorities concerned, the present State Report focusses on the information provided by these *Länder* on legislative acts and on other measures taken to enforce the principles enshrined in the Framework Convention. In addition, specific parts

of the Report deal with the German Sinti and Roma in the other *Länder* of the Federal Republic of Germany.

A.2.3 Public information regarding the Framework Convention

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

21. As part of the public information/education activities of the Federal Government Commissioner for Matters Related to National Minorities, a comprehensive information brochure was published in the spring of 2004 on the situation of the national minorities, which also includes information on the Framework Convention and is widely distributed free of cost. The organisations of the national minorities provided inputs to the brochure's contents.

A.2.4 Participation of the *Bund*, *Länder* and national minorities

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

23. Since November 1998, annual Implementation Conferences on the Framework Convention and the Charter for Regional or Minority Languages have been held, which bring together representatives of the Federal Ministries responsible for the protection of minorities, representatives, with similar responsibilities, of the *Länder* of the Federal Republic of Germany, and representatives of the groups protected under the Framework Convention. These conferences dealt with the implementation status of the Framework Convention in Germany, the deficits still encountered in this respect, and development of the German State Reports (*i.e.* the First Report of 1999 and the present Second Report). Such conferences will be required in future as well.

24. Also, the Council of Europe instruments on the protection of minorities and their implementation status regularly are the subject of discussions of bodies in which Parliamentarians, government representatives and representatives of the minorities co-operate.

25. Before its final endorsement at the national level, the present Second State Report was also sent to the central organisations of the groups concerned for their comments. These comments are included in Part D of this report. After its submission to the Secretariat of the Council of Europe, this State Report will be published in Germany.

A.3 General conditions applying to national minorities in Germany

A.3.1 State structure:

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

diction/financial sovereignty, right to make bye-laws/ordinances, and local town and country planning.

A.3.2 Population:

27. Germany has a population of around 82.3 million inhabitants (as of 31 December 2001)¹, of whom some 7.3 millions are foreigners.

No statistical data are collected with reference to ethnic criteria. Under the Basic Law, identification with any of the national minorities or other ethnic groups traditionally resident in Germany is as free as use of, and identification with, a mother tongue. It is everybody's individual personal decision - which is neither registered, reviewed or contested by the state authorities - whether he/she chooses to be considered a member of any of the these groups. There are no statistics established on the basis of ethnic or linguistic criteria. Therefore, like at the time of the First State Report, the number of members of national minorities and thus of the persons protected under the Framework Convention can only be estimated.

It can be said, however, that - with the exception of some communities with a Sorbian or North Frisian majority - the members of the groups protected under the Framework Convention form the minority of the overall population in their respective settlement areas.

A.3.3 Key figures on the economy:

28. In 2002, the gross national income (at current prices) amounted to 2,099,100 million € (*i.e.* + 2.11 % as compared to the previous year); the gross domestic product (at current prices) (gross national product) amounted to 2,108,200 million € (*i.e.* + 1.79 % as compared to the previous year); and the net national product at factor cost (national income) amounted to 1,562,000 million €.

The national, or aggregate, income is composed of the gross wage and salary income amounting to 1,130,000 million €, and of the gross income from property and entrepreneurship amounted to 432,000 million €.

The gross income (per inhabitant) in 2002 amounted to 18,900 €, and the gross domestic product per wage/salary earner to 51,300 €.

In 2002, the gross national income, per inhabitant, at current prices amounted to 25,400 € (change as compared to the previous year: + 1.60 %).²

¹ Results updated since 1988, on the basis of the census of 25 May 1987. Data taken from *Statistisches Jahrbuch* [Statistical Yearbook], 2003, published by *Statistisches Bundesamt* [Federal Statistical Office].

² Information based on the data contained in *Statistisches Jahrbuch* [Statistical Yearbook, 2003, published by *Statistisches Bundesamt* [Federal Statistical Office]. These are provisional findings.

A.3.4 Legal framework regarding protection of persons belonging to national minorities:

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

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

A.3.5 Specific information on the various national minorities in Germany:

A.3.5.1 The Danish minority

31. The Danish minority, like the German majority population of this region, live in the German part of Schleswig (*Land* of Schleswig-Holstein) in their traditional settlement area, just as the German minority and the Danish majority population do on the Danish side in North Slesvig - *Sønderjylland*. Germans and Danes have been living together in this area for more than a thousand years. Today's border between the two countries was laid down in 1920 on the basis of the results of two plebiscites agreed upon in the Treaty of Versailles.

32. The number of members of this ethnic group is estimated at some 50,000 persons who, for the major part, live in the Schleswig region in the *Kreise* [county-type administrative districts] of Nordfriesland and Schleswig-Flensburg, in the northern part of Rendsburg-Eckernförde *Kreis*, and in the city of Flensburg. The percentage of the members of the Danish minority in relation to the population of the various towns and communities varies

greatly, and ranges from local communities where only a number of families of the minority live, to around 20 per cent in the town of Flensburg and some smaller places.

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

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

A.3.5.2 The Sorbian people (and their languages Upper Sorbian and Lower Sorbian (Wendish))

35. The Sorbs have been resident in Lusatia since the year 600 AD, when Slav tribes settled in the region between the Baltic Sea and the Ore Mountains [Czech: *Krušné hory*, Polish: *Kruszcowe Góry*] which had been largely depopulated after the out-migration of Germanic tribes. After King Henry I, in the year 929, had placed the Sorbs' settlement area under German rule and increasing numbers of Germans settled there as well, the Sorbs - a West Slavic people - have been living together with the German population for about a millennium. They have no mother country outside the borders of Germany.

In the Middle Ages, the Sorbian language was still spoken in a much more extended area than today. Sorbian is part of the West Slavonic family of languages. From the various dialects of colloquial Sorbian, two standard languages developed: Upper Sorbian [more precisely: the Sorbian of Upper Lusatia], and Lower Sorbian [the Sorbian of Lower Lusatia; also called Wendish]. Today's speech area of Sorbian covers Upper Lusatia in the northeastern part of the Free State of Saxony, and Lower Lusatia in the southeastern part of Brandenburg *Land*. The Sorbs living in Lower Lusatia are, until this day, also known as Wends.

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

settlement area, while in the towns they account for less than 2 per cent. According to varying estimates, around 20,000 to 35,000 Sorbs have a command of written and spoken Sorbian. While scholarly linguistic surveys - limited to specific parts of the Sorbian settlement area - have been conducted, comprehensive surveying is problematic, both in view of the freedom to designate oneself as a member of the Sorbian people, as guaranteed under Section 1 of the Saxon Sorbs Act (*SächsSorbG*) and on account of the fact that larger numbers of Sorbs already live outside the Sorbian settlement area; all Sorbs speak German as well. As regards use of the Sorbian language in the private and public spheres, cf. in particular the comments under B.10.1.2.2 ("Use of the Sorbian language").

A.3.5.3 The ethnic group of Frisians in Germany

37. The Frisians, as a people of the North Sea coastal region, have been known since about the start of the Christian Era. Westfriesland - nowadays covering the province of Friesland in the Netherlands, and adjacent regions - and East Friesland have been the settlement area of Frisians since the times of the earliest historic sources. The settlement area of the East Frisians essentially covers Ostfriesland and the northern Oldenburg region up to the mouth of the Weser River on the North Sea [Lower Saxony *Land*]. From the coastal region and from the islands, especially after the devastating storm surges during the Middle Ages, settlement extended also to more southerly up-country regions where other, non-Frisian people already lived.

38. Frisian, as an autonomous and ancestral language, descended from the North Sea Germanic division of the West Germanic subfamily, distinctly differs from Netherlandic [Dutch and Flemish] and Low German and, in terms of historical linguistics, is closely related to Old English. It has evolved in three subgroups: West Frisian, East Frisian, and North Frisian. West Frisian is spoken in the province of Friesland in the Netherlands. East Frisian is native to Ostfriesland in Lower Saxony. These two regions form the historical geographical centre of the Frisians. North Frisian is spoken in Nordfriesland *Kreis* in the western coastal region of Schleswig-Holstein and on the island of Heligoland.

39. **Ostfriesland**, or East Friesland, is still inhabited mainly by people of East Frisian origin.

40. Already around the year 1500, the East Frisians replaced the Frisian language by Low German as the language used for drafting legal documents. By 1800, for the major part, and last on one of the North Sea Islands at the beginning of the 20th century, they relinquished their ancestral Frisian language which, however, continued to be used as the language of everyday oral communication.

41. Although the Frisian language subsequently became extinct in Ostfriesland [the present-time so-called "Ostfriesisch" actually being a variety of Low German], an East Frisian - cultural - identity continues to be preserved by the majority of the Ostfriesland people living in the area between the Netherlands border and the Weser River. However, it is not possible to give any precise estimates regarding the share of people identifying themselves as Frisians within the Ostfriesland population.
42. The **Saterland Frisians** are descended from those Frisians who, between 1100 and 1400, moved from the North Sea coast that had been devastated by storm tides, to settle, more to the south, in the Saterland where Westphalians had already settled earlier. The Saterland Frisians live in the Saterland Community [Seelterlound] which comprises the villages of Strücklingen [Strukelje], Ramsloh [Romelse], Scharrel [Schädde] and Sedelsberg [Sedelsbirg], including many farmstead hamlets. Also due to the general mobility entailed, in particular, by the economic changes in the course of the 20th century, and as a result of the in-migration of refugees and expellees who arrived here, as in all regions of Germany, after World War II, the population structure of the Saterland changed as well. The share of Saterland Frisians in the total population of the community has, since a number of years ago, been reduced once more on account of the arrival of many so-called "late repatriates" who, as former members of German minorities, especially in the former Soviet Union and in South Eastern Europe, returned to their ancestors' native country where they resettled in places having sufficient housing available. The majority, however, of the inhabitants of the local government unit *Gemeinde Saterland* (total population of some 12,000 persons) consider themselves Saterlanders.
43. Around 2,000 persons use Sater(land) Frisian [*Saterfriesisch - Seelterfräisk*] which forms part of the Old East Frisian subgroup of languages. About twice as many people understand Saterland Frisian. Despite many Low German loan words, Saterland Frisian has preserved its linguistic independence. Saterland [East] Frisian originally had superimposed itself on the Westphalian Low German language of the first inhabitants of the Saterland. After Ostfriesland and the adjacent regions of the Saterland had changed over to Low German, survival of Saterland Frisian was possible only because the Saterland villages were located in a sandy river valley surrounded by extensive fens which, up to the 20th century, provided a shield from contacts with the outside world and from its influence that penetrates and moulds all spheres of life. Use of Sater Frisian by the Saterland Frisians is gradually increasing since school-children are taking a greater interest in learning this language and children and the grandparent generation have started to communicate in Saterland Frisian again.
44. Since the times of the migration of peoples [Middle Ages population movements], **North Friesland** at first had not been colonised. Frisians - presumably as early as in the 7th and

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

45. North Frisian developed after Frisians, about a 1000 years ago, had settled also north of the Frisians' geographical centre. North Frisian consists of two groups of dialects (**Continental North Frisian** and **Insular North Frisian**) with nine local varieties: six of these are spoken on the continent along the west coast of Schleswig-Holstein (including the holms, or Halligen islands), and three of them on the offshore islands of Sylt, Föhr and Amrum, and Helgoland. The linguistic communality of North Frisian prevails despite the linguistic diversity brought about by the subdivision into dialects. Of the total number of nine North Frisian local idioms, three - which are spoken by less than 150 persons - are acutely threatened by extinction. The other six local idioms are not only used orally but also exist in written form. Their orthography is based, for the major part, on uniform rules.

46. Written records in the North Frisian language date from the Middle Ages. The first book in the North Frisian language was published in 1809. Since then, a large body of Frisian-language literature has been created, which covers several hundreds of books and, in addition, several thousands of literary items in a variety of publications. This ensures that the Frisian language also meets the requirements expected of a modern means of communication.

47. Of the present number of around 50,000 to 60,000 North Frisians, some 10,000 still speak North Frisian; another 20,000 persons understand this language.

The North Frisian language still is, to a major extent, the language spoken within the family and the language for communication in public, especially among the Frisians living on the islands and in the northern continental region (extending from the German-Danish border to the town of Bredstedt/*Bräist*). In mixed-language marriages, German and Frisian are increasingly being used as languages of equal rank.

48. The **perception of their Frisian identity** differs among the aforementioned groups: The Frisians in Ostfriesland are united by the perception of a common history and culture, which finds its expression in a regional identity. They do not consider themselves a nation-

al minority. The Saterland Frisians regard themselves as the Saterland Frisian language group. Neither do the largest group of organisationally associated North Frisians - the North Frisian Association (*Nordfriesischer Verein*) - consider themselves a national minority; rather, they regard themselves as a group having their own language, history and culture within Germany. The other supraregional organisation, the *Frisk Foriining* - "Frisian Association" - (formerly *Foriining for nationale Friiske*, Association of National Frisians), sees the Frisians as a people in its own right and considers them a national minority in Germany. Nowadays, the two groups have reached a compromise, i.e. referring to themselves as the "Frisian ethnic group", and are designated as such also in the Schleswig-Holstein *Land* Constitution.

Under the Framework Convention for the Protection of National Minorities, the Frisian ethnic group is accorded the same status as a national minority. This is welcomed by all Frisian associations and organisations.

A.3.5.4 The German Sinti and Roma

49. Since the 14th/15th century, the Sinti have traditionally been living on German-speech territory. Roma came to be at home in Germany at a later time. Time and again, in the course of history, Sinti and Roma had to suffer discrimination, were crowded out from various trades, and driven out of towns or regions. In instances, attempts made by Sinti to settle in their home region were thwarted in the past up until the 20th century. Despite these problems, the Sinti and Roma by and by managed to establish themselves locally, and in their respective home regions, they worked as manual workers, employees, civil servants, craftsmen, artists, small tradesmen and handicraftsmen, and other businessmen. Due to the racist fanaticism under the National-Socialist (Nazi) despotic rule, the Sinti and Roma in Germany and in the areas occupied by German armed forces were exposed to persecution and genocide with the aim of their extermination. Hundreds of thousands of them were murdered, and their cultural heritage was destroyed for the major part. Of the 40,000 officially registered German and Austrian Sinti and Roma, more than 25,000 had been murdered by May 1945. This persecution, aimed at systematic and definitive extermination, left its mark on the survivors and also has an impact on the generation born after 1945. The memories of those persecuted will continue to decisively influence their consciousness and their identity. After 1945, many of the surviving Sinti and Roma, whose health had been impaired and whose material basis of existence had been destroyed, still have had to struggle with discrimination; for instance, they have been subject to local registration with the police and the (criminal) identification service. In this context, cf. also the comments regarding Article 4, para. 2 (Nos. 104 - 107 below).

50. The German Sinti and Roma are estimated to number up to 70,000 persons. Some of the Sinti organisations put the numbers even higher. The majority of them live in the capitals of the "old *Länder*" of Germany [the 11 federal States that belonged to the FRG within its territorial boundaries up to German unification], including Berlin and its environs, and in the conurbations of the Greater Hamburg area, the Rhine/Ruhr region with Düsseldorf and Cologne at its centre, the Rhine/Main and Rhine/Neckar conurbations, and the Greater Kiel area. In some cases, major numbers of German Sinti and Roma also live in regions of geographically close, smaller towns. Thus, German Sinti and Roma populations are to be found, for instance, in medium-sized and small towns of Ostfriesland, Northern Hesse, the Palatinate, Baden and Bavaria. The German Sinti and Roma only represent a small, not quantifiable, share of the population in all of their settlement areas. So there is no single speech area confined to any one *Land* for the Romany language traditionally spoken in Germany. Rather, the language is spoken in most of the *Länder* of the Federal Republic of Germany.

51. Romany is the language spoken by those German Sinti who traditionally live in Germany. It is spoken by an estimated number of up to 60,000 persons. This is an autonomous language, deriving from Sanskrit, which is spoken by the Ṣiṇṭi in Western Europe, especially in the German speech area, and which differs from the other Romany languages used in Europe. In addition, the Romany of the German Roma is spoken by an estimated number of up to 10,000 persons.

52. Historically, the language can be assigned to quite a number of small regions in Germany where Sinti for centuries have been, or still are, traditionally resident. The race policy of the despotic Nazi régime - entailing stigmatisation and discrimination, persecution and the genocide inflicted also on the Sinti and Roma - has, moreover, destroyed the historical structure and the speech communities of some members of the Sinti and Roma people. Nowadays the German Sinti and Roma are integrated into society. In everyday life, however, they are still subject to private discrimination, due to the prejudices held by some fellow citizens.

53. However, the high degree of dispersal and what often are only small numbers of users of the Romany language in a narrowly delimited region must not be allowed to result in any impairment of the objective scope for protection if the causes of such dispersal have been generated, or at least been significantly influenced, by earlier government action. In this regard, there is a particular obligation incumbent on the state to help to reduce problems that have arisen in respect of the existence of the language and to expand the scope for developing the language and culture. To the extent possible at this time, account is taken of this requirement in the measures, both applied and envisaged, for protection and promotion.

54. Within the organisations of the German Sinti and Roma, there is no general agreement on the designation as either a national minority or an ethnic group. The Central Council of German Sinti and Roma (*Zentralrat deutscher Sinti und Roma*), with its nine affiliated *Land* Associations, and other associations and institutions that are members of the Central Council consider the German Sinti and Roma a national minority in Germany, but part of the German people at the same time. This view is shared by some other associations of German Sinti and Roma or of German Roma.

55. On the other hand, associations of German Sinti, which co-operate within the *Sinti Allianz Deutschland* ("Sinti Alliance Germany"), see themselves as an ethnic Sinti group within the German people, which - without discrimination, and without any special privileges as well - wishes to be integrated and to cultivate the traditional language and culture at the private level, without any governmental action in this sector. This position must be taken into account by the State to the same extent as the position taken by the Central Council.

56. The obligation flowing from Article 3, para. 1, of the Framework Convention means for the State that the only choice is *to offer* special protection and promotion. It is for every individual concerned to avail him/herself of this offer of protection and promotion, or to reject it. The same approach must be taken as regards the designation of the German Sinti and Roma as a national minority. German Sinti and Roma who, on the basis of their sense of identity, do not consider themselves a national minority, must *not*, either by a third party or by the State, be classed with a national minority. On the other hand, however, it cannot be denied to any German Sinto/Sintessa or Roma that he/she should identify him/herself both as an integral part of the German people *and* as a member of the national minority of German Sinti and Roma. Both factions are agreed on the position that the German Sinti and Roma are an inseparable part of the German people. The State acknowledges this shared basic position.

A.3.6 Overlapping of settlement areas common to national minorities in Schleswig-Holstein

57. In the Schleswig region, there are common settlement areas of various minorities (Danes and North Frisians, and a few Sinti and Roma) in some places of the *Kreis* of Nordfriesland. Both groups co-operate, also at the political level in instances (cf. the comments below, regarding Article 6). Frisian is taught also at some schools of the Danish minority. Difficulties regarding relations with one another and/or discrimination against members of the smaller ones of these groups have not become known.

58. Regarding Sinti and Roma settling also in areas where other groups live, there is no information on any co-operation with other groups at the local level. So far, discriminatory action by members of other minority groups has not been reported. In instances, there is close co-operation among the Schleswig-Holstein *Land* Association of German Sinti and Roma, *Sydslesvigsk Forening* [South Schleswig Association] and *Frasche Rådj*, Section North [Frisian Council / Nordfriesland Section].

Part B

Protection of national minorities under the various articles of the Framework Convention

B.1 Article 1

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

B.1.1 International instruments for the protection of minorities, which are applicable law in Germany

59. The Federal Republic of Germany has actively contributed to the development of binding rules of law for the protection of national minorities and traditional ethnic groups and/or of their respective language and culture. On 10 September 1997, the Federal Republic of Germany ratified the Framework Convention for the Protection of National Minorities which for Germany entered into force on 01 February 1998. In addition to the Framework Convention, the European Charter for Regional or Minority Languages of the Council of Europe, which is aimed at protecting and promoting regional or minority languages traditionally spoken in a Contracting State as an endangered part of the European cultural heritage, was ratified by Germany on 16 September 1998. The Charter entered into force in Germany on 01 January 1999. In Germany, the *minority languages* protected under the Charter are: Danish, Upper (Lusatia) Sorbian and Lower (Lusatia) Sorbian, North Frisian and Saterland Frisian, and the Romany language of the German Sinti and Roma; Low German is protected as a *regional language*.

60. Germany acceded to the International Covenant on Civil and Political Rights of 19 December 1966, to the International Covenant on Economic, Social and Cultural Rights of 19 December 1966, and to the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) of 07 March 1966. In the context of the obligations of reporting imposed by these instruments, reports are also given on the measures taken for the protection of minorities.

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

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

63. In 1996, the Federal Republic of Germany (represented by the Federation (*Bund*) and Schleswig-Holstein *Land*) and the Kingdom of Denmark founded the European Centre for Minority Issues (ECMI) to help with solving the problems related to minorities and majorities. ECMI conducts practice-oriented research, provides information and documentation, and offers advisory services concerning minority-related issues in Europe. It co-operates with various governments and international organisations. ECMI supports the research activities of the academic community, the media and the general public by providing information and analyses.

64. The Centre organises its activities around three principal themes: It is concerned with the evaluation and further development of universal, regional, bilateral and national standards that may help with consolidating democratic governance on the basis of ethnic diversity and human rights. In this context, ECMI is also particularly interested in the emerging convergence of standards between the EU member states and candidate countries. A second area of interest relates to implementation procedures and mechanisms for such standards and the study of their effectiveness. ECMI provides advice to governments and minorities and, in co-operation with them, develops approaches to the implementation of minority-related regulations. The third strand of ECMI's activities concerns constructive conflict management. ECMI is at present developing its capacities to support international peace-building efforts and peacekeeping measures by increasingly addressing conflicts with an ethnopolitical dimension. To this end, ECMI has established contacts with various regions of tension in Europe and encouraged local protagonists to engage in dialogue. For these activities, the Centre, which is located in Flensburg, profits from the exemplary development of minority-related issues in the German-Danish border region.

65. ECMI relies on a highly qualified team of scholars. The team is supported by a number of Visiting Fellows and Visiting Research Associates and can draw upon an extended network of outside experts. The Centre maintains active relations with other institutions engaged in similar activities and develops joint projects with them. ECMI is governed by a Board of nine members: three from Denmark, three from Germany, and one representative each from the OSCE, the Council of Europe and the European Union.

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

67. Council of Europe -

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

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

68. OSCE -

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

69. Other institutions -

Support for the activities of the Commissioner of the Council of the Baltic Sea States [CBSS Commissioner] on Democratic Institutions and Human Rights, including the Rights of Persons Belonging to Minorities; promotion, through non-governmental organisations (NGOs) and their institutions, of the development of the practical dimension of the protection of minorities in Europe; support for work projects of the international umbrella organisations of minorities, i.e. Federal Union of European Nationalities (FUEN) and Youth of European Nationalities (YEN), of which all national minorities and ethnic groups in Germany are members.

B.1.2 Protection of minorities under the national legal system

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

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

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

72. However, the general prerequisite for having recourse to the courts is that the relevant rule of law grants the person concerned a right/entitlement and that the complainant is legally affected. Among the rights granted to an individual are not only the fundamental rights, but all public rights (of an individual) deriving from the Constitution, formally enacted laws, statutory ordinances, autonomous legislation (local statutes), and customary law. On the other hand, general regulatory orders have directly binding force only for the Administration. However, they may become effective externally (*i.e.* affect third parties outside the Administration) in cases where administrative practice in conjunction with the equal treatment principle so warrants. The same goes, with regard to the Danish minority in Germany, for the *Bonn Declaration* of 1955 [cf. Appendix to the First State Report] which also does not grant any direct rights/entitlements.

B.2 Article 2

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

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

B.3 Article 3

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

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

B.3.1 Paragraph 1

B.3.1.1 The freedom to decide that the group of the population, with which one identifies oneself, is designated as a national minority

74. Of the national minorities in Germany who are covered by the Framework Convention as stated in the Declaration by the Federal Republic of Germany on signing the Convention (i.e. the Danish minority, the Sorbian people, the Frisians in Germany, and the German Sinti and Roma), only the Danes, the members of the Sorbian people and those German Sinti and Roma who are represented by the Central Council of German Sinti and Roma are designated as *national minorities*. The Frisians, on the other hand, are not classed as a national minority, but are termed "Frisian *ethnic group*", to reflect a compromise reached among the Frisians on this point (e.g. Article 5, para. 2, of the Schleswig-Holstein Constitution [cf. Appendix to the First State Report]). Under the Council of Europe Framework Convention for the Protection of National Minorities, the Frisian *ethnic group* is accorded the same status as a national minority. The same applies to those Sinti who are clearly represented by the *Sinti Allianz Deutschland*.

B.3.1.2 The freedom to choose to be treated or not to be treated as a member of a national minority (right freely to identify oneself with a minority)

75. The freedom of the individual members of a national minority to decide for themselves whether they wish to be identified with the given national minority and therefore choose to be treated as belonging to that national minority is a fundamental element of the protection of national minorities, based on democratic principles. Nobody may - either directly or indirectly - be forced, against his/her will, to identify him/herself as a member of a national minority. Thus, every person belonging to a national minority can decide for him/herself whether he/she wishes to be included in the category of persons for whose protection and promotion nations take measures in compliance with the Framework Convention. For the Federal Republic of Germany, this right derives from the general freedom of the person as guaranteed by the Basic Law: "Every person shall have the right to free development of his personality insofar as he/she does not violate the rights of others or offend against the consti-

tutional order or the moral law" (Article 2, para. 1, of the Basic Law). Thus it is everybody's individual personal decision - which is neither registered, reviewed or contested by the German State - whether he/she chooses to be considered a member of any of the groups protected under the Framework Convention.

B.3.1.3 Embodiment, in the legal system, of the right freely to identify oneself with a minority

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

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

During the deliberations on a bill on Frisian in Schleswig-Holstein, Frisian representatives suggested that the freedom to identify oneself with a minority should also be embodied in the preamble to this envisaged Act. (For the status of the legislative process regarding this bill, cf. section B.5.1.4.7 below.)

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

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

79. Nor is identification with a national minority registered by the **executive** authorities of the Federation and the *Länder*.

Therefore, the statement included in the First State Report (p. 23, regarding Art. 4) is now irrelevant, *i.e.* that: **Bavarian** agencies, when obtaining the particulars for establishing the identity of persons charged or persons affected, record the actual ethnic group affiliation "Sinti/Roma", in addition to membership of other ethnic groups, in cases where recording of such data is required for tactical reasons of criminal investigations and where information is provided on a voluntary basis. This no longer applies

because the Bavarian State Ministry of the Interior, in a letter dated 1 October 2002, directed that **membership of the "Sinti/Roma" ethnic group must no longer be established and stored, including data provided on a voluntary basis**, as part of questioning, by the police, of persons charged or persons affected. At the same time, the order was given to delete any existing holdings of data and to remove the designation "Sinti/Roma" from the "ethnicity catalogue" stored in files.

80. Similarly, Bavaria - already in late 2001 - **discontinued** inclusion of the **designation "Sinti/Roma type" in personal description forms used by the police**; such use had still been criticised by the Advisory Committee on the Framework Convention (ACFC), in their "Opinion on Germany" (doc. CM(2002)43, nos. 19 - 21, 74). (For details, cf. under Nos. 104 - 07 below, regarding Art. 4; this did not refer to a person's identification as a member of a minority but, instead, only concerned a supposedly typical outward appearance.)

81. In other respects, too, belonging to a minority is not registered by state authorities on account of the right freely to identify oneself with a minority; for this reason, there are **no federal or Land statistics covering ethnic origin and affiliation** on the basis of pertinent characteristics such as language. (For details, cf. Nos. 128 - 131 below, referring to Art. 4). Therefore, only estimated figures are available regarding the members of the various national minorities and other ethnic groups traditionally resident in Germany. Generally, the figures are provided by these groups themselves and have been compiled on the basis of the membership of minority organisations, votes cast for minority party tickets, the number of pupils enrolled in minority schools, and the number of participants in activities or organised events.

82. With regard to the cases mentioned by the Central Council of German Sinti and Roma in its comments in Part D (p. 267 of the translation, referring to section B.3.1.3) of the present report - where specific instances of inadmissible registration of the ethnicity of Sinti and Roma are claimed to have become known even after the aforementioned measures had been taken - the Free State of Bavaria provided the following clarification:

- Use of the abbreviation "MEM", allegedly to designate a "mobile ethnic minority", which is said to have been introduced as a substitute term for "Sinti/Roma type", has not been introduced by the Bavarian State Ministry of the Interior, nor have any such cases become known. In connection with the discontinuation of the ethnic designation "Sinti" or "Roma", the police authorities in Bavaria were ordered not to use any substitute designations, either.
- The data entry - regarding identification and registration of individual features, and DNA profiling, of a person - which was retrieved by the Bavarian police on the occasion of vehicle spot-checks did not originate with the Bavarian police.

Generally, storage of such data is governed by the Act on the Federal Criminal Police Office and the Co-operation between Federal and *Land* Authorities in Criminal Police Matters (*Bundeskriminalamtsgesetz*) and the conditions laid down in the ordinances on the establishment of nation-wide files.

Stored data do not refer to any ethnic minority.

- The Bavarian State Minister of the Interior, by letter of 5 August 2004, addressed to the President of the Central Council of German Sinti and Roma, already commented on the described case (identification and registration of individual features of around 25 persons).

The Minister's letter clarified that in this case, it had been a matter of necessary measures relating to criminal procedure in connection with a specific preliminary investigation and that consequently it was difficult to understand the basis and source of the Central Council's assertion that these measures had been carried out, 'as stated by Police Headquarters', by the police authority as preventive measures under the Bavarian Act on the Responsibilities and Powers of the Bavarian State Police (*Polizeiaufgabengesetz - PAG*). Criminal proceedings have been instituted on the basis of the aforementioned preliminary investigation.

Referring to the various allegations and complaints put forward in this connection, the following clarification has already been provided:

- For the period of police detention, even if of short duration, straps and belts are, as a general rule, taken from the detained persons if suicidal risk cannot be ruled out.
- In the case considered here, the individuals concerned were taken to various police stations so as to expedite the measures relating to criminal procedure so that those concerned might be released from police detention as soon as possible.
- Records established during the process of identification and registration of individual features will be destroyed as soon as the grounds for suspecting an offence have been disproved.
- The generalised and undifferentiated complaint that the individuals concerned had, in instances, been subject to ill-treatment must be rejected - unless it can be verified on the basis of more specific information which might be submitted, for example, in the context of a request for administrative review (disciplinary complaint) or judicial remedies.

In summary, it is to be noted for the record that the criticised measures were *not* taken because the persons concerned belonged to a national minority, and it is pointed out that, *vice versa*, suspects cannot - for the sole reason that they belong to a national minority - be exempted from legitimate measures required in a given case for reasons of criminal procedure.

With regard to the claim, as repeated in connection with an article published by *Münchner Merkur* of 17/18 July 2004 - that a substitute term was used by the Bavarian police to designate a person belonging to the national minority of Sinti and Roma, reference is made to the above clarification under the first indent.

83. It was not in the course of the hearings on the drafting of the present report, but only subsequently - and publicly - in a press release that the Central Council of German Sinti and Roma contradicted the affirmation by the Free State of Bavaria (see the first indent under No. 82 above) that a substitute designation for Sinti and Roma had *not* been introduced and was not known by the Ministry to exist. Although the Central Council was not

authorised to publish (in the press release) parts of the Report before its submission to the Council of Europe, but had received the draft report only for the purpose of participating in the drafting process, this press release has been added to Part D of the Report. The intention was to present the most up-to-date state of the controversy about the aforementioned substitute designation. The comments by the Free State of Bavaria on the renewed complaints are as follows:

The designation "mobile ethnic minority" and the abbreviation "MEM" are inadmissible substitute terms which may not be registered by the Bavarian police. The directive not to register any substitute designations was circulated last in November 2002. To the extent required by current search operations and warnings given on the basis of concrete intelligence, but depending on the circumstances of the given case, it is admissible to give - substantiated and verified - information on the nationality and ethnicity of offenders and on whether they are travelling offenders. In his letter of 2 February 2002 (cf. No. 82 above), State Minister Dr. Beckstein pointed out that the police had - on the occasion of a press conference held by Mittelfranken Police Headquarters on the subject of "Preventive measures against trick theft - against the background of the Euro currency" - also used the term "mobile ethnic minority" with specific reference to a travelling group of offenders from the Greater Frankfurt area. This had been a warning given to the general public with reference to a specific case of offenders committing organised trick theft crimes in Bavaria at that time.

Introduction of a substitute designation for members of the minority of German Sinti and Roma is not known to the Bavarian State Ministry of the Interior, nor has such introduction been ordered.

B.3.2 Paragraph 2 (entitlement to exercise rights individually as well as in community with others)

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

In addition to these individual rights and freedoms, **legal provisions** have been laid down explicitly to provide for the **interests of political parties of national minorities** under federal law (election to the German *Bundestag*; Political Parties Act) and under *Land* legislation (electoral law in Brandenburg, and electoral law in Schleswig-Holstein for the Danish minority), or for bodies representing the interests of a national minority (*Rat für sorbische Angelegenheiten* [Council for Sorbian Affairs] in the Free State of Saxony and in Brandenburg *Land*).

B.4 Article 4

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

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

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

B.4.1 Paragraph 1 (prohibition of discrimination)

B.4.1.1. Societal purport of the prohibition of discrimination

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

B.4.1.2 Embodiment of the ban on discrimination in the legal system

86. Central provisions of the **Basic Law** are Article 3, para. 1 ("All persons are equal before the law."), and Article 3, para. 3, 1st sentence, stipulating that no person shall be favoured or disfavoured because of sex, parentage, race, language, national or social origin, faith, religion or political opinions.

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

88. In some of the **Land Constitutions**, additional safeguards have been included to enforce the ban on discrimination, for instance:

- in Article 2, para. 1, of the Baden-Wurttemberg *Land* Constitution;
- in Article 12 of the Constitution of the *Land* of Brandenburg;
- in Articles 1 and 134 of the Hessian Constitution;
- in Article 4, para. 1, of the *Land* Constitution of North-Rhine/Westphalia;
- in Article 18 of the Constitution of the Free State of Saxony; and
- in Article 1 of the Constitution of the *Land* of Schleswig-Holstein.

In the Constitution of Berlin, in Article 10, para. 2, an overarching non-discrimination clause has been included, under which "nobody shall be prejudiced or favoured because of their sex, parentage, race, language, national or social origin, faith, religion or political opinions, or sexual identity". Article 4, para. 1, of the *Land* Constitution of North-Rhine/Westphalia, also expressly prohibits discrimination on the grounds of belonging to a national minority in that *Land*. In Bremen, the ban on discrimination is enshrined in Article 2 of the *Land* Constitution.

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

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

90. Eligibility for **employment in the public service** is laid down as a legal rule in Article 33, para. 2, of the Basic Law. This provides that every German national shall be equally eligible for any public office according to his/her aptitude, qualifications and professional achievements. The relevant provisions implementing this are contained in Section 8, para. 1, 2nd sentence, of the Act on Federal Public Officials [*Bundesbeamtengesetz*] which stipulates that selection of applicants for public official [civil service] status must be based on aptitude, qualifications and professional achievements, irrespective of sex, parentage, race, faith, religious or political opinions, origin or the person's associations. Similar rules are laid down in Section 7 of the Act Defining the Scope of Public Officials' Rights and Duties [*Beamtenrechtsrahmengesetz*]. Therefore, this principle is effective in all of the *Länder*.

91. Section 67 of the Federal Personnel Representation Act (*BPersVG*) states the following: "The employing agency and the staff council shall see to it that all staff members of the agency are treated in justice and fairness, and in particular, that there is no form of unequal treatment of persons [discrimination] on account of their parentage, religion, nationality, origin, political

or unionist activities or views, or sex". On the basis of the outline provision of Section 105 of the BPersVG (ban on discrimination), the *Länder* have issued appropriate regulations.

92. With reference to the requirement for compliance, by **administrative authorities**, with the ban on discrimination, and to **media reporting**, the Central Council of German Sinti and Roma has again found reason to complain that there are still instances of harassment by public authorities towards individual members of the minority. Also, the Central Council pointed out that stigmatising prejudices and discriminatory views directed at this minority continued to be frequently reflected in media reporting. These problems were encountered, in particular, in the context of reporting on criminal charges which - also on the basis of information provided by the police - contained indications as to the ethnicity of an accused person, while such indication was not required for understanding the reported incident. (Cf. the comments provided by the Central Council of German Sinti and Roma in Part D, and the answer given by the Free State of Bavaria, in section B.3.1.3 above: "Embodiment, in the legal order, of the right freely to identify oneself with a minority"). The Central Council holds that any official indication regarding the ethnic background violates the valid principle that it is forbidden to make any *ex officio* review of a person's declaration of his/her identification with the ethnic community and culture of a national minority. Police or press reports containing ethnicity information have caused the **Central Council to call for inclusion of a ban on discrimination in the media laws** of the *Länder*. In the Council's view, the changes achieved in media reporting as a result of voluntary self-regulation by the media are not sufficient.

93. At their Bonn conference on 15 April 1999, the Heads of the *Land* Governments discussed the subject of "Presentation of Minorities in the Media". They reached the conclusion that the public service media deal with the problems of minorities in an appropriate and adequate form. At the same time, however, they reaffirmed their will to continue resolutely to oppose any attempts at discriminatory practices. They also concluded that, for the major part, discrimination of minorities is not specific to the media but rather is a general problem of society. Thus, there is a need for political action by means of information/education [awareness-raising]. This insight led the Heads of *Land* Governments to reach the unanimous conclusion that there is no concrete evidence indicating any discrimination against minorities on the part of the media, which would call for changes to the media laws.

94. Also, the **Central Council** pleads for the **inclusion of specific bans on discrimination in general administrative law and in the legal provisions governing public officials** [civil service law]. (Also regarding the call for inclusion of a legal ban on discrimination in civil service law and media law, cf. the Central Council's comments in Part D.)

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

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

"No person shall be discriminated against because of his/her sex or his/her belonging to a racial, ethnic, religious, social or national group." (Press Code, no. 12).

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

"In reports on criminal offences, the fact that a suspect or offender belongs to a religious, ethnic or other minority shall be mentioned only if there is a reasonable need for such information in view of properly understanding the reported incident. Special attention should be paid to the fact that such mention might foment prejudices against groups requiring protection."

97. Therefore, the *Land* Governments have repeatedly emphasised that they prefer voluntary self-regulation of the media, as against any legal solution in media law, since the latter raises problems in terms of constitutional law in view of the freedom of the press and the freedom of reporting through audiovisual media, as guaranteed under the Constitution.

98. As the Federal Government sees it, such legislative action would not be feasible from a constitutional law point of view. The Federal Government Commissioner for Culture and the Media provided the following comments on this point:

The Central Council of German Sinti and Roma has repeatedly called upon the Federal Government to introduce a specific ban on discrimination, *inter alia* in media law. On the occasion of a visit to the Central Council in 2000, the then Federal Government Commissioner for Culture and the Media, State Minister Naumann, explained the limited scope for action by the federal administration in the field of media law on account of the restricted legislative powers (under established Federal Constitutional Court decisions).

99. As regards implementation of a ban on discrimination under press law, it should be pointed out first that, under Article 75, para. 1, no. 2, of the Basic Law, the federal legislator in specified areas has law-making power only with regard to federal *framework* legislation. While the *Bund* [Federation] has power to enact provisions as a framework for *Land* legislation, it is only in exceptional cases that such framework legislation may contain detailed or directly applicable provisions. Therefore, already in 1979, the Federal Government renounced its competence to enact framework legislation and left press law regulations entirely to the *Länder* (see the *Land* Press Acts). Law-making power with regard to

broadcasting - with the exception of broadcasting abroad (*Deutsche Welle*) - is vested exclusively in the *Länder*.

100. In its Article 5, para. 1, 2nd sentence, the Basic Law guarantees freedom of the press and freedom of reporting by means of broadcasts and films as an indispensable constitutional element of a rule-of-law democracy. Since broadcasting and the press are among the most important instruments for the public opinion-forming process, freedom of the press and of broadcasting is accorded specific protection as fundamental rights; on the basis of this requirement for protection, the Federal Constitutional Court, in consistent and established practice, specified the principle of governmental non-intervention with regard to state/media relations. This means that the state must refrain from exerting any influence whatsoever on the press.

101. However, freedom of the press and freedom of broadcasting are not unlimited. Under Article 5, para. 2, of the Basic Law, these rights find their limits in the provisions of general laws, in legal provisions on the protection of young persons, and in the right to inviolability of personal honour. Also, the press and broadcasting, as essential factors of "opinion-forming power", must be subject to control which must be exercised especially in case of neglect of journalistic fairness or of professional thoroughness [checking facts for 'truth, content and origin'] and must be provided for in the profession's ethical codes on a level below the formal legal system.

102. Monitoring of the press is the responsibility of *Deutscher Presserat* (German Press Council, a voluntary self-regulation body). The Federal Government thinks that this institution, in its present form, adequately meets the requirements with regard to compliance with the basic rules of free and responsible journalism. On the other hand, imposing a legal prohibition of discrimination on the media, as requested by the Central Council, would meet with significant objections in terms of constitutional law.

103. In view of the problems referred to above, the Central Council endeavours to have German Sinti and Roma represented on supervisory bodies of the media (which, on principle, are subject to *Land* jurisdiction). (On this point, cf. section B.9.1.2.1 below)

104. With reference to **physical descriptions of offenders**, the *Länder* of the Federal Republic of Germany renounced further use of direct ethnic typifications.

105. While the Advisory Committee on the Framework Convention (ACFC), in their "Opinion on Germany" (doc. CM(2002)43, nos. 19 - 21, 74), still criticised the fact that police practice in Bavaria permitted the use of the qualification "Sinti/Roma type" in a personal description form, this practice actually has, since the end of 2001, been dropped also by Bavaria. The descriptive characteristic "Sinti/Roma type" was dropped and new descriptive

criteria were developed on the basis of typified pseudo photographs to allow allocation to certain generic appearance characteristics (e.g. Latin/Mediterranean types 1 and 2; Asian; Northern European; African, etc.).

106. The Bavarian State Ministry of the Interior informed the Central Council of German Sinti and Roma accordingly. Following the aforementioned measures taken by the Bavarian State Ministry of the Interior, the Central Council of German Sinti und Roma declared the popular action disposed of and the Bavarian Constitutional Court closed the legal proceedings by its decision of 19 October 2001.

107. Also, the information provided in the First State Report on p. 23 is now obsolete, namely that Bavarian agencies, when obtaining the particulars for establishing the identity of persons charged or persons affected, recorded the actual ethnic group affiliation "Sinti/Roma", in addition to membership of other ethnic groups, in cases where recording of such data was required for tactical reasons of criminal investigations and where information was provided on a voluntary basis. (For details, cf. Nos. 79 - 83 above, regarding Article 3).

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

B.4.2 Article 4, paragraph 2 (obligation to promote equal living conditions)

B.4.2.1 General principles

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

109. For all persons who, in a given country, are members of the majority population and speak the official language as their native language, it is a matter of course to cultivate their specific culture and traditions, to learn, and be taught in, their language, to make daily use of their language and to derive from it elements for shaping their identity. For a much smaller group within the nation's population, the prerequisites for the cultivation of an autonomous culture, preservation of their own language and development of their identity can only be ensured by providing an appropriate infrastructure. Therefore, measures taken by the State for the protection of national minorities are aimed at according the members of those minorities equal status with the majority population within the country. Thus, such measures do not constitute a violation of the principle of equality; rather, they comply with it by ruling out discrimination and unequal treatment. Wherever it is necessary and appro-

priate, the State may take adequate measures to promote equality between the members of national minorities and the majority population in the economic, social, political and cultural fields. Such measures must take account of the specific conditions existing for the respective group and its members.

B.4.2.2 Equality in all areas of economic, social, political and cultural life

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

The economic and social structure, including the educational structure, in the respective settlement area is basically the same for the groups protected under the Framework Convention and for the majority population. However, the economic and social development of the persons belonging to the Sinti and Roma minority in Germany has been more conflict-laden than in the case of the members of the other national minorities. Around the end of the 15th century, Sinti and Roma were increasingly oppressed and persecuted by the majority population. They were denied the practice of craft trades, and were expelled from many areas. At the same time, however, there were, especially at the local and regional levels, many and various forms of normal and peaceful coexistence of this minority and the majority population. It was only in the course of the 19th century that social exclusion was succeeded by the minority's gradual integration into society. This process made further progress under the democratic governmental system after World War I so that German Sinti and Roma then came to be citizens, of legally equal status, of the State and part of society. Nevertheless, they continued to be subject to a wide-ranging set of ordinances, decrees and orders - partly dating back to Imperial Germany - which regulated their lives.

111. The progressive development towards integration and equality was interrupted by the search into the minority's ancestry and origin by so-called "race researchers", and by the minority's persecution by the despotic Nazi régime. Every Sinti or Roma family in Germany had to mourn murdered kinsfolk. Many families were extinguished, with only a few individuals surviving. Racial persecution by the Nazi régime has continued to have a direct impact on the survivors, especially by permanently impairing their health and physical fitness and through the sequels of the destruction of the domestic/family community, of their infrastructure and material basis of life, as well as on account of the years lost as regards school education and vocational training; and this persecution has also had an indirect effect on the next-born generation. Moreover, due to the compulsory sterilisation carried out by the Nazi régime, many survivors were deprived of the possibility to build up a family for themselves.

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

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

B.4.2.2.1 Measures to promote equality in Baden-Wurttemberg

114. As the only federal state, Baden-Wurttemberg *Land* (in addition to the Federal Government) has, continuously since 1991, granted financial support to the *Dokumentations- und Kulturzentrum Deutscher Sinti und Roma* [Documentation and Cultural Centre of German Sinti and Roma] in Heidelberg. The Baden-Wurttemberg *Land* Government also supports the Baden-Wurttemberg *Land* Association of Sinti and Roma. Since 2002, the subsidies for the Secretariat of the Baden-Wurttemberg *Land* Association of Sinti and Roma have been included in the budget of the Ministry of the Interior; social counselling has, already since 1988, been funded out of the departmental budget of the Ministry of Social Affairs. The activities of the *Land* Association, which was founded in 1986, covers all issues of the economic, social, political, community and cultural life of the Sinti and Roma in that *Land*. One of the priorities of these activities is the social field. Therefore, social counselling provided by the *Land* Association in a form geared to the particular needs of the Sinti and Roma is subsidised out of the departmental budget of the Ministry of Social Affairs. Such counselling is given by both full-time staff and counselling volunteers belonging to the minority. They also provide counselling to their clients in the minority language ("mother tongue" changed to "minority language" at the request of the Central Council of German Sinti and Roma - cf. the Council's comments in Part D). The main subjects of counselling are, among others, issues regarding indemnification for victims of the Nazi régime and pension claims, questions in respect of social insurance and long-term care insurance [old-age

nursing-home insurance], assistance provided on a case-by-case basis to help with difficult economic and social situations in life, issues connected with the naturalisation and integration of foreign Roma, and information activities referring to the social situation of the Sinti and Roma in Baden-Wurttemberg.

B.4.2.2.2 Measures to promote equality in Bavaria

115. **Nuremberg Municipality** (Bavaria) subsidises the payroll costs for a qualified youth worker and operating resources of the *Initiativkreis zur Verbesserung der Lebensbedingungen der Nürnberger Sinti e.V.* (INS - Initiative Group for the Improvement of the Living Conditions of Nuremberg Sinti, Reg'd).

116. The Bavarian State Ministry of Labour and Social Affairs supplied the following information in response to the comments (cf. Part D) by the Central Council of German Sinti and Roma pointing out that the Bavaria *Land* Association of German Sinti and Roma, together with its Secretariat and Counselling Bureau, gives its particular support to the members of the minority of German Sinti and Roma in the economic, social, political and cultural spheres of life and is subsidised by the Bavarian *Land* Government, but that in 2004 its budget appropriations (subsidies) were reduced by 22 per cent:

The subsidies had been granted up to 2003 on an unchanged scale - by contrast to the majority of other subsidising schemes which were subject to cuts as a result of budgetary freezes while it had still been possible to avoid such reductions with regard to the *Land* Association of German Sinti and Roma. Due to the worsening of the tight budget situation facing public authorities, it has not been possible, for 2004, to exempt the subsidies granted to the *Land* Association of German Sinti and Roma from the budgetary freeze and the reductions of the overall budget. The *Land* Association warned that the resultant budgetary cuts by about 22 % would, to all practical effects, preclude continuation of the activities related to the tasks flowing from the Framework Convention for the Protection of National Minorities.

In view of subsidies still amounting to more than 131,000 €, this assertion is not comprehensible. The cuts and savings measures in the budget of the Free State of Bavaria have their effect on most counselling bureaus and many groups in Bavaria. All of these must adjust themselves to the reduced subsidies and look for additional sources of finances or reduce their offers. Thus, the Sinti and Roma are not placed at a disadvantage as compared with other groups.

B.4.2.2.3 Measures to promote equality in Berlin

117. In the *Land* of Berlin, the Senate Authority [of the Berlin Senate] for Schools, Youth and Sports has, since 1990, been funding a social services/youth work Counselling Bureau run

by the Berlin-Brandenburg *Land* Association of German Sinti and Roma. The staff members of this Bureau are Sinti. The Bureau's main tasks are social counselling and general assistance with the enforcement of indemnification claims of victims of the Nazi regime who are members of this national minority. In addition, awareness-raising activities forming part of school and out-of-school youth education as well as adult education, or presented at public events, are carried out with the aim of providing basic information about Sinti and Roma in order to reduce misconceptions and prejudices.

B.4.2.2.4 Measures to promote equality in Bremen

118. With the aim of rendering the activities related to Sinti and Roma in the *Land* of Bremen more effective, the *Verband Deutscher Sinti und Roma, Landesverband Bremen e.V.* [Union of German Sinti and Roma, Bremen *Land* Association (reg'd)] was founded in 1999; the Association, as the providing body, took over the local government tasks of the counselling bureaus for Sinti and Roma in Bremen and Bremerhaven and the supraregional tasks of the former *Land* Association of Sinti and Roma in Bremen. For these activities, Bremen provides institution-based support by funding two permanent posts and one post established under Section 19 [(temporary) job creation for welfare recipients] of the Federal Social Welfare Act (*BSHG*). The Association's Counselling Bureau provides social counselling on all issues affecting the Sinti and Roma. These activities are of major importance to the Sinti and Roma population of Bremen since the Counselling Bureau often is, as stated by the Association, the only point of contact dealing with the affairs of Sinti and Roma living in Bremen. These persons, the Association said, could turn to "their" association, without any shyness or inhibitions, for advice and support. The activities of the Consulting Bureau are focused on case-by-case assistance with coping with deficits or problems encountered in social matters, at school and in working life. For solving social problems, co-operation with welfare services and other institutions and public agencies is very important. Target group activities for women and young people also are an important part of the Association's work. Offers and other projects aimed at promoting their cultural identity help to enhance the Sinti's and Roma's self-assurance and sense of personal identity. Also, the Association gives advice on matters concerning reparations for those Sinti and Roma who during the Nazi era were persecuted and/or were required to perform forced labour. The Association carries out public information and awareness activities regarding the Sinti's and Roma's history, the wrongs suffered by them under the Nazi regime, and their present-day situation in society.

B.4.2.2.5 Measures to promote equality in Hamburg

119. In the Free and Hanseatic City of Hamburg, the *Roma und Sinti Union* runs a Counselling Bureau in the Hamburg city district of St. Pauli. The Bureau is staffed with an

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

B.4.2.2.6 Measures to promote equality in Hesse

120. The Hessian Ministry of Social Affairs allocates annual grants, as part of institutional promotion, to the Hesse *Land* Association of the *Verband Deutscher Sinti und Roma* [Union of German Sinti and Roma] for the operation of the Association's Secretariat. In addition, the Hessian Ministry of Education and Cultural Affairs grants project-related subsidies.

B.4.2.2.7 Measures to promote equality in Lower Saxony

121. In Lower Saxony, the Hanover-based Counselling Bureau for Sinti and Roma which is operated by the *Niedersächsischer Verband deutscher Sinti* [Lower Saxony Association of German Sinti] has been in existence since 1983. The *Land* provides funds, as part of institutional promotion, for the operation of the Bureau to cover 99.8 % of the Bureau's annual overall requirements. The Counselling Bureau offers person-oriented help and counselling to the members of the minority, with the aim of their integration into society, and pursues wide-ranging public information/education activities in order to help with reducing current prejudices. The Göttingen-based Counselling Bureau for Sinti and Roma is operated by the local government. *Inter alia*, the Bureau has developed a project for young Roma women and Roma girls in order to offer them better educational and developmental opportunities. The focus in this regard is on assistance with regular school attendance.

B.4.2.2.8 Measures to promote equality in North-Rhine/Westphalia

122. In the schools sector of North-Rhine/Westphalia, policy guidelines, curricula and projects promote equality between the majority and the minority in social and cultural life (for details, cf. under Article 12, para. 2, Nos. 676, 882 below). (As regards cultural promotion, cf. under Article 5, para. 2, No. 252 below.)

123. As regards the social and economic fields, mention should be made of the subsidies granted to the Düsseldorf-based Counselling Bureau of the **North-Rhine/Westphalia Land** Association of German Sinti and Roma. This bureau offers social counselling to Sinti and Roma, helps with overcoming communication problems in their relations with public authorities, and provides other forms of social assistance.

124. The specific conditions of the persons belonging to national minorities, within the meaning of para. 2, 2nd sentence, are taken account of by paying attention to the specific wishes and needs of the members of the Sinti and Roma minority. Thus, regarding schooling, the Romany language is not included as a subject of classroom instruction since the Sinti and Roma wish to cultivate and disseminate their language only within their own communities.

B.4.2.2.9 Measures to promote equality in Rhineland-Palatinate

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

B.4.2.2.10 Measures to promote equality in Schleswig-Holstein

126. In Schleswig-Holstein, the *Land* Association of German Sinti and Roma has established a Secretariat and a Counselling Bureau in Kiel. One of the Bureau's tasks is to achieve improvements in the civil-rights situation - and where required, the social situation - of the German Sinti and Roma in Schleswig-Holstein. The Bureau is financially supported by the *Land* Government of Schleswig-Holstein. (In this respect, cf. section B.5.1.7.4.2, No. 251 below: Subsidising of a feasibility study regarding the establishment of an umbrella cooperative, and section B.12.3.2.1, No. 693 below: Promotional measures to support equal opportunities as regards access to education.)

B.4.2.3 Measures to promote equality, even without statistical data

127. With reference to the equal status of persons belonging to national minorities, especially the Sinti and Roma, on the **labour market**, the Advisory Committee, in their "Opinion on Germany" (CM(2002)43, no. 75), expressed the view that the authorities should seek means of obtaining more reliable **statistical data** on persons belonging to national minorities broken down by age, gender and location [...] to promote full and effective equality in the socio-economic field.

Therefore, the following is pointed out once more in order to avoid any further misunderstanding in respect of statistical data collection:

128. Since World War II, no official data have been collected in Germany on the number and identity of residents belonging to national minorities; Germany abstains from such data collection especially against the backdrop of German history and the persecution of minorities during the Third Reich.

129. Furthermore, many practical and methodological obstacles prevent collection of statistics on minorities in Germany:

- The German population statistics and many statistics in the social area (e.g. social benefits, education, public health) are largely based on the evaluation of administrative documents. As such records do not contain any information on national minorities and, if information is discriminating, *must not* contain any such data, it is not possible to make any relevant evaluations with regard to national minorities.
- The number of persons belonging to national minorities is relatively low. Out of the approximately 74.8 million German nationals residing in the Federal Republic, far fewer than 100,000 persons each belong to any one of the four national minorities, according to the estimates notified in the First State Report. This explains why no reliable statistics can be collected on this population segment within the framework of current official sample surveys.
- It is not necessary to establish whether a person belongs to a national minority in order to establish the identity of persons residing in Germany. That is why population registers do not contain any such data. There are no other official sources providing reliable information on the structure and distribution of national minorities on the basis of socio-demographic features.
- Consequently, there is no information available, either, on the persons who identify themselves with certain national minorities and where these specific persons live. The latter applies, above all, to the Sinti and Roma who settle in all parts of the FRG territory. This explains why there are considerable methodological and practical obstacles involved in conducting statistical surveys and in recording statistical data on these groups of persons.

For the above-mentioned reasons, inclusion of data on national minorities in Germany's official statistics would not be possible - or could only be achieved with disproportionate investments of time and effort.

130. Finally, basic legal considerations preclude collection of any such data in Germany. In addition to Article 3 (1) of the Framework Convention, also the Bonn-Copenhagen Declarations of 1955, Article 8 of the EU Data Protection Directive [Directive 95/46/EC of 24 October 1995 on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of Such Data] and other national legal provisions render this impossible.

131. Moreover, the Advisory Committee's own assessments regarding the overall subject of collecting criminal police data on persons belonging to national minorities show that, in the context of administrative practice, objections will indeed be raised to any recording of the affiliation with national minorities.

Bearing all of these facts in mind, the Federal Government does not intend to collect any statistical data on persons belonging to national minorities, especially since none of the national minorities have yet expressed, to the Federal Government, the wish that any such data be collected.

B.4.2.4 Supporting equality through financial (revenue) equalisation for structurally weak areas

132. With reference to the national minorities of the **Danes, Sorbs and Frisians**, it should be pointed out once more that their **settlement areas** belong to those areas of the Federal Republic of Germany which - like other regions having a **weak structure** in terms of trades and/or industry as compared to the economically more fully developed conurbations - are faced with special economic and social problems. The financial, or revenue, equalisation among the *Länder*, which is designed to set off the divergence in tax receipts that results from structural differences, helps to enable also the *Länder* with structurally weak regions to meet their state obligations, and thus also benefits regions with settlement areas of national minorities and ethnic groups. However, the minority-related policy tasks of the *Länder* are not separately itemised, as regards the allocated funds, in the schedule of allocations.

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

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

**B.4.3. Article 4, paragraph 3
(confirmation that the measures adopted to promote equality do not constitute an act of discrimination)**

135. Cf. the comments on Article 4, para. 2, in No. 109 above (section B.4.2.1 "General principles").

B.5 Article 5

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

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

B.5.1 Paragraph 1

(promoting the culture and preserving the identity of national minorities)

B.5.1.1 Promotion geared to the various needs, in accordance with the federal structure of the Federal Republic

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

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

138. Referring to the federal structure of cultural promotion, the Advisory Committee (ACFC), in their "Opinion on Germany" (CM(2002)43, no. 76), found that the present financial support system was perceived as very complicated by representatives of several national minorities because of the large number of public authorities involved. The Advisory Committee considered that Germany should seek, in co-operation with the national minorities concerned, to simplify and clarify the financial support system for minority languages and cultures.

139. On this point, the following clarification was needed:

The funds allocated by the Federal Government to national minorities for cultural purposes have developed in tandem with the various needs of the respective national minorities, thus taking their needs into account. This means that the criteria of financial support systems are just as specific.

All applications for financial support for minority cultures submitted to the Federal Government Commissioner for Cultural Affairs and the Media are carefully examined, and the respective decisions are taken according to standardised criteria. The *Länder* in question become involved, at the very latest, when such applications are processed.

B.5.1.2 Article 2 of the Basic Law as the basis for preserving culture and identity

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

B.5.1.3 Conditions for preserving the religion of national minorities

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

B.5.1.4 Conditions for preserving the languages of national minorities

142. In Germany, the obligation flowing from Article 5, para. 1, *i.e.* to promote the preservation of minority languages, (also laid down as an aim in Article 7, para. 1 (c), of the European Charter for Regional or Minority Languages [Regional/Minority Lan-

guage Charter]: "... to promote ... languages in order to safeguard them") is put into specific terms and fulfilled by the following legal provisions:

(For the scope for using minority languages in private and in public, cf. the comments below regarding Article 10.

143. For all persons speaking a country's official language as their native language it is a matter of course to learn their language, be taught in that language and to use it. For a much smaller group within the nation's population, the prerequisites for the preservation of an autonomous language can be ensured only by means of an appropriate infrastructure. Therefore, government measures serving the cultivation of regional or minority languages are aimed at placing the speakers of the given language on an equal footing with the majority population using the official language as their native language. Thus, such measures do not constitute a violation of the principle of equality; rather, they comply with it by ruling out discrimination and unequal treatment. The state may take adequate measures to promote equality of speakers of regional or minority languages with the speakers of the generally spoken official language in those cases where such measures are necessary and appropriate. Such measures must take account of the specific conditions existing for the given language and its users.

144. In keeping with the federal structure of the Federal Republic of Germany, responsibility for the implementation of measures to promote and preserve the languages of national minorities primarily lies with the *Länder*. The Constitutions of five *Länder* of the Federal Republic of Germany contain provisions relating to national minorities and ethnic groups, or to national and ethnic minorities. In part, these provisions also relate directly to the language/languages spoken by the latter. Such constitutional provisions form the basis for legislative measures or for administrative action taken for the benefit of these languages.

B.5.1.4.1 Legal bases for preserving the languages of national minorities in Brandenburg

145. Article 25 of the **Constitution** of the *Land* of **Brandenburg** paraphrases the rights of the Sorbs (Wends) as follows:

"(1) The right of the Sorbian people to the protection, preservation and fostering of their national identity and of their ancestral settlement area is guaranteed. The *Land*, local governments and local authority associations will promote the fulfilment of this right, especially the existence of the Sorbian culture in its own right and effective political participation by the Sorbian people.

(2) The *Land* will work towards ensuring the cultural autonomy of the Sorbs across the *Land* borders.

(3) The Sorbs have the right to the preservation and promotion of the Sorbian language and culture in public life and to having the language and culture imparted in schools and child day-care centres.

(4) In the settlement area of the Sorbs, marking of public identification signs for buildings and places shall include the Sorbian language. The Sorbian flag has the colours 'blue, red, white'.

(5) A law will lay down the details of the rights of the Sorbs. That law shall ensure that Sorbian representatives will participate in matters of the Sorbs, especially as regards legislation."

B.5.1.4.2 Legal bases for preserving the languages of national minorities in Mecklenburg-Western Pomerania

146. The **Constitution** of the *Land* of **Mecklenburg-Western Pomerania**, in its Article 18, contains the following provision for the protection of national minorities:

"The existence, in its own right, of the culture of ethnic and national minorities and of ethnic groups of citizens of German nationality is afforded specific protection by the *Land*."

B.5.1.4.3 Legal bases for preserving the languages of national minorities in Saxony

147. Article 5, para. 2, of the **Constitution** of the Free State of **Saxony** reads as follows:

"The *Land* guarantees and protects the right of national and ethnic minorities of German nationality to the preservation of their identity and to the cultivation of their languages, religion, culture and tradition."

148. Several articles of the Constitution of the Free State of Saxony refer to the Sorbs:

Article 2, para. 4, says that:

"In addition to the colours and the coat of arms of the *Land*, the colours and coat of arms of the Sorbs may be deployed, on an equal footing, in the settlement area of the Sorbs, and the colours and coat of arms of Lower Silesia in the Silesian region of the *Land*."

Article 5, para. 1, reads as follows:

"(1) Citizens of German, Sorbian or other ethnic origin belong to the people of the Free State of Saxony. The *Land* recognises the *lex patriae* [right to live in one's native country]."

Article 6 reads as follows:

"(1) The citizens of Sorbian ethnic origin living in the *Land* are a segment of the state's population who enjoy equal rights. The *Land* guarantees and protects the right to the preservation of their identity and to the cultivation and development of their traditional language, culture and tradition, especially by schools, preschool facilities and cultural institutions.

(2) Within the framework of *Land* and local-government planning, account shall be taken of the necessities of life of the Sorbian people. The German-Sorbian character of the settlement area of the Sorbian ethnic group shall be preserved.

(3) The co-operation, across *Land* borders, among Sorbs - especially in Upper and Lower Lusatia - is in the interest of the *Land*."

B.5.1.4.4 Legal bases for preserving the languages of national minorities in Saxony-Anhalt

149. The **Constitution** of the *Land* of **Saxony-Anhalt** lays down that:

"The existence, in its own right, of the culture of ethnic minorities and their political participation are afforded protection by the *Land* and local governments." (Article 37, para. 1)

B.5.1.4.5 Legal bases for preserving the languages of national minorities in Schleswig-Holstein

150. Article 5 of the **Constitution** of the *Land* of **Schleswig-Holstein** reads as follows:

"(1) Everybody is free to declare that he or she belongs to a national minority; such declaration does not release the given individual from his or her general civic duties.

(2) The existence, in its own right, of the culture of national minorities and ethnic groups and their political participation are afforded protection by the *Land*, local governments and local authority associations. The national Danish minority and the Frisian ethnic group are entitled to protection and promotion."

B.5.1.4.6 Additional legal basis for preserving the language of the Danes

151. A further basis for the rights of the Danish minority is provided by the **Bonn Declaration** of the Government of the Federal Republic of Germany **on the Rights of the Danish Minority of 29 March 1955**, which was preceded by the Declaration of 26 September 1949 by the *Land* Government of Schleswig-Holstein (Kiel Declaration).

In Section I of the Bonn Declaration, it is made clear that the members of the Danish minority, like all German nationals, enjoy the rights guaranteed by the Basic Law of the Federal Republic of Germany of 23 May 1949. These constitutional rights are listed under Nos. 1 to 12 of the Declaration.

152. In January 2004, a bill - comprising a bye-laws proposal - was submitted to the *Kreistag* of Nordfriesland *Kreis*. It contained, among others, the suggestion that a commissioner for minorities be appointed; multilingual capabilities available within the [*Kreis*] administration be advertised; use of the Frisian language in public life be promoted and protected; and an annual status/progress report be prepared.

After the party submitting the proposal had been heard by the Cultural Affairs Committee, the legislative motion was referred to the parliamentary groups for further deliberation. The *Kreis* also invited the Commissioner for Minorities of the Minister-

President of Schleswig-Holstein *Land* to report on her activities. It is expected that further decisions will be taken.

B.5.1.4.7 Additional legal basis for preserving the language of the Frisians

153. In January 2004, a bill on Promoting Frisian in the Public Sphere (Frisian Act) was introduced in the Schleswig-Holstein *Landtag*. The Frisian ethnic group expects that a law to this effect will be adopted by autumn 2004. [The *Friesisch-Gesetz/Friisk-Gesäts* (Frisian Act) was adopted by the Schleswig-Holstein *Landtag* on 13 December 2004.] The bill [Act of 13 December 2004] covers provisions on language use by public authorities; bilingual signs to indicate [public] buildings and bilingual place-name signs; bilingual forms; bilingual seals and letterheads; knowledge of the Frisian language as a recruitment criterium for employment in the public service; and using the Frisian coat of arms and the Frisian flag [colours].

B.5.1.4.8 Additional legal basis for preserving the language of the Sorbs

154. With regard to the Sorbian people, a **protocol note to Article 35 of the Treaty on the Establishment of German Unity** of 31 August 1990 states the following:

"Regarding Article 35 of the Unification Treaty, the Federal Republic of Germany and the German Democratic Republic declare the following:

1. Everybody is free to declare his or her affiliation with the Sorbian ethnic community and with the Sorbian culture.
2. The preservation and further development of the Sorbian culture and of Sorbian traditions are guaranteed.
3. Members of the Sorbian people and their organisations enjoy the freedom to cultivate and preserve the Sorbian language in public life."

155. Section 8 of the Act to regulate the substance of the **Sorbs' (Wends')** rights in the Land of **Brandenburg** [*SWG*] explicitly states that the Sorbian language, especially Lower Sorbian, shall be protected and promoted. Provisions similar to the above provisions of Brandenburg *Land* are to be found in Article 6, para. 1, of the Constitution of the Free State of Saxony and in Section 2, para. 3, of the **Saxon Sorbs Act** [*SächsSorbg*].

B.5.1.4.9 Additional legal basis for preserving minority languages by virtue of international conventions

156. In addition to the Framework Convention for the Protection of National Minorities, the Federal Republic of Germany on 16 July 1998 ratified the European Charter for Regional or Minority Languages (**Regional/Minority Language Charter**) which for Germany entered into force on 1 January 1999.

157. The Framework Convention also comprises a number of language-related provisions under international law. The constitutional stipulations regarding the protection of the national minorities and of the other ethnic groups traditionally resident in Germany, and the provisions under international instruments or treaties are put into concrete terms by laws, ordinances, statutes, and administrative action. Thus, federal legislation such as the Federal Electoral Act, and a number of *Land* Acts contain provisions designed to ensure adequate scope for the participation of national minorities in public policy affairs and within society, and aimed at protecting national minorities and promoting their identity and thus, in particular, their language/s. The *Land* Acts which are also aimed at the protection and promotion of the given language/s refer to national minorities who live, as a group, in their traditional settlement areas.

B.5.1.5 Conditions for preserving culture and traditions

158. Promotion of measures required to maintain and further develop the culture and preserve the protected languages and the identity of persons belonging to minorities is accomplished in Germany through the law in force and the promotional activities of public authorities.

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

160. Of particular significance to persons belonging to national minorities are the right to free development of personality, as guaranteed by Article 2, para. 1, of the Basic Law, which *inter alia* leaves use of the relevant language, maintenance of the relevant autonomous culture, and preservation of the ethnic identity to each individual; and Article 4, paras. 1 and 2, of the Basic Law, guaranteeing freedom of faith, conscience, and to profess a religious or philosophical creed, as well as the undisturbed practice of religion.

161. In keeping with the federal structure of the Federal Republic of Germany, responsibility for the implementation of the relevant measures primarily lies with the *Länder*.

The regulations contained in the Constitutions of five *Länder* and already quoted above in the sections on "legal bases for preserving the languages of national minorities" [Nos. 145 *seqq.*] also cover explicit provisions on the promotion and preservation of the culture of the groups protected under the Framework Convention: Article 25 of the Brandenburg *Land* Constitution; Article 18 of the Constitution of Mecklenburg-Western Pomerania *Land*; Articles 5, para. 2, and 6 of the Constitution of the Free State of Saxony; Article 37, para. 1, of the Saxony-Anhalt *Land* Constitution; and Article 5 of the Schleswig-Holstein *Land* Constitution.

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

B.5.1.6 Institutional infrastructure for promoting the culture and preserving the identity of national minorities

163. The existence of the following bodies and institutions responsible for promoting the conditions required for preserving the identity of the protected groups pursuant to Article 5, para. 1, at the same time ensures implementation of the obligations under Article 15 (therefore, see also the comments below in section B.15 on Article 15).

B.5.1.6.1 Bodies established by the Federation and the *Länder*

164. The *Bund* [Federation; Federal Government/Administration] and the *Länder* have established special bodies where regular exchanges take place between the political level, public administration and the various national minorities. These bodies discuss all minority-relevant issues concerning these groups. Also, functions have been established within public administration which are constantly in touch with the minorities and have direct responsibility for the protection and promotion of the groups protected under the Framework Convention. The creation of this infrastructure had to take account of the different needs of the various groups, and of the existing scope for government action. In addition, there are various organisations dealing with the preservation and promotion of the protected languages.

B.5.1.6.2 Government agencies, other public authorities, and Commissioners

B.5.1.6.2.1 Federal level

165. At the federal level, the **Federal Ministry of the Interior** has the primary responsibility for matters of minority-related law and for giving effect, at the national level, both to the protection of national minorities and to the provisions of the Charter.

166. With the designation of a **Federal Government Commissioner for Matters Related to Repatriates and National Minorities** in November 2002, national minorities can rely on an additional central point of contact at the federal level that makes it easier for the minorities' associations to put their concerns and views to government agencies, and thus to overcome the difficulties entailed by the division of responsibilities in the Federal Republic of Germany - both vertical (among the *Bund*, the *Länder* and local governments) and horizontal (among different Ministries). The main tasks of this Federal Government Commissioner *qua* commissioner for national minorities are:

- point of contact at the federal level for the national minorities in Germany;
- representative of the Federal Government to the relevant contact bodies;
- public information activities regarding the national minorities in the Federal Republic of Germany.

167. The Commissioner for National Minorities chairs the meetings of the Consultative Committees (both at the Federal Ministry of the Interior) on Issues concerning the Danish Minority and on Issues concerning the Sorbian People.

Also, the Commissioner caused a "Consultative Committee on Issues concerning the Frisians" to be established in summer 2004.

168. The Commissioner's continuing dialogue with the national minorities and the Council of Europe creates awareness and understanding of the concerns of national minorities, ensures direct involvement of the persons concerned in the opinion-forming process and thus ensures that the interests of national minorities will be taken into account, e.g. in the context of promotional measures, with due regard to the views of the groups affected. Thus, the Commissioner also is a mediator between the minorities and the responsible administrative agencies of the *Bund* and the *Länder*.

At the same time, the Commissioner's public appearances and public relations and outreach activities help to raise the general public's awareness of the cultural particularity of the national minorities and thus to enhance a tolerant attitude, arising from genuine interest and understanding, towards cultural differences.

169. As regards **human rights aspects of the protection of minorities**, responsibility also lies with the **Federal Ministry of Justice**. In the *Länder*, general responsibility for

matters concerning national minorities is vested in the respective State Chancellery or one of the Ministries (usually the Ministry of Cultural Affairs and/or of Education, or the Ministry of Scientific Affairs).

170. According to their specific portfolios, also **other Ministries, or institutions at the same level**, deal with various aspects of the protection of minorities (usually in connection with specific promotion tasks).

At the federal level, this is the **Federal Government Commissioner for Cultural Affairs and the Media**. In the *Länder*, there are, in instances, several different Ministries with responsibility in this field (under the federal system of Germany, material support for the work of minority organisations mostly is a responsibility of the *Länder*).

B.5.1.6.2.2 Land level

171. In **Brandenburg Land**, the Ministry for Science, Research and Cultural Affairs has a **Section for Sorbian (Wendish) Matters**.

172. In the Free State of **Saxony**, the Ministry of Scientific Affairs and Arts has a **Section for Sorbian Matters**. Responsibility for dealing with the interests of the Sorbian and German/Sorbian schools in the Sorbian settlement area in the Free State of Saxony lies with the Saxon State Ministry of Education and Cultural Affairs and the Bautzen Regional Schools Office which have assigned, to this task, one officer each with responsibility for school matters.

173. In **Schleswig-Holstein Land**, the head of a section of the State Chancellery is responsible for minority matters. In other *Länder* of the Federal Republic of Germany, these tasks are performed by units of various supreme *Land* authorities. In order to provide a direct point of contact to the minorities in Schleswig-Holstein, the additional function of a Border Region Commissioner, reporting to the Minister-President, was established in 1988. In April 2000, the designation was changed to "the Minister President's Commissioner for Minorities". *Inter alia*, the Commissioner [at present a woman] advises the Minister-President on matters which concern the Danish minority in the Schleswig region of this *Land* and the Frisians and German Sinti and Roma in Schleswig-Holstein. The Commissioner for Minorities monitors the cultural, social and economic developments in the border region in terms of their implications for the minorities and reviews the development and implementation of the legislation on minorities and ethnic groups at the international level.

B.5.1.6.2.3 Agencies at the regional level

174. *Kreise* [county-type administrative districts] with larger shares of national minorities and ethnic groups, and local authorities in the settlement areas of these minorities/groups have, like other public-law corporations (e.g. *Ostfriesische Landschaft*), also provided regional institutions for attending to the interests of minorities. In Brandenburg, the *kreisfreie Stadt* [non-district municipality] of Cottbus and Spree-Neisse *Landkreis* [(rural) administrative district] have designated full-time Commissioners for Sorbian Matters. In the *Landkreise* of Oberspreewald-Lausitz [Lusatia] and Dahme-Spreewald, honorary commissioners have been designated. The *Amt* [local authority union] of Jänschwalde has designated an honorary Sorbian Affairs Commissioner, and the *Amt* of Burg is planning a similar designation.

175. For election of these Commissioners, the Sorbian associations had the right of nomination in Cottbus and in the *Ämter* of Jänschwalde and Burg. In Spree-Neisse *Landkreis*, opinions of the Sorbian associations were taken into consideration. In Oberspreewald-Lausitz *Landkreis*, the associations were not involved in the selection process but agreed to the selection and since then have pursued constructive co-operation. In the *Landkreis* of Dahme-Spreewald, the Sorbian associations did not exercise the right of nomination.

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

The tasks of the Commissioners for Sorbian Matters include, for instance, preparing decisions by mayors, departmental heads and town councils; co-ordination and co-operation with the local agencies and departments with regard to all Sorbian matters; monitoring and supporting the public agencies in respect of the enforcement of the rights of the Sorbian people, as guaranteed by the *Land* Constitution; introduction of draft bills affecting the interests of the Sorbian population; and co-operation with Sorbian institutions.

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

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

B.5.1.6.3 Councils, institutions, and/or round tables at the federal level

179.

- **A *Bund/Länder* Conference with the minorities on the Framework Convention for the Protection of National Minorities:** Participants are the Federal Ministries dealing with the protection of national minorities, the respective *Land* authorities with lead responsibility, representatives of the umbrella organisations of the minorities protected by the Convention and of their scholarly institutions. One of the Conference subjects is discussion of the implementation of the Framework Convention.
- **A *Federation/Länder* Conference with the language groups** concerned on the European Charter for Regional or Minority Languages (**Regional/Minority Language Charter**): participants are Federal and *Land* Government authorities dealing with aspects of the Charter, and representatives of the umbrella organisations of these language groups and of their scholarly institutions. One of the Conference subjects is discussion of the Charter's implementation.
- **Consultative Committee on Issues concerning the Danish Minority**, set up at the **Federal Ministry of the Interior** (Federal MOI): members are the Federal Minister of the Interior and a State Secretary of the Federal MOI; two members each of the parliamentary groups of the German *Bundestag*, three members of the Danish minority in Germany, and the [Minister-President's] Commissioner for Minorities as the representative of Schleswig-Holstein *Land*. The Committee is chaired by the Federal Minister of the Interior. The Committee is to ensure contacts of the Danish minority with the Federal Government and the *Bundestag*. It has the task to discuss all issues of the Federal Government's domestic policy that concern or affect the Danish minority.
- **Consultative Committee on Issues concerning the Sorbian People**, set up at the **Federal Ministry of the Interior** (MOI): membership of the Consultative Committee includes, on the one hand, three members of the Sorbian people designated by DOMOWINA [Federation of Lusatian Sorbs] and a representative of the Foundation for the Sorbian People [Za³ožba za serbski lud] and, on the other hand, representatives of the Federal Ministry of the Interior and of the Brandenburg and Saxony governments. Members of the German *Bundestag* and representatives of other federal ministries can be invited to attend the meetings. The Committee is chaired by the Federal Minister of the Interior.

The Consultative Committee's task is to discuss all issues of the Federal Government's domestic policy that concern or affect the Sorbian people.

- **Foundation for the Sorbian People** (*Za³o^zba za serbski lud - Stiftung für das sorbische Volk*): the members of the board of trustees [Foundation Board] are representatives of the Sorbian people, of the *Bund* [Federal Government], of the Free State of Saxony and of Brandenburg *Land*, and local government representatives; membership of the Parliamentary Consultative Council includes Members of the German *Bundestag*, of the Saxon *Landtag* and of the Brandenburg *Landtag*. The aim of the Foundation is to promote, both in terms of moral support and funding, activities designed to preserve the Sorbian identity and language, the Sorbian institutions and Sorbian culture. For further details, cf. the comments under Nos. 197 - 204 below.
- So far, no similar bodies have been established at the federal level to attend to matters concerning the German Sinti and Roma. However, leading personalities from the spheres of politics, academia and industry in Germany are represented on the Board of Curators of the Documentation and Cultural Centre of German Sinti and Roma.
- The **German *Bundestag*** established a "**Round Table on National Minorities**", which several times per year, with the support of the chairperson of the Committee on Internal Affairs, brings together Members of Parliament and representatives of the umbrella organisations of the national minorities for joint deliberations. The President of the *Bundestag*, in the autumn of 2003, invited this Round Table to a discussion and promised similar future meetings once a year.
- In the autumn of 2003, an **all-party initiative for regional and minority languages** was launched in the **German *Bundestag*** with the aim of taking particular care of the interests of the language groups protected under the Charter.

B.5.1.6.4 Bodies at the *Land* level

180. For the duration of each legislative period, the **Saxon *Landtag*** elects a **Council for Sorbian Affairs** [Rada za serbske naležnosæ], and the ***Landtag* of Brandenburg** a **Council for Sorbian (Wendish) Affairs** [Rada za serbske nastupnosæi]. Each of these Councils has five members who, in Brandenburg *Land*, must be members of the Sorbian people. In Brandenburg, Council members are nominated by the Sorbian associations, and in the Free State of Saxony by Sorbian associations and the German/Sorbian local communities. The Council deals with all parliamentary matters of importance to the Sorbian people, including legislative proposals, and submits comments/opinions from the Sorbian point of view.

181. The *Landtag* of Schleswig-Holstein has a "Panel dealing with Matters Concerning the Frisian Ethnic Group in Schleswig-Holstein Land". It is composed of Members of the Schleswig-Holstein *Landtag* and *Bundestag* Members coming from Schleswig-Holstein, the Minister-President's Commissioner for Minorities, and prominent elected representatives and office-holders of this ethnic group. The Panel's activities ensure continuous exchanges of information and support as regards pertinent issues.

B.5.1.7 Promotional policy

182. The groups protected in Germany under the Framework Convention differ in terms of their regional distribution, the level of (minority) language proficiency, the infrastructure established and maintained by these groups to support cultural institutions and associations, and their respective concepts for preserving their cultural and linguistic identity. In instances, such differences also exist within a given minority when it is represented by various organisations with different aims. Also, the respective situation, together with the historic development, has - in conjunction with the varying financial capacities of the *Länder*, and taking account of the respective number of persons belonging to the national minorities and ethnic groups in a *Land* - had an influence on governmental promotion policies. Consequently, the information provided here on the various groups differs in length and detail.

183. While - leaving small numbers of individuals out of consideration - only members of *one* of the groups protected under the Framework Convention live in the majority of the *Länder* of the Federal Republic of Germany, the situation is different in two of the *Länder*. In Schleswig-Holstein, the Danish minority and the North Frisian ethnic group as well as - substantially smaller numbers of - the national minority of the German Sinti and Roma are at home. The population of Lower Saxony includes, on the one hand, the large group of East Frisians who see themselves as a cultural ethnic group with a regional identity, including the Saterland Frisians (who are both a cultural and a language group), and on the other hand, a considerable number of German Sinti and Roma.

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

185. Promotion of the three groups in Schleswig-Holstein takes account of their widely varying structures and different needs. In addition to the *Land*, the *Kreise* and local authorities are involved in public support for minorities. Once per legislative period (last in December 2002), the *Land* Government submits a Minority Report to the *Landtag*. The report provides information on the situation of the national minorities and ethnic groups in Schleswig-Holstein and on the activities of the German 'Border Associations', of the Federal Union of European Nationalities (FUEN), the European Bureau for Lesser Used Languages (EBLUL) and the European Centre for Minority Issues (ECMI).

B.5.1.7.1 Promotional policy for the Danish minority

186. The **chief organisation** of the Danish minority **for cultural work** and thus, in particular, for the cultivation of the Danish language is ***Sydslesvigsk Forening (SSF)***, i.e. "*Südschleswigscher Verein*", SSV - South Schleswig Association), with the *Dansk Generalsekretariat* in Flensburg and, at present, a membership of 13,034; another 25 associations pursuing many and various activities are affiliated to the SSF.

Sydslesvigsk Forening is committed to the promotion of "Danish work in South Schleswig", of the Danish language and Danish folklore. In addition, the Association maintains lively contacts with Denmark and the other Nordic countries, and its aim is to keep alive the Danish culture and the Danish way of life within the minority. It organises Danish theatrical performances and concerts, maintains buildings as meeting places and assembly rooms, a museum, a school hostel in the country [outdoor pursuits centre] as well as residences for the elderly, and operates senior citizens' clubs with a wide range of recreational facilities and activities in the Danish language.

187. The programme of cultural events throughout the region also includes lectures, movies, slide lectures, discussions and social gatherings. The **yearly meetings of the Danish minority**, with large open-air gatherings in various places of the settlement area and with parades with musical accompaniment, have for some time already developed into large public festivals. The minority and the majority have opened up towards each other and share experiences and activities.

188. The Danish minority also operates the **Danevirke Museum**, a historical museum near [the town of] Schleswig, and an **adult education centre** in Jarplund (Jaruplund).

The *Danevirke*, or *Danewerk*, an earthen defence rampart over a total length of 30 km, is the largest archaeological monument in Northern Europe. The Danevirke Museum documents the vicissitudes of the history of this fortification from the Iron Age and the early Middle Ages up to the recent past.

189. **Jaruplund Højskole**, the residential adult education college of the Danish minority in Schleswig-Flensburg *Kreis*, was built in 1950. As a Danish residential adult education college, it follows the tradition of the Danish educationalist Grundtvig [who founded voluntary 'residential folk high schools'] and takes particular account of the cultural activities of the Danish minority in the Schleswig region of the *Land*.

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

191. In addition, the Danish minority has a library system of its own, *i.e.* the **Dansk Centralbibliotek for Sydslesvig** (*Dänische Zentralbibliothek für Südschleswig* - Danish Central Library for South Schleswig), which is the local main library for adults and children and also comprises two mobile libraries, a bibliographic section and a selection of audiovisual media. The Danish Central Library has two main branches and many sub-branches in schools and nursery schools. It also comprises a research section and archives.

192. Of particular importance to the Danish minority, and for the preservation of their language, is their fully developed system of private schools. The providing body for activities related to schools and nursery schools is **Dansk Skoleforening for Sydslesvig**, or *Dänischer Schulverein für Südschleswig* (Danish Schools Association for South Schleswig), with some 8,000 members. At present, it operates 57 nursery schools and day-nurseries and 49 schools. These are primary schools and secondary modern schools - including remedial classes, three *Realschulen* [secondary technical schools], one *Gymnasium* [grammar school] in Flensburg, and two comprehensive schools.

193. The Danish minority finance their work, for the major part, with funds provided by the Kingdom of Denmark and the Danish Border Association "*Grænseforeningen*". Also, substantial funds are allocated from the budgets of the Schleswig-Holstein *Landtag*, the *Kreise* and local governments in the settlement area. In addition, own resources of the minority and donations from private individuals and foundations are available. Thanks to these resources and allocations, the diversified cultural work of the Danish minority can be carried out on an extensive scale.

194. The church activities of the Danish minority are organised and supported by the Evangelical Lutheran *Dansk Kirke i Sydslesvig*, or *Dänische Kirche in Südschleswig* [**Danish Church in Southern Schleswig**]. As a corporated society under German law, it is a Free Church comprising 37 parishes with 22 ministries [pastorates]. Overall, church services are held in about 60 parishes. The Danish Church in Southern Schleswig, with a membership of around 6,600, is independent *vis-à-vis* the regional Evangelical-Lutheran Church, *Nordelbische Evangelisch-Lutherische Kirche*, in Germany and the *Folkekirke* (National Church / Evangelical-Lutheran People's Church) in Denmark. It closely co-operates with the private-law organisation *Dansk Sømands- og Udlandskirke* (Danish Church Abroad / Danish Seamen's Church - DSUK) in Odense/Denmark.

B.5.1.7.2 Promotional policy for the Sorbian People

B.5.1.7.2.1 Institutional infrastructure for the promotion of the Sorbian people

195. For the duration of each legislative period, the **Saxon Landtag** elects a **Council for Sorbian Affairs** [Rada za serbske naležnosæ], and the **Landtag of Brandenburg** a **Council for Sorbian (Wendish) Affairs** [Rada za serbske nastupnosæi]. Each of these Councils has five members who, in Brandenburg *Land*, must be members of the Sorbian people. In Brandenburg *Land*, Council members are nominated by the Sorbian associations, and in the Free State of Saxony by Sorbian associations and the communities in the Sorbian settlement area. The Council deals with all parliamentary matters of importance to the Sorbian people, including legislative proposals, and submits comments/opinions from the Sorbian point of view. In the Free State of Saxony, also the State Government shall hear the Council on these matters.

196. In addition, the Sorbs founded a large number of associations with widely varying objectives. (On this point, cf. B.7.2.2 below, No. 369, referring to Article 7.)

197. The ancestral settlement area of the Sorbs is in the *Länder* of Saxony and Brandenburg. The two *Länder* have, mutually and with the *Bund*, agreed a common promotion policy. This policy has been embodied in the **Foundation for the Sorbian People**. It was established in 1991 as an unincorporated foundation of the Free State of Saxony, with the *Bund* and the *Länder* of Brandenburg and Saxony as the providing bodies. This unincorporated foundation has always been understood by the interested parties as a mere interim solution. The aim was the establishment of a legally autonomous foundation which would enable the Sorbian people to organise its interests and concerns with a large degree of self-determination. After the structures required to this end had been developed in the meantime, the [incorporated] foundation was established with the conclusion of an Inter-State Treaty signed by the *Länder* of Brandenburg

and Saxony on 28 August 1998 in Schleife/Saxony. The Treaty was ratified on 18 December 1998 and entered into force on 1 January 1999.

198. The institutors of the Foundation, and Contracting Parties to the State Treaty, are the *Land* of Brandenburg and the Free State of Saxony. The Federal Government (*Bund*), on the basis of the Agreement on the Common Funding of the Foundation of 28 August 1998 (effective until 31 December 2007), provides funding and appoints representatives to the Foundation's bodies.

199. The principal tasks of the Foundation are, in particular:

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

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

201. The Foundation is domiciled in the city of Bautzen/Budyšin, and has regional offices in Cottbus/Choæebuz [Brandenburg], Schleife/Slepo, Hoyerswerda/Wojerecy, Crostwitz/Chrósæucy and Bautzen [all four in Saxony]. Its affairs are managed by the Director. The Foundation's administration also comprises *Sorbische Kulturinformation* [SKI - Sorbian Cultural Information Office] in Bautzen and the Sorbian Cultural Information Office [Serbska kulturna informacija] "Lodka" in Cottbus.

202. For fulfilment of the Foundation's objectives, it receives annual grants from the *Bund*, the Free State of Saxony and Brandenburg *Land*. The *Bund* provides about half of the Foundation's funds while the Free State of Saxony and Brandenburg *Land* provide one third and one sixth, respectively. In the fiscal years up to 2004, the Foundation disposed of an annual cultural promotion budget of around 16 million €. However, the *Bund* envisages marked cuts for the 2005 fiscal year (reduction from 7,880,000 € to 7,225,000 € - as of: August 2004).

The following institutions are subsidised out of the endowment funds:

203.

Sorbisches National-Ensemble GmbH, Bautzen;

Domowina - Bund Lausitzer Sorben e.V. [Zwajsk łuŹiskich Serbow z.t. - Federation of Lusatian Sorbs, reg'd], as the umbrella organisation of Sorbian organisations, which also operates the *WITAJ-Sprachzentrum* [WITAJ Language Centre];

Domowina-Verlag GmbH [Domowina Publishing House], Bautzen;

Sorbisches Museum Bautzen [Sorbian Museum in Bautzen];

Wendisches Museum Cottbus [Sorbian/Wendish Museum in Cottbus];

Sorbisches Institut e.V. [Sorbian Institute, registered association], Bautzen, as a scholarly institution;

Schule für niedersorbische Sprache und Kultur [School for the Low Sorbian/Wendish Language and Culture] in Cottbus.

204. The *Deutsch-Sorbisches Volkstheater* [*Němsko-Serbske ludowe dźiwadlo* - German-Sorbian Popular Theatre], Bautzen, and the *Sorbischer Schulverein e.V.* [Serbske šulske towaristwo z.t. - Sorbian Schools Association] are subsidised as part of project promotion by the Foundation. In addition to institutional promotion [basic funding of institutions], project-oriented promotion by the Foundation covers a wide range of subjects, e.g. production of movies and sound recordings, projects related to the cultivation of culture, traditions and folklore, competitions for various age groups and fields of interest.

B.5.1.7.2.2 Fields of promotional measures for the Sorbian People

205. **Sorbian in tertiary education** can be promoted only on a limited scale: There is neither a Sorbian university nor any other college/university in the German-Sorbian settlement area. **Teacher training** in Sorbian as a school-subject and courses of studies for students of the Sorbian language and culture [Sorabists] are offered by the *Institut für Sorabistik* [Institute of Sorbian Language and Culture] at **Leipzig University**.

206. In order to enable Sorbian students to stay in contact with the Sorbian language and culture also outside their settlement area, accommodation in Sorbian **student hostels** is offered in **Dresden, Leipzig and Berlin**.

207. The **Sorbische Fachschule für Sozialpädagogik** [Sorbian College for Social Pædagogics] forms part of the Vocational Training Schools Centre for Economics (**BSZ Wirtschaft**) in **Bautzen**. Attendance of Sorbian classes is obligatory for all students. The type of instruction (students speaking Sorbian as their mother tongue; students having some knowledge of Sorbian; or students learning Sorbian as a foreign language) depends on the level of Sorbian language proficiency.

208. Support is given not only by the Foundation or, for other activities, by the *Länder* but also by the local authorities and *Landkreise* [rural county-type administrative districts] in the traditional settlement area. This is the case, in particular, as regards **promotion of traditional festivals** carried out, **and of customs** observed, by Sorbian associations. Cultural groups and associations are actively maintained and are also supported by local authorities.

209. A large number of such clubs and associations were newly founded after the 1989 'peaceful revolution' [in the former GDR]; young people are much involved in these activities and often even organise such events. Apart from locally organised activities, particular importance attaches to certain major-scale festivals which draw supralocal attention and for many people mark the highlights of the yearly cycle of seasons and festivals. As a rule, financial support by local authorities and the Foundation for the Sorbian People is required for such festive events.

Preservation and cultivation of Sorbian customs thus are an integral part of almost all local mass events in the traditional settlement area of the Sorbian people. In most cases, these customs are also kept up and practised by the Sorbs' fellow-citizens belonging to the majority population.

210. As regards support, provided by the Foundation for the Sorbian People, to projects related to Sorbian practice of religion, cf. B.8.2.2 below ("Religious affiliation of the Sorbs").

211. The two *Länder* concerned give high priority to **promoting acquisition of the Sorbian language** because passing on of language proficiency to next-born generations is seen as a prerequisite to preserving and developing a national identity. Therefore, learning the language in school ranks particularly high among these priorities. Since the 1989 'peaceful revolution' [in the former GDR], the number of pupils attending Sorbian classes has, at least in Brandenburg, quintuplicated and at present stays at a high level. In the Free State of Saxony, the number has mostly remained constant over the same period; fortunately, the *Witaj* Project and subsequent provision of bilingual schooling in part offset the negative demographic development. Mirroring the demographic development, there was a marked drop in the number of

Sorbian native speaker pupils - however, this decrease was less than in the case of the German majority population.

212. On the basis of the *Witaj* Project, *i.e.* a project to impart knowledge of the Sorbian language already in **pre-school education**, mainly to children coming from German-speaking families and attending day-care centres, an attempt has already been made to have children learn the language at an earlier age and allow them to learn it through play. The project is being further developed on a continuous basis.

213. The state-run **schools** system and pre-school institutions make contributions to Sorbian language teaching, which are quite significant in a number of cases. This is particularly the case in those regions where the Sorbian language is not present in family and public life. Language acquisition is supported by the state-run schools system and the relevant pre-school facilities.

214. Another priority of cultural promotion at the local government level is educational work. It is especially due to the work of the **museums** provided by local self-administration bodies that items of the Sorbian cultural heritage are collected, made accessible to the public, and presented and explained in lectures, guided tours, etc. Also, many centres showing displays of local customs and traditions (so-called *Heimatstuben*), which are supported by local authorities within the framework of project promotion, preserve the Sorbian cultural heritage and make others familiar with it.

215. With the aim of authentically conveying Sorbian cultural values and traditions and the Sorbian people's way of life, the association **Verband "Sorbischer Kulturtourismus e.V."** [*Zwjazk za serbski kulturny turizm z.t.* - Sorbian Cultural Tourism, registered association] was formed in 1996. With its projects, among others the development of a Sorbian Cultural Route, this association intends -without, however, aiming at commercialisation principally for tourism purposes - to make Sorbian institutions, museums and local traditional centres (*Heimatstuben*) accessible to tourism on a greater scale. This requires close co-operation with many individuals and institutions.

216. There is close co-operation with the Working Group "*Serbske pomniki - Sorbische Denkmale*" [Sorbian Architectural Monuments], which also aims at preserving Sorbian cultural monuments.

B.5.1.7.2.3 Maintaining Sorbian culture and preserving the Sorbian identity, as opposed to open-cast lignite quarrying - conflicting concerns and requirements

217. In no. 77 of their Opinion on Germany's first State Report [doc. CM(2002)43], the **Advisory Committee on the Framework Convention (ACFC)**, found that the envisaged **dissolution of a municipality with Sorbian character aimed at allowing lignite**

quarrying to continue was likely to make **maintaining the Sorbian culture** and preserving the Sorbian minority identity **more difficult** and that therefore the obligation under Article 5, *i.e.* to promote such conditions, was not sufficiently fulfilled.

218. On this point, the Federal Republic of Germany made a substantiated clarifying statement to the effect that, nevertheless, this was no case of abuse of discretion or of contravening Article 5; for details, cf. the comments below on Article 16 as regards the specific obligation it imposes on the Parties, *i.e.* to refrain from territorial reorganisation affecting (the areas inhabited by) persons belonging to national minorities.

B.5.1.7.3 Promotional policy for the Frisian ethnic group

219. Under the Council of Europe Framework Convention for the Protection of National Minorities, the Frisian ethnic group is accorded the same status as a national minority. The activities of the Frisian movement are, for the major part, organised by associations. These include *Nordfriesischer Verein* [North Frisian Association], *Friisk Foriining* [Frisian Association] (formerly: *Foriining for nationale friiske* [Association of National Frisians]), *Nordfriisk Instituut* [North Frisian Institute], *Öömrang Feriin* [Öömrang Association, *i.e.* association for the dialect spoken on the island of Amrum/Oomram], *ffnr (feriin for nordfriisk radio / Ferian för en nuurdfresk radioo* [Association for a North Frisian Radio Station]) and, as a private foundation, the *Fering Stiftung* [Fering Association, *i.e.* association for the dialect spoken on the island of Föhr/Feer]. All of these associations are promoting different priority aspects of the preservation of the language, culture and landscape of Nordfriesland. The *Verein Nordfriesisches Institut* [Association for the North Frisian Institute] is the providing body of the scholarly institution *Nordfriisk Instituut*.

220. In Saterland *Gemeinde*, the association *Seelter Buund* dedicates its activities to the preservation of the Saterland Frisian [*Seelterfräisk*] language and culture.

B.5.1.7.3.1 Institutional infrastructure for the promotion of the Frisian ethnic group

221. The **umbrella organisation of the Frisians** is *Interfrasche Rädj (Interfriesischer Rat* - Inter-Frisian Council) which comprises three Frisian Councils: Section North (in Schleswig-Holstein *Land*), Section East (in Lower Saxony *Land*), and Section West (in the Netherlands). Membership of the Frisian Council "Section North" includes four representatives of *Nordfriesischer Verein* [North Frisian Association], two representatives of *Friisk Foriining* [Frisian Association], one representative of *Eiderstedter Heimatbund* [Eiderstedt Union for Local and Regional Traditions], one representative of the *Gemeinde* of Helgoland, and one representative of *Nordfriisk Instituut* [North Frisian Institute]. The Section East brings together the associations of East Frisians and Sa-

terland Frisians. The main associations in the East Frisian area are: *Ostfriesische Landschaft* (a public-law corporation), *Landwirtschaftlicher Hauptverein für Ostfriesland* [Agricultural Main Association for Ostfriesland], *Oldenburgische Landschaft* (a public-law corporation) and *Friesischer Klootschiesserverband* [Frisian Curling Association]. The interests of the Saterland Frisians within this Section are represented by *Seelter Buund*, an association which is dedicated, in particular, to the cultivation of the Saterland Frisian culture and language.

222. In addition, there are, **throughout the East Frisian area**, many local clubs dedicated to the cultivation and preservation of Frisian customs and folklore.

The local and supraregional Frisian associations in **Nordfriesland** engage in a wide range of cultural activities, including folksongs and dancing. They offer language courses and language study trips as well as children's holiday camps, engage in sports activities where Frisian is spoken, champion Frisian stage productions, carry out work in the fields of nature conservation and conservation of the architectural heritage, and operate their own museums of local history and culture. Some of these projects are supported with public funds.

223. The **Schleswig-Holstein Landtag** has a "**body dealing with matters concerning the Frisian ethnic group in Schleswig-Holstein Land**" which is chaired by the President of the *Landtag*. Usually twice per year, this body discusses matters concerning the Frisian inhabitants of the *Land*, with the aim of cultivating and fostering the Frisian language and culture. Its members are representatives of the political parties of the *Landtag*, the *Bundestag* MPs from Nordfriesland, representatives of the *Land* Government and of the Frisian ethnic group. North Frisians are also represented on local councils. The meetings of some of these local parliaments are held also in the Frisian language.

B.5.1.7.3.2 Fields of promotional measures for the Frisian ethnic group

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

225. Kiel **University** has the *Nordfriesische Wörterbuchstelle* [North Frisian Dictionary Institute] (since 1950) and the **professorial chair for Frisian philology** (since 1978).

The *Nordfriisk Instituut* (NFI, *Nordfriesisches Institut* - North Frisian Institute) in Bredstedt/Bräist, as a central scholarly institution in Nordfriesland, is of great importance to

the cultivation of the Frisian language, culture and history. The Institute sees its role as a bridge between theory and practice, between scholarly work and non-specialist research. In particular, its scholarly and journalistic activities cover the languages, history, and study of the geography and civilisation of Nordfriesland. It has a specialised library and archives, and organises seminars, courses, workshops and lectures. The Institute's providing body is the association *Verein Nordfriesisches Institut*, with a membership of about 850. The Institute's work is mostly funded with subsidies provided by Schleswig-Holstein *Land*. Funding is also provided by local authorities and by the Danish minority. In addition, own resources are available in the form of membership dues, donations and sales revenues.

226. In addition to *Nordfriisk Instituut*, the privately funded foundation **Fering Stiftung**, in Alkersum on the island of **Föhr/Feer**, pursues scholarly linguistic and cultural activities especially, but not exclusively, for the island of Föhr.

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

228. A special measure worth mentioning is the "**Andersen-Haus**" in Risum-Lindholm, which was renovated, with substantial *Land* funding, as a **Frisian cultural centre** for which Nordfriesland *Kreis* provides substantial funds.

229. So far, it has not been possible to set up a federally subsidised "foundation for the Frisian ethnic group" along similar lines as the Foundation for the Sorbian People. Since 2000, however, the Frisians' linguistic and cultural activities have also been supported by the *Bund* with considerable project-related funding.

230. Research on the **Saterland Frisian history, culture and language** is of more recent date. Saterland Frisian [*Seelterfräisk*] has not been handed down as a written language. One known work is a collection of Saterland Frisian proverbs, dating from the year 1901. It was only after World War II that the first spelling rules were laid down for this language. In 1980, a *Saterfriesisches Wörterbuch* [Saterland Frisian Dictionary] was published; a revised and significantly enlarged second edition is in preparation. Further publications are compilations of texts, such as "*Saterfriesisches Volksleben*" ["Saterland Frisian Folkways"] and "*Saterfriesische Stimmen*" ["Saterland Frisian Voices"].

231. The *Zentralstelle für die sprachliche Landesforschung* [Central Office for Linguistic Regional Research] of Göttingen University, with the support of Saterland *Gemeinde*, carried out a poll among 10 per cent of the inhabitants of the Saterland region. The project is planned to provide findings regarding the awareness of the members of this ethnic group in respect of their own history and culture.

232. The study of the Saterland Frisian language lay primarily in the hands of a Germanist [scholar studying German/Germanic languages and literatures] of Oldenburg University. However, the position became vacant in October 2003 when this Germanist went into retirement. *Seelter Buund* fears that completion of the aforementioned second edition might be jeopardised as a result. The *Buund* also pointed out that, also with regard to future teacher training and linguistic research, there was an urgent need for appointing a Germanist specialising in Saterland Frisian and Low German to a post at Oldenburg/Osnabrück University.

As stated by the *Land*, it was very important to Oldenburg University to continue Sater Frisian linguistic research, and the University endeavoured to include it in its programme of studies also in future. However, it had to be seen first how this could be implemented and integrated at the university within the framework of restructurisation after the retirement of the holder of this position.

In Lower Saxony, a Commissioner for Saterland Frisian/Low German was appointed in 1997 to serve with the Weser-Ems *Bezirk* Government.

B.5.1.7.4 Promotional policy for the German Sinti and Roma

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

B.5.1.7.4.1 Institutional infrastructure for the promotion of the German Sinti and Roma

234. To safeguard representation of their interests, members of the German Sinti and Roma have formed [local] associations and (in line with the federal structure of Germany) *Land* Associations.

235. With the *Bundestag* Resolution of 26 June 1986, all parliamentary groups of the German *Bundestag* confirmed the need for enhancing the living conditions of the German Sinti and Roma and for promoting their integration into society.

236. Since 1991, the Central Council of German Sinti and Roma and the Documentation and Cultural Centre of German Sinti and Roma have received publicly funded institution-based support.

237. The **Central Council of German Sinti and Roma** is the umbrella organisation of nine *Land* Associations of German Sinti and Roma and of a number of regional or local associations and institutions. Priority tasks of the Central Council are: representation of the interests of this national minority with regard to according them political

equal status - this also includes, for instance, legislative proposals and political initiatives for protection against radical-right violent offences and outrages, and the Holocaust Memorial; enforcement of minority rights and of indemnification claims of Holocaust victims; commemoration of the genocide victims; and supporting public prosecution of Nazi crimes at the national and international levels. Other chief activities are co-operation with the *Land* Associations of German Sinti and Roma and with international minority and human rights organisations, and support for Sinti and Roma in other countries.

238. Priority activities of the **Documentation and Cultural Centre** are: documentation and scholarly work regarding the history, culture and present situation of this national minority; cultural work, education and further education; social work and counselling; and public information/education with the aim of integrating the German Sinti and Roma into society while preserving their cultural identity. The Centre publishes a series of papers in several volumes, e.g. on subjects like "Sinti/Roma Story-Telling in the Context of European Folk-Tale Traditions", "Portrayal of Gypsies in German-Language Literature", or "Children and Adolescents as Victims of the Holocaust". In addition, several comprehensive works were published, such as the documentation entitled "Sinti and Roma under the Third *Reich* - The Programme of Extermination Through Labour". Also, the Documentation and Cultural Centre organises cultural projects and, in a large permanent exhibition, shows the history and the extent of the National-Socialist genocide of 500,000 Roma and Sinti in Europe. A travelling exhibition on the same subject will tour several German cities.

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

240. The Central Council's budget is fully funded by the *Bund* while for the budget of the Documentation and Cultural Centre, 90 per cent of the funds are provided by the *Bund* and the remainder by Baden-Wurtemberg *Land*. The Central Council's staffing schedule covers six staff posts (mainly academic positions), and the schedule for the Documentation and Cultural Centre provides for 18.5 posts.

241. The Lower Saxony *Land* Association of German Sinti, one Sinti and Roma association in Hamburg and a number of smaller regional organisations of German Sinti, of German Sinti and Roma, or of German and foreign Roma are independent organisations.

242. A number of organisations not affiliated to the Central Council and some elders of family clans of German Sinti formed the **Sinti Allianz Deutschland e.V.** [Sinti Alliance Germany, reg'd]. As stated by the Alliance, it was founded in 1999/2000 by twenty representatives of tribes and is the umbrella organisation of nine - previously independent - Sinti organisations and one Lowara tribe. The Sinti Alliance sees itself as representing those Sinti who feel committed to the Sinti's traditional way of life with its historically evolved precepts and prohibitions governing the conduct of their lives, and who wish to preserve this social and cultural system. The Alliance's work priorities are the development of political concepts and supporting these concepts *vis-à-vis* governments, parliaments and public authorities. Other fields of activity, as stated by the Alliance, are strengthening the Sinti culture through cultural projects and supporting Sinti families in social matters. In addition, the Alliance provides care of elderly people and represents the interests of victims of the Nazi regime. The Alliance seeks to establish a legal basis to enable the Sinti to exercise their civil rights in keeping with the Sinti's taboo system.

243. There are no specific governmental bodies and institutions dealing with the protection and promotion of the Romany language. This is in line with the wishes of the majority of this language group. Related to this is the objection raised by the Sinti Alliance and the Central Council of German Sinti and Roma and other associations of German Sinti to the introduction of the Romany language in publicly maintained schools or to making it the subject of scholarly research. On the one hand, this objection is based on the negative experience made with Nazi language researchers. Therefore, the Central Council and other associations take the view that, also out of regard for the experience undergone by the survivors of the genocide, Romany should neither be taught by non-Gypsies nor be learnt within the public educational system. Another reason given by the Sinti Alliance for this objection is the Sinti's millennia-old taboo system under which nobody outside the Sinti community may have access to this language. The opposite position is taken by Roma associations which come out in favour of the inclusion of Romany in school education and wish to support measures, like those taken in European neighbouring countries, for the development of a written form of this language. Thus, going by those German Sinti and Roma as are represented by their relevant organisations, the vast majority of German Sinti and Roma are against inclusion of their Romany language in the State-run education system, and emphasise their right to cultivate their language and to pass it on to future generations exclusively within the family and family clans.

B.5.1.7.4.2 Fields of promotional measures for the German Sinti and Roma

244. In the meantime, Sinti families have addressed a large number of **individual requests** and initiatives to the *Land* Associations of German Sinti and Roma in order to enforce their wish that teachers of this minority be employed for supplementary

lessons for Sinti and Roma schoolchildren (outside regular classes, in the afternoon and in classrooms made available for the purpose) with a view to improving the children's linguistic competence. Another objective to be achieved by such supplementary lessons is to enhance the children's school performance by dealing with school subjects and offering homework assistance - in the minority language - (and/or going over the regular classroom lessons again for better understanding of the subject-matter, etc.). The Documentation and Cultural Centre of German Sinti and Roma offers to co-ordinate such initiatives.

245. For **adult education**, groups have already been set up; in Mainz, for example, young fathers of Sinti families discuss job-related, family and other subjects in regular meetings of a working panel and go on educational trips in order to improve and keep up their proficiency in the minority language. In the field of adult education, the *Land* Associations of the Central Council - e.g. those of Baden-Württemberg, Bremen, Schleswig-Holstein, Rhineland-Palatinate and Bavaria - organise educational trips every year, with members of the Sinti and Roma, to the *KZ* [concentration camp] memorial sites of Neuengamme, Bergen-Belsen, Natzweiler-Struthof, Flossenbürg and Dachau. The Central Council and the Documentation and Cultural Centre of German Sinti and Roma several times per year organise educational trips, mainly for Holocaust survivors among the Sinti and Roma, to the *KZ* memorial sites of Auschwitz, Sachsenhausen, Buchenwald and Mauthausen, and every year trips to *Evangelische Akademien* ["Protestant Academies" - educational centres of the German Protestant Church] or other educational establishments. These educational trips also serve the purpose of communicating in the minority language and the resultant enhancement of the linguistic competence of the participating adults.

Specific promotional measures taken by the *Länder* for the Sinti and Roma

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

247. In addition to promoting the *Land* Association of German Sinti and Roma in **Baden-Württemberg**, this *Land* grants financial aids to the Documentation and Cultural Centre of the German Sinti and Roma in Heidelberg.

248. The Free State of **Bavaria** subsidises the Secretariat and Counselling Bureau of the Bavarian *Land* Association of German Sinti and Roma. The Association's aims include support for, and promotion of, cultural events organised by German Sinti and Roma.

249. The Free Hanseatic City of **Bremen** promotes projects for the furtherance of the cultural identity of Sinti and Roma, which are designed to strengthen their self-assurance and sense of personal identity.

So far, no request has been addressed to the Bremen authorities for having supplementary lessons taught to Sinti and Roma school-children by teachers belonging to the minority (in the afternoon, outside regular classes, in rooms provided by the school for the purpose). In Bremen, a second state-employed teacher/educator (from the Sinti Promotion/Supportive Instruction Project or the Roma Promotion/Supportive Instruction Project) tutors and helps Sinti and Roma children during regular classes. In some cases, 1-hour lessons of individualised teaching are offered. These 'assistant teachers' specifically respond to the children's concerns and needs. Under the Sinti Promotion/Supportive Instruction Project, three state-employed teachers and one Sintessa are available for social education support and for monitoring the project; the Roma Promotion/Supportive Instruction Project at present employs four such teachers.

250. The Free and Hanseatic City of **Hamburg**, through its Cultural Department, promotes cultural initiatives and male and female artists belonging to minorities - also Sinti and Roma - carrying out cultural projects and events. The aim is to help minorities with the preservation and further development of their culture. Priority is given to promoting intercultural projects, *i.e.* projects involving, or reaching out to, people from different backgrounds.

251. The *Länder* of **Schleswig-Holstein** and **Hesse** grant financial aids for the work of their respective *Land* Association of German Sinti and Roma. In addition, a feasibility study concerning founding of a residential building co-operative as a housing association for Sinti was subsidised in Schleswig-Holstein.

252. In the cultural sphere, the *Land* of **North-Rhine/Westphalia** has, since 1993, provided financial promotion for performances, in the Romany language, of the "*Pralipe*" Theatre in Mülheim/Ruhr.

The actors involved are Macedonian Rroma who do not belong to the group of autochthonous German Sinti and Roma. By giving guest performances of stage plays in Germany and neighbouring countries, this theatre company, which originally was domiciled in the Former Yugoslav Republic of Macedonia, helps to preserve essential elements of the Rroma's identity, such as language, tradition and cultural heritage. In

October 1998, the *Pralipe* Theatre received the Lorca Award of the International Institute of Mediterranean Theatre. At the same time, the Theatre, together with the former North-Rhine/Westphalia *Land* Ministry of Education and Cultural Affairs, was awarded a prize by this Institute for their commitment to fighting xenophobia. Special grants by the *Land* Government in 1998 enabled the *Pralipe* Theatre to go on an additional tour of guest performances to present its plays to a larger audience. With the support of the *Land* it is possible to present types of expression specific to the respective languages and to foster access to works produced in these languages.

253. As part of the general activities to foster and maintain culture in **Rhineland-Palatinate**, the Sinti and Roma "*Aven*" festival, which is regularly held in Landau, is supported with funds of the registered association "*Kultursommer e.V.*" ["Cultural Summer"]. In addition, the *Land* subsidised various local events, e.g. the music festival "*Horizonte*" in Koblenz and the photo exhibition "*Schnuckennack-Reinhardt*" in Landau (Palatinate). Local authorities, too, promote cultural projects.

254. For additional information, cf. the promotion measures - described in our comments above on Article 4, para. 2, no. 2 - which have been taken by the *Länder* of Baden-Württemberg, Bavaria, Berlin, Bremen, Hamburg, Lower Saxony, Rhineland-Palatinate and Schleswig-Holstein.

B.5.2 Article 5, para. 2

(Protection against assimilation against the will of persons belonging to national minorities)

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

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

initiatives of the organisations of national minorities and ethnic groups for the preservation of the given language and culture.

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

B.6 Article 6

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

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

B.6.1 Paragraph 1

(Encouraging a spirit of tolerance and promoting understanding among all groups of the population)

B.6.1.1 General conditions and institutional infrastructure as regards promotion of tolerance and understanding among all groups of the population

258. Tolerance, intercultural dialogue, and mutual acceptance are indispensable elements of the peaceful co-existence, based on mutual respect and understanding, of people from different cultural backgrounds. This objective is one of the most important tasks of domestic politics in Germany. It is only in this way that a positive social climate can be created, which will also benefit the situation of national minorities and ethnic groups.

259. Against this fundamental policy background, the Federal Government responded as follows to the **Advisory Committee's recommendation** in no. 81 of their "Opinion on Germany" [doc. CM(2002)43, regarding Germany's first State Report] that the German Government should pursue and **even strengthen its strategy of counter-measures to fight crime of an extremist, xenophobic and anti-Semitic nature** - although most of these crimes were targeted against foreigners other than persons protected under the Framework Convention:

The Federal Government perceives the fight against violence of a right-wing extremist, xenophobic and anti-Semitic nature and the social conditions conducive to such violence as a major priority and is actively pursuing its policy in this field.

The Federal Government's prevention strategy is based on the following four pillars.

260. Pursuing a **consistent human rights policy** is the Federal Government's starting point and the basis for all its political work. The peaceful co-existence of people regardless of their origin or religion is the crucial political and social basis of efforts to ensure an open and democratic society. Against this backdrop, it is a matter of vigorously and resolutely taking measures to prevent racist, anti-Semitic and xenophobic attitudes and actions.

261. In order to achieve this goal, **civil society** above all needs to be greatly **strengthened** and people's courage of their convictions must be supported, as is manifested, among others, by the *Bündnis für Demokratie und Toleranz - gegen Extremismus und Gewalt* ["Alliance for Democracy and Tolerance - Against Extremism and Violence"] initiated by the Federal Government or by the action programme *Jugend für Toleranz und Demokratie - gegen Rechtsextremismus, Fremdenfeindlichkeit und Antisemitismus* ["Young People for Tolerance and Democracy – against Right-Wing Extremism, Xenophobia and Anti-Semitism"].

262. For the action programme alone, the Federal Government allocates about 182 million € for the period 2001 - 2006. The action programme comprises three elements: *XENOS - Leben und Arbeiten in Vielfalt* ["XENOS - Living and Working in Diversity"] (about 57 million € from funds of the European Social Fund which are co-financed, to about the same amount, by *Länder* and local governments), *ENTIMON - Gemeinsam gegen Gewalt und Rechtsextremismus* ["ENTIMON - Jointly against Violence and Right-Wing Extremism"] (about 63 million €), and *CIVITAS - initiativ gegen Rechtsextremismus in den neuen Bundesländern* ["CIVITAS - Initiative against Right-Wing Extremism in the New Federal *Länder*"] (about 44 million €).

263. In full awareness that successful **integration of foreigners** is a crucial factor for the peaceful co-existence of immigrants and the German population and thus also helps to prevent xenophobia, racism and discrimination in everyday life, the Federal Government has, for example, drawn up a comprehensive concept for the regulation of immigration and, in the 2004 Immigration Act [Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners], incorporated - for the very first time - a minimum framework of governmental provisions to promote integration.

264. In fighting right-wing extremist violence, it is also essential to implement **measures that focus on offenders and their environment**. However, in addition to the consistent work performed by the security authorities (police and intelligence services), it is also important to strengthen the rights of victims and to adopt crime-preventing strategies in this field.

265. The preventive measures taken by the Federal Government have been designed as long-term and sustained measures in terms of their logical approach, and their stated aim is to fight the causes of this problem. It is not possible overnight to change right-wing extremist attitudes and patterns of behaviour. Therefore, it is not so much a matter of providing topical news items to highlight momentary successes; rather, this is a task that involves society as a whole and needs to be backed by all democratic forces. Politicians and society need to adopt a proactive stance in order to foster respect, acceptance and recognition of different cultures and lifestyles. The

Federal Government is indeed fulfilling this ongoing political task. The success of this policy is also reflected by the fact, *inter alia*, that dealing with the phenomenon of right-wing extremism has not been made a taboo but has triggered widespread social and political debate that is accompanying the wide range of measures implemented by the Federal Government.

266. Furthermore, the steps taken by the Federal Government also met with a tremendous echo abroad. They not only concur with the views of the international community; in essence they already meet the international standard that was agreed at the UN Anti-Racism Conference held in Durban/South Africa in autumn 2001.

267. The Federal Government also supports the decision taken by the Council of European Ministers for Justice and Home Affairs (JHA Council) of 25 April 2002. The Decision underlines the need to intensify co-operation between police forces, to forge ahead with judicial co-operation in this connection and to press ahead with the harmonisation of criminal law in Europe. Moreover, it acknowledges the enormous importance of the "European Monitoring Centre on Racism and Xenophobia" (EUMC). The Federal Government considers this decision to be a major contribution towards the fight against right-wing extremism, xenophobia and anti-Semitism and will implement it as a top priority.

268. Under the auspices of OSCE, the Federal Government organised a Conference on Anti-Semitism, with high-level attendance, in Berlin on 28 and 29 April 2004; in its "Berlin Declaration", the Conference condemned all manifestations of anti-Semitism and incorporated into the Declaration the extensive commitments under the Permanent Council Decision on Combating Anti-Semitism to monitor and to fight anti-Semitic harassment, violence and discrimination throughout the OSCE area. While **activities to fight anti-Semitism do not directly relate to national minorities** in Germany, they meet the objective of **Article 6 of the Framework Convention**, *i.e.* they **promote** a spirit of tolerance and intercultural dialogue and are measures promoting mutual respect and understanding and and co-operation among all persons living in Germany.

269. As the **Federal Government Commissioner for Matters Related to** (Repatriates and) **National Minorities** perceives his mandate, his tasks also include furtherance and enhancement of understanding between the majority population and the members of the national minorities.

270. In addition, the Federal Republic of Germany has a **Federal Government Commissioner for Migration, Refugees and Integration** (previously: Federal Government Commissioner for Matters Relating to Aliens) whose office is provided for in the

Aliens Act* of the Federal Republic of Germany and whose status is strengthened by the Immigration Act [Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners] entering into force on 1 January 2005.

The Integration Commissioner has, among others, the task to further the conditions for foreigners and Germans, as well as various groups of non-nationals, living together in a setting which is as free of tensions as possible, to promote their mutual understanding, and to prevent and counteract xenophobia. This implies that she does not have responsibility for the members of national minorities - these being German nationals - but her activities **help to create a general climate of tolerance** which in turn is furthering good relations between the majority population and the members of national minorities.

The tasks of the **Land Commissioners for Matters Relating to Aliens** include the analysis of conflicts between Germans and foreigners, and the development of measures to encourage tolerance and acceptance. This is achieved by wide-ranging and diversified public information/awareness-raising activities, by supporting the self-organisation of migrants' and refugees' associations, and by local Foreigners' Consultative Councils (to the extent that provision has been made for such bodies in the legislation of the various *Länder*).

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

B.6.1.2 Areas for encouraging a spirit of tolerance and promoting understanding among all groups of the population

272. In the areas of education, culture and the media, the aforementioned principles are embodied in laws and implementing statutes. The *Bund* and the *Länder* implement these regulations by means of many and various measures. For one part, such measures are aimed at education in tolerance and at promoting understanding for other cultures and languages as well as acceptance of people with a different language and culture who live in the neighbourhood or belong to the local community or to the nation's society. Other measures are aimed at increasing, among the general public, the knowledge concerning the existence of national minorities and ethnic groups and at familiarising the majority population with the culture of those groups and the related traditions.

* subsequently translated as "Foreigners Act" (translator's note for ease of reference)]

273. For this purpose - and with the support of the Federal Ministry of the Interior and the *Bündnis für Demokratie und Toleranz* [Alliance for Democracy and Tolerance - Against Extremism and Violence] - the German EBLUL Committee on 16 and 17 November 2001 organised the Berlin **Congress on Sprachenvielfalt und Demokratie in Deutschland** ["Linguistic Diversity and Democracy in Germany"] which was attended by all groups protected under the European Charter for Regional or Minority Languages as well as by noted politicians active at the federal and *Land* levels, representatives of the Council of Europe, German and foreign linguists, and officials responsible for specific projects. This congress occasioned the publication of an anthology entitled *Wanderer in zwei Sprachen. Unbekannte Sprachen Deutschlands* ["Wanderers between two languages. Germany's unknown languages"] and containing prose and poetry written in Danish, Low German, North and Saterland Frisian, and Lower and Upper Sorbian. Also, a documentation was published about the congress (Brussels 2002).

274. Also, against the background of the obligation under Article 6, para. 1, of the Framework Convention - to encourage a "spirit of tolerance and intercultural dialogue" between the majority population and the national minorities and to bring about, and deepen, mutual understanding between the majority population and the national minorities and to inform the persons living in Germany about the ethnic and cultural identity of the national minorities in this country - the Federal Ministry of the Interior in March 2004 published the brochure **"Nationale Minderheiten in Deutschland"** ["National Minorities in Germany"]. It covers the history and traditional settlement areas, the languages and specific cultural features, and the very active club- and association-based work pursued by the interest groups of the national minorities.

The minorities' associations contributed texts for inclusion in the overall description of their respective ethnic group, as well as literary extracts and photos.

The brochure had to be confined to providing an abridged overview. An annex gives the addresses of associations and relevant public authorities and institutions from which more detailed information may be obtained. The brochure addresses itself to the general public and can be obtained free of cost by everybody.

275. Referring to the present section of Germany's Report (Areas for encouraging a spirit of tolerance and promoting understanding among all groups of the population), the Central Council of German Sinti and Roma once more stated its request for a legal ban on discrimination in public service and media law, with the aim of prohibiting ethnic typifications of suspects and accused persons belonging to a minority (cf. the Council's comments in Part D). However, the present report follows the systematics of the first State Report by dealing with this subject in the comments above, regarding Article 4, para. 1 (section B.4.1.2 - Embodiment of the ban of discrimination in the legal system).

B.6.1.2.1 Encouraging tolerance and promoting understanding among all groups of the population - under the programmes of the Federal Agency and Land Centres for Civic Education

276. The *Bundeszentrale für politische Bildung* (BpP - Federal Agency for Civic Education, FACE) has the task, through civic education activities, to promote the understanding of political facts and processes, to strengthen democratic consciousness, and to encourage greater readiness for political involvement. The Centre also has the particular task of providing well-balanced and scientifically substantiated information on political key issues, strengthening the democratic basic consensus and, on these foundations, promoting the development of a culture of (democratic) political dispute on the basis of a rational dialogue. This also includes information on the co-existence of the various cultures represented in Germany, and on the reduction of prejudice and xenophobia. In order to achieve an ever greater focus on these tasks, the BpP on 1 December 2000 set up two project groups on "Right-Wing Extremism" and "Migration/EU", respectively.

In addition, the following activities and projects against racism and for tolerance, inter-ethnic understanding and humaneness were, or are, carried out:

277.

- ***Sprechbaukasten 'Train the Trainer'*** [interactive video module 'Train the Trainer']
Racism and xenophobia violate the fair play rules in sports in the same way as they infringe upon the rules of democracy. This prompted the Federal Centre (*BpP*) to ally with sports clubs - which in Germany have, after all, as many as around 27 million members. Actually, sport trainers/coaches are now and then confronted with discriminating remarks made in their presence and often do not know how to react. They are assisted by the BpP and *Deutsche Sportjugend* [DSJ - German Sport Youth] with the interactive programme *Sprechbaukasten 'Train the Trainer'* which was developed in 2001. In seven CD-ROM parts, this video programme presents to viewers situations showing discriminating behaviour. By choosing from a range of response options, the programme enables the learner to find out how he/she him/herself would react to the respective situation. Aim: enabling coaches/trainers to repress, promptly and effectively, any racist or xenophobic behaviour already in the initial stages.

278.

- **Projects "*Schule ohne Rassismus*" ["Schools without racism"]**
A project carried out with various partners; pupils, on their own initiative, plan and implement a variety of individual projects against racism, right-wing extremism and xenophobia.

279.

- **BpP publications**
A large number of BpP publications address the subject of national minorities. Examples are the issues on "*Sinti und Roma als Feindbilder*" ["Sinti and Roma as

enemy stereotypes"] and "*Gesellschaftliche Strukturen*" ["Social structures"] which were published in the series *Informationen zur politischen Bildung* [Information on Civic Education], with more than 900,000 copies each.

280.

- **Discussion series "*Weltreligionen im Diskurs*" ["World religions in discussion"].**

281.

- **Supporting material for civic education in "inter-religious learning".**

(Since members of the national minorities in Germany may adhere to one of the Christian denominations, the measures mentioned in Nos. 280 and 281 - promotion of religious tolerance - cannot be considered measures for the protection of national minorities in Germany and therefore are not treated in greater detail in the present report.)

- Setting up of the **website www.bpb-aktiv.de** in 2001 as an information platform for individuals and **initiatives to fight right-wing extremism and xenophobia**. Also, **www.fluter.de** [presented by BpB] succinctly and informatively presents current socio-political subjects. "*fluter Sprache*" ["floodlight on language"] deals with the **role of language as a gateway to the world and a means for achieving integration**.

282.

- Organisation of **cinema seminars on *Kino gegen Gewalt*** ["Anti-violence cinema"].
- Co-operation with industry and the sports sector for **poster campaigns** against anti-foreigner hostility. For example, posters showed a well-known soccer team composed only of players of German nationality, and thus it was made quite clear that the team would have little chance of succeeding without their foreign team mates.

283.

- **An exhibition in 2003 - *Zuhause ist, wo ich lebe*** ["Home is where I live"] - about young foreigners in Germany.

284. Also, the BpB makes intensified efforts to support organisations of minorities as providing bodies.

285. The **Documentation Centre of German Sinti and Roma** and the *Land* Associations of Sinti and Roma launched **initiatives** in various *Länder* and developed **materials for schools** and educational institutions. These materials deal with discussing and analysing racism and with the existing patterns of clichés and prejudices regarding the Sinti and Roma. They also serve for analysing and assessing the history of the Sinti and Roma genocide perpetrated by National Socialism. The Baden-Württemberg *Land* Association of German Sinti and Roma, both on its own initiative and in co-operation with schools and other institutions, carried out projects for analysing and assessing "anti-tsiganism" (anti-Gypsy hostility), along similar lines as projects dealing with anti-Semitism.

286. All *Länder* of the Federal Republic of Germany have established **Land Centres for Civic Education** which carry out similar tasks in their respective *Land*.

287. The **Hamburg Land Centre** for Civic Education, for instance, regularly sponsors associations dealing with the co-existence of, and mutual understanding between, different religions and nationalities.

288. As part of the "*Rechtsextremismus und Gewalt*" ["Right-Wing Extremism and Violence"] Programme, activities to further mutual understanding among young people of different nationalities are promoted and guidance is given with regard to personal courage in standing up for one's convictions when faced with conflicts and violence. This is achieved, *inter alia*, by the following activities:

- Series of lectures entitled "*Die den Winkel tragen mussten*" ["Those who had to wear distinguishing badges (i.e. for non-Jewish groups of prisoners in Nazi concentration camps)"] (17 January - 8 February 2004) to accompany the exhibition "*Der nationalsozialistische Völkermord an den Sinti und Roma*" [The Sinti and Roma genocide perpetrated by National Socialism].

This series of lectures dealt with the persecution of the Sinti and Roma under the Nazi regime as well as of other minorities [both ethnic and religious, etc.]. Whoever held views or beliefs or had a way of life that did not conform to the tenets of Nazi ideology was marginalised, persecuted, deported and murdered in concentration camps. This ideology defined a person's worth on the basis of biologicistic-racist and mental-racist criteria, so as to achieve complete adjustment to the majority population's way of life. The series of lectures focuses on the minority that for biologicistic-racist reasons were persecuted, deported and, in most cases, murdered by the National Socialists - namely the Sinti and Roma. But it also deals with the suffering inflicted by the persecution, imprisonment and murdering of those individuals whose beliefs, faith or personal way of life differed from those of the majority population and thus were in contradiction to the mental-racist criteria underlying Nazi ideology.

289. Promotion of events organised by the registered association "*Interreligiös begegnen und voneinander lernen*" [Cross-religion encounters, and learning from each other]. (These activities are not discussed in the present report since they do not relate to the protection of national minorities).

B.6.1.2.2 Encouraging tolerance and promoting understanding among all groups of the population - schools, and early childhood care and education

290. On account of the federal structure of the Federal Republic of Germany, the *Länder* have jurisdiction over educational matters and - notwithstanding the Federa-

tion's responsibility for children and youth services - are responsible for education, instruction and caregiving in children's day-care facilities and all-day nursing places. Many *Land* laws contain provisions on education in tolerance.

291. For example, Section 4 of the Schools Act of Brandenburg *Land* lays down, as an objective of school education, that the ability and readiness of pupils should be enhanced "to understand their own culture as well as other cultures, also within their own region and in their own personal environment, and to help to achieve the peaceful co-existence of cultures and peoples, and to stand up for the dignity and equal status of all humankind".

292. Additional objectives as stipulated in Sections 4 (subsection 5, 2nd sentence), 5 and 109 (subsection 1, 2nd sentence, no. 3) of the Brandenburg Schools Act and Section 3, subsection 2, no. 5, of the Children's Day-Care Centres Act (*KitaG*), are to make children and youngsters, in particular, take an interest in Sorbian culture, to enhance their readiness to accept the special cultural features of their personal environment, and to encourage their interest in experiencing the full spectrum of Sorbian culture.

293. Section 5 of the Children's Day-Care Centres Act of Schleswig-Holstein *Land* lays down, e.g. in its paragraph 6, that the work of children's day-care centres shall promote "the living together of children of different national or cultural origin". Similar provisions are contained in the respective laws of the other *Länder* as well.

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

295. The Advisory Committee's comment in nos. 33 and 78 (knowledge of minority cultures) of their "Opinion on Germany" (doc. CM(2002)43 referring to Germany's first State Report) that, in view of reports about attitudes of rejection or hostility towards

minorities, also on the part of certain authorities, intensified efforts should be made to enhance knowledge/awareness of minority cultures in numerous areas, particularly in education, prompted Germany to clarify that no information was known on such incidents; rather, the members of national minorities had the same rights and duties as all other nationals did.

Also, the following (additional) measures taken in the schools sector were pointed out:

296. In the Free and Hanseatic City of **Hamburg**, in the field of education, the subject "History and Culture of the Roma and Sinti" is being integrated into the curricula that are currently in the pipeline for all types of schools and school levels. Dealing with this subject provides information and thus creates the prerequisites for raising understanding and tolerance *vis-à-vis* the minority culture of the Roma and Sinti.

297. Examples from **Baden-Württemberg Land** include the setting up of a "Sinti and Roma in Germany" Working Group at the beginning of the 1997/98 school year at the "Land Institute for Education and Instruction" (*Landesinstitut für Erziehung und Unterricht* - LEU). The Working Group developed a pamphlet (teachers' support material) for dealing with the history of the Sinti and Roma in classroom instruction. The Baden-Württemberg Land Association of Sinti and Roma (*Landesverband Baden-Württemberg der Sinti und Roma*) was also involved in the work of this Working Group.

298. Central further training for teachers was offered at the Academy in Calw from 29 November 1999 to 1 December 1999 on the subject "Sinti and Roma; the Fate of a Minority in Germany". Members of the Baden-Württemberg Land Association of Sinti and Roma participated as speakers. The Ministry of Education and Culture contributed to a meeting organised by the Protestant Academy (*Evangelische Akademie*) in Bad Boll on "Sinti and Roma – a (nonentity) subject for classroom instruction?" in Wiesensteig from 12 to 13 April 2002.

299. Within the framework of the **revision of the Schleswig-Holstein curricula** for general and vocational schools the "efforts to expand multi-cultural and multi-ethnic contents" have been continued and intensified. This applies both to the curricula of primary schools and lower secondary schools [secondary education stage I] which entered into force in 1997, and to higher secondary schools [upper secondary grades of a *Gymnasium*] and to special classes for under-achievers that were introduced in the autumn of 2002.

Out of the five main problems of our time that were taken as a basis for these curricula, one deals exclusively with the basic values governing the living together of people, focusing in particular on the ability to live together in the One World with its different cultures, religions, social systems, peoples and nations. All specialised curricula reflect the contribution they are making towards handling these problems.

Furthermore, "intercultural learning" has been highlighted in the curricula as an area of general educational importance. In this respect, the individual schools are called upon also to develop and implement forms of work and organisational systems that integrate all subjects and focus on certain themes and that reflect the importance of this educational task.

Various instruction materials and teaching aids have been developed in recent years in connection with the work on curricula in order to ensure that these principles are actually implemented. Thus, the Ministry of Education, Science, Research and Cultural Affairs produced a documentation on "intercultural learning, for inclusion in curricula" containing a wide range of suggestions and aids and sent that documentation to schools (in 1997).

300. In connection with the obligation, under Article 6, to promote tolerance towards minorities and to take measures to protect them against hostility, the Advisory Committee (in no. 80 of their "Opinion on Germany" - doc. CM(2002)43 - referring to the first State Report) had called for **enhancing understanding for the German Sinti and Roma by improving their school education**. The Advisory Committee recommended that **measures be taken to remedy** the present situation where **children of Roma/Sinti, migrants and immigrants are over-represented at lower secondary schools and special schools for under-achievers** and correspondingly **under-represented at intermediate and grammar schools**.

Rejecting the reference, in the ACFC's comment, to groups other than national minorities, the Federal Republic of Germany provided the following information regarding school education of German Sinti and Roma:

301. Improving the school-based integration and educational involvement of the children belonging to the national minority of German Sinti and Roma is an important objective of the *Länder* which, within Germany's federal structure, are responsible for education. To this end, the *Länder* implement specific measures that are developed and monitored in co-operation with the respective organisations of the national minority. Nonetheless, Sinti and Roma pupils are *not* included as *such* in the statistics. There is therefore no reliable statistical evidence to suggest that this group of pupils has a lower rate of participation in education. This group of pupils has access to all school facilities and promotional measures that are available to all other pupils.

302. However, some Federal *Länder* have reported that in isolated cases a particularly large number of children of Sinti and Roma attend general remedial schools. Further efforts should be made in this area also in future in order to continue to improve the general educational situation for this group of pupils. However, no improvements to this effect can be brought about through government action alone. For instance, in the context of a project implemented in Schleswig-Holstein *Land* and aim-

ed at enhancing the school performance of Sinti children, it was found that there is an extremely high rate of absenteeism among these children even though four Sinti women are employed as educational assistants [assistant instructors]. Therefore, in order to bring about radical change, it is also necessary for the individual families of this group of pupils to make sure their children attend school regularly and that they make use of government-provided facilities that are currently available in the educational system. In this respect, all bodies and groups involved must make a concerted effort to raise the relevant awareness.

B.6.1.2.3 Encouraging tolerance and promoting understanding among all groups of the population - cultural fields

303. The *Länder* - which, on account of the federal structure of Germany, have responsibility for cultural and educational affairs - and local authorities include the culture of groups other than the German majority population in supraregional, regional and local cultural events and activities. This is also exemplified by large-scale *Land* festivals ["days" dedicated to the special character of the respective *Land*] such as *Schleswig-Holstein-Tag*, *Hessen-Tag*, *Tag der Sachsen* and *Brandenburg-Tag*.

B.6.1.2.4 Encouraging tolerance and promoting understanding among all groups of the population - broadcasting

304. Jurisdiction over broadcasting also lies with the *Länder*. Under constitutional law, the State may not exert an influence on the contents of broadcasting programmes.

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

306. Compliance with the programming principles is monitored, for public service broadcasting, by the supervisory bodies (Sound Broadcasting Board, Television Board) which have a pluralistic membership, and in the case of private broadcasters, the independent *Land* Supervisory Authorities (*Landesmedienanstalten*). Additional specific measures which also refer to the obligations under Article 6, para. 1, are described below in the comments on para. 2 of Article 6.

307. In **Berlin and Brandenburg**, under Section 4, para. 2, sub-para. 2, of the Inter-State Treaty on the Establishment of a Joint Broadcasting Corporation for the *Länder* of Berlin and Brandenburg (RBB Treaty) of 25 June 2002, the programmes of *Rundfunk Berlin-Brandenburg (RBB)* take account of the regional [cultural] diversity in the *Länder* of Berlin and Brandenburg, and of the language and culture of the Sorbian (Wendish) people. Under Section 14, para. 1, no. 20, of the RBB Inter-State Treaty, a member of the associations of the Sorbs (Wends) in Brandenburg is represented on the Broadcasting Board of the RBB so that the Sorbs' interests are safeguarded within this body. In this respect, the Treaty includes the pertinent provisions of the Act on *Ostdeutscher Rundfunk Brandenburg (ORB)*, which ceased to have effect in 2003, and ensures that account is taken, in the field of broadcasting, of Sorbian interests and concerns.

308. In the **Free State of Saxony**, under Section 6, para. 3, of the Inter-State Treaty on *Mitteldeutscher Rundfunk (mdr)* of 30 May 1991, broadcasts of the *mdr* must take account of the interests of *all* segments of the population – including the minorities. Also, in accordance with para. 1, no. 16, and para. 2, no. 3, of Section 19 of this Inter-State Treaty, socially relevant groups - including the *Domowina* Federation, the Sorbs' umbrella organisation - delegate their representatives to the Broadcasting Board of *Mitteldeutscher Rundfunk (mdr)*.

309. As regards the role of national minorities in broadcasting, cf. below, sections B.9.1.2.1 (Participation of representatives of national minorities in media control bodies) and B.9.3.3 (Broadcasting media for the national minorities).

B.6.1.2.5 Encouraging tolerance and promoting understanding among all groups of the population - print media

310. For clarification, the following response was given to the Advisory Committee's comment in no. 79 of their "Opinion on Germany" (doc. CM(2002)43, referring to the first State Report) that self-regulation in the German media did not seem to prevent certain newspapers, when reporting on criminal offences, from mentioning suspects' ethnic origin when they belonged to the Roma/Sinti community, this information coming in some cases directly from police sources; and to the Committee's recommendation that Germany should make sure that the existing rules in this field were applied in practice by the competent authorities, and should encourage the media to follow their own rules of professional ethics and to review the effectiveness of complaints procedures established by them.

311. Government agencies have very limited influence on the media by virtue of Article 5 of the Basic Law which guarantees the freedom of the press and freedom of broadcasting (radio and television). Therefore, in view of German constitutional law,

the comments made by the Advisory Committee primarily concern the media themselves.

312. The *Land* authorities have already issued instructions according to which press releases by their subordinate authorities must not include information on ethnic origin or affiliation. This does not apply if and when the information on the given case cannot be fully understood by the general public unless such ethnic reference is included.

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

"No person shall be discriminated against because he or she belongs to a specific race or ethnic, religious, social or national group." (Press Code, no. 12)

314. To make its regulations even more precise, the German Press Council, as early as on 21 September 1994, decided to amend the previous Directive on Protection from Discrimination. The new Directive 12.1 on Journalistic Work now recommends the following:

"In reports on criminal offences, the fact that a suspect or offender belongs to a religious, ethnic or other minority shall be mentioned only if there is a reasonable need for such information in view of properly understanding the reported incident. Special attention should be paid to the fact that such mention might foment prejudices against groups requiring protection."

315. In the Federal Government's view, the practices of the German Press Council with regard to the observation of the basic rules of free and responsible journalism are adequate in their present form.

316. In each of the years during the period 1997 - 2000, the Central Council of German Sinti and Roma submitted between 30 and 45 objections to the German Press Council. The Press Council recognised one-third of them as complaints, and during this period issued a total of three disapprovals and seventeen (rectification) recommendations.

317. From 2001 until mid-2002, the German Press Council dealt with 37 complaints by the Central Council and, as a result, issued ten disapprovals and seven (rectification) recommendations against press organs that had discriminated against Sinti and Roma in their reporting.

B.6.2 Article 6, para. 2
(Protection of persons belonging to national minorities
against threats or acts of hostility or violence)

B.6.2.1 Present state of affairs

318. For a number of years, xenophobia [anti-foreigner sentiment] on the part of a small segment of the German population, including younger members of fringe groups, has become a problem in society. This problem increasingly emerges in the "new *Länder*" [i.e. those of the former East German GDR], and has ranged from verbal attacks to outrages directed primarily against foreigners of non-European origin who live in Germany.

319. The Federal Office of Criminal Police (*Bundeskriminalamt - BKA*) recorded 20,477 politically motivated criminal offences in 2003 (2002: 21,690); of these, 11,576 (2002: 12,933) - including 845 violent offences (2002: 940), i.e. a percentage of 7.3 for both 2003 and 2002 - come under the heading of "politically motivated crime - right-wing". Thus, as compared to 2002, the total number of right-wing politically motivated offences dropped by 10.5 %; for right-wing politically motivated acts of violence, the number dropped by 10.1 per cent.

10,795 (2002: 10,902) of right-wing politically motivated offences were classified as extremist; these included 759 (7 %) violent offences (2002: 772, i.e. 7.1 %). Thus, criminal offences of right-wing extremist motivation dropped by 1 % and similarly motivated acts of violence by 1.7 per cent. Of all crimes with a right-wing extremist background, however, 86.1 % (2002: 86.4 %) were either so-called "propaganda offences" [i.e. dissemination of propaganda by unconstitutional organisations] (7,554 offences; 2002: 7,294) or incitement to hatred and violence against individuals or certain segments of the population (1,744 offences; 2002: 2,122).

320. The members of the national minorities and protected ethnic groups considered in this Report have, as a rule, not been the target of xenophobic aggression. In a number of cases, however, there have been attacks against German Sinti and Roma.

321. The **Central Council of German Sinti and Roma**, during talks held in January 2001, presented the Federal Minister of the Interior with a documentation on the desecration of, and outrages against, KZ (concentration camp) memorial sites in Germany. Already on this occasion, the Central Council brought up its demand (presented again in its Comments on the present Report, cf. Part D) for a **special "Protection Zone Act" for these memorial sites** which - like similar legislation in Poland - is seen by the Central Council as a possible instrument to fight such outrages effectively and as a felony.

322. The Federal Government is preparing a legislative initiative for completely revising the law of assembly with the aim of taking full account of the legal and factual developments since the entry into force of the Act concerning Assemblies and Processions (*Versammlungsgesetz - VersG*) in 1953. Account must be taken of the changes recently observed in the type, scope and objectives of assemblies, and of the increasingly specific and detailed nature of judicial decisions since the entry into force of the original Assemblies Act. It is intended to have the wording of the [amended] Act directly reflect the interpretation applied, in accordance with the Basic Law, by the Federal Constitutional Court to many provisions of the Assemblies Act in its present version.

323. In the context of the thorough revision of the Assemblies Act, and as a follow-up to the decisions adopted by the autumn 2000 Conference of the *Land* Ministers of the Interior, attention will also be given to the scope for preventing and restricting assemblies that aim at undermining the bases of communal life of people, peace and justice, and, in particular, at glorifying or downplaying tyranny and despotism or terrorism. On this point, the Federal Ministry of the Interior - which has the lead responsibility for this legislative proposal - promised that it would fully utilise the scope provided under constitutional law for uncompromising rulemaking against assemblies tending towards objectives of the aforementioned kind.

324. In preparation of the legislative procedure, an - unpublished - expert opinion was sought on the limits set by constitutional law to the proposed amendment of the Assemblies Act. The Opinion addressed the following issues, in particular: the call for introducing a "regulation on protective zones", *i.e.* identifying specific locations - such as the *KZ* memorial sites (around 1,200) in Germany - as zones where assemblies involving anti-constitutional tendencies would be banned; and the envisaged introduction of provisions to protect the international reputation [prestige abroad] enjoyed by Germany. According to the Legal Opinion, these two proposals *cannot* be implemented under constitutional law since they restrict the freedom of opinion and assembly as guaranteed by Articles 5 and 8 of the Basic Law, and therefore were dropped from the legislative agenda.

325. The legislative proposal, which at present is the subject of interdepartmental harmonisation within the Federal Government, takes up two requests submitted by the Central Council of German Sinti and Roma: it is planned to introduce a general definition of conditions that allow to impose a ban and/or restrictions on assemblies likely to glorify or downplay National Socialism, and to provide a wider scope for restricting assemblies at singular memorial sites such as the Berlin memorial for European Jews murdered in the Holocaust.

326. The documentation presented by the Central Council of German Sinti and Roma on 110 cases of provocative vandalism perpetrated, in the period 1991 - 2001, by right-wing extremists against institutions of the Jewish community and sites commemorating the victims of the National-Socialist reign of terror failed to underpin the Council's call for a "regulation on protective zones" because this documentation listed offences committed outside "assemblies" as defined in the Assemblies Act (these offences were: [criminal] damage to property; insult/defamation; disturbing the peace of the deceased [desecration of graves]; incitement of the people to hatred and violence [incitement to national dissension]).

327. In view of the problems involved, in terms of constitutional law, with regard to the freedom of assembly and opinion, particular care is taken to co-ordinate and harmonise the legislative proposal both within the Federal Government and between the *Bund* and the *Länder*. This harmonisation process is still going on; it is not possible at present to give specific information on the definitive provisions and objectives of this bill.

328. Generally, the fight against right-wing extremism is based on a comprehensive overall concept. Apart from repressive measures, the focus is on preventive approaches, as documented in detail by the **Report on the Federal Government's Current and Planned Measures and Activities to Combat Right-Wing Extremism, Xenophobia, Anti-Semitism and Violence** presented to the German *Bundestag* on 14 May 2002 (for details regarding this "four pillars" model, cf. B.6.1.1. above).

B.6.2.2 Protective regulations

329. In Germany, protection against discrimination is, on the basis of the general legal order, also ensured for the members of national minorities and ethnic groups. They are entitled, under the Criminal Code (*StGB*), to the same protection of legal rights as everybody else. In this respect, particular importance attaches, in the field of criminal law, to the following offences: incitement to hatred and violence, public incitement to criminal acts, and insult [covering insult, calumny and defamation].

330. In **Section 130, subsection 1 (incitement to hatred and violence)**, the **Criminal Code** provides that a term of imprisonment from three months up to five years will be imposed on whoever, in a manner designed to interfere with public peace, violates the dignity of others by inciting to hatred against parts of the population, inciting to despotic or arbitrary action against them, or insulting, maliciously disdaining or disparaging them.

331. Under Section 130, subsection 2, no. 1 (incitement to hatred and violence), of the Criminal Code, a custodial sentence for up to three years or a fine will be imposed on whoever disseminates writings which incite to hatred against segments of the population or against a national, racial, religious or ethnic group, incite to despotic or arbitrary action against them, or violate the dignity of others by insulting, maliciously disdain or disparaging segments of the population or any of the aforementioned groups. Under Section 130, subsection 2, no. 2, of the Criminal Code, such penalties are also imposed on whoever disseminates such contents through broadcasts, media or teleservices.

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

333. In addition, with the aim of proscribing and preventing right-wing extremist outrages, the German *Bundestag* has, since 2001, allocated funds under the yearly Budget Acts to finance **hardship compensation payments to the victims** of such crimes.

334. Contrary to the **request put forward by the Central Council of German Sinti and Roma** (cf. its Comments in Part D), the Federal Government for the following reasons does not see a need for legal definition of an **additional specific offence constituted by "racially motivated acts of violence committed by individuals or groups"**: The existing provisions of the Criminal Code suffice for effective penal prosecution of racially motivated offences.

335. Under Section 46 [Principles governing the assessment of punishment], subsection 2, of the Criminal Code, the court, when assessing the statutory range of punishment, shall weigh against each other the respective circumstances of the case that either exonerate or incriminate the offender. Account is taken, in particular, of the motives for committing the offence, the offender's objectives, and the mental attitudes

or political convictions revealed by the offence. According to the uncontested legal interpretation, this also covers racist and xenophobic motives, and the relevant sentences passed by the courts reflect this view. Also, inclusion of additional aggravating circumstances is conceivable, e.g. the manner of execution, or certain patterns of - negative - conduct after commission of the offence.

336. In the Federal Government's view, application of the provisions of Section 46, subsection 2, of the Criminal Code governing aggravation of sentence, to racist and xenophobic motives adequately provides for effective prosecution of such crimes. Moreover, specification of one single motive would be contrary to the Code's systematism and, reversing the argument, also involves a risk of no longer covering other motives (e.g. offences to the disadvantage of children or disabled persons).

337. The Federal Government does not see the need for including additional specific acts constituting an offence - e.g. within the category of bodily injury crimes - because an adequate statutory range of punishment has been provided, especially after the tightening of punitive provisions in recent years.

338. For dangerous bodily harm under Section 224 of the Criminal Code, which may be committed by means of a weapon or another dangerous implement or by means of a treacherous surprise attack, by several persons jointly or by means of treatment endangering life, the sentence is imprisonment for at least six months and for at most 10 years. For grievous [aggravated] bodily harm, defined in Section 226 of the Criminal Code as bodily injury with grave sequels, the sentence is imprisonment ranging from 1 to 10 years or [if the perpetrator caused such sequels intentionally or knowingly] from 3 to 15 years. In the case of bodily injury offences as defined by Section 223 of the Criminal Code [i.e. physical mistreatment, or injuring the health, of another person] racist motives are already included in the provisions on the assessment of punishment under Section 46, subsection 2, of the Criminal Code.

339. Moreover, specification of a particular offence would be contrary to the Code's systematism since the systematised arrangement of bodily injury offences - as well as of other categories of criminal offences - does not refer to any specified motives.

340. In the case of homicide offences, racist and xenophobic motives are considered separately. In these cases, racism and xenophobia may be included as so-called "other base motives" [turpitude] under Section 211, subsection 2, of the Criminal Code with the result that the offence would be classified as murder ["A murderer is whoever, from ... other base motives, ... kills a human being."] and that consequently the sentence would be life imprisonment instead of a prison sentence of 5 to 15 years imposed for manslaughter.

341. Finally, contrary to what is claimed by the Central Council of German Sinti and Roma, "fellow-travellers" and "assisting agitators" involved as aiders and abettors in racially motivated offences can be effectively prosecuted in Germany. First, the offender's criminal liability can be based on the provisions on complicity [participation] (S. 25, Criminal Code), instigation [encouraging commission of crime] (S. 26, Criminal Code) and aiding and abetting (S. 27, Criminal Code). Secondly, prosecution can be based on Section 130 of the Criminal Code which provides that whoever, in such a manner as to endanger public peace, violates the dignity of others by inciting to hatred and violence against segments of the population or inciting to despotic or arbitrary action against them will be punished by imprisonment.

342. The request made by the Central Council of German Sinti and Roma for adoption of an "Act against racially motivated acts of violence" does not tally with the recommendations made by the UN Committee on the Elimination of Racial Discrimination [UNCERD] in its Conclusions of 21 March 2001 referring to the 15th State Report submitted by the Federal Republic of Germany under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination [ICERD], and by the European Commission against Racism and Intolerance (ECRI) in its latest (third) Report on Germany of 5 December 2003.

343. The UN Committee suggested that the Federal Republic of Germany should intensify its efforts to prevent and fight right-wing extremist, xenophobic and anti-Semitic offences.

344. Referring to its General Policy Recommendation No. 7, ECRI recommended that the German authorities should include legal provisions stipulating that, for all criminal offences, racist motives shall constitute an aggravating circumstance.

345. The pertinent comment by the Central Council of German Sinti and Roma that ECRI and the UN Committee "in their reports on implementation in Germany urged governmental authorities to make "intensified efforts" to penalise, "explicitly by virtue of a law", any racist act of violence", is not a precise rendering of either the wording or the tenor of the statements made by ECRI and UNCERD.

B.6.2.3 Protection of persons belonging to national minorities against threats or acts of hostility or violence by means of civic education and promotion of intellectual/political discussion

346. The fight against racism and xenophobia is an important concern of German politics, with particular importance attaching to the aspect of prevention through intellectual/political analysis and discussion.

347. In addition to the protection provided under the Criminal Code, civic education and intellectual/political discussion of extremism, xenophobia and violence are of major significance in view of eliminating the breeding ground of extremist ideology and thus helping to prevent politically motivated acts of violence. Civic education, school education and prevention-directed public information help the public to understand the values of our free democratic order, and people are made aware that violence never can, and never must, be a means of settling political differences of opinion.

348. On account of the federal structure of the Federal Republic of Germany, primary responsibility for these aspects lies with the *Länder* in the fields of culture and education.

349. A central instrument of intellectual/political discussion is provided by the extensive **public information/education activities of the Federal Government and the *Länder***, which in terms of their form and contents are **geared to specific target groups**. This includes brochures on the subjects of extremism and xenophobia; seminars for teachers, for contributors to school magazines, journalists and multipliers in adult education; specialist conferences on sociopolitical issues; awareness-raising campaigns against extremism, xenophobia and violence; and also the initiation, monitoring and support of sociologic research activities in the field of internal security; and evaluation and application of analyses and research findings by means of publications.

B.6.2.3.1 Educational measures taken by the Federal Government (*Bund*) for the protection of persons belonging to national minorities against threats or acts of hostility or violence

350. Various public-oriented measures which met with good response and proved successful already in the past are being continued. Pertinent examples are the publication of brochures in the series "*Texte zur Inneren Sicherheit*" [**Texts on Internal Security**] and the annual edition of the **Report on the Protection of the Constitution** which provides an information basis for assessing the threats posed to the democratic constitutional state by racism, xenophobia and other factors.

351. Academic **research** on the causes of, and motives for, racism and xenophobia helps to further develop and optimise **concepts for sustained preventive measures**. For this reason, **the Federal Ministry of the Interior analyses topical studies** about these phenomena or initiates its own research projects such as the **project regarding right-wing extremist suspects and offenders** carried out and completed **in co-operation with the foundation Volkswagen-Stiftung**; the project's **findings and conclusions** were published in December 2001 in the series *Texte zur inneren Sicherheit* [Texts on

Internal Security], issue entitled "Xenophobia, Anti-Semitism, Right-Wing Extremism". In the **spring of 2000**, **Erlangen University** completed another research project commissioned by the Federal Ministry of the Interior on the **violence phenomenon of hooliganism**. This study also probes the extent to which anti-foreigner or right-wing extremist motives play a role in connection with the specific "hooligan" category of offenders. This study, too, was published in the *Texte zur Inneren Sicherheit* series.

352. Public debate on, and analysis of, racism and xenophobia and anti-Semitism is a task for society as a whole to tackle. Therefore, the Federal Government continues the **dialogue** taken up in the context of the "European Year against Racism and Xenophobia" (1997) **between the Government and non-governmental organisations** (NGOs). The *Forum gegen Rassismus* (FgR - Forum against Racism) was constituted in 1998 as a follow-up to the "European Year against Racism". It has by now become an established platform for discussion between state agencies and civil society on all issues concerning the fight against racism, xenophobia and anti-Semitism. The *FgR* is, at the same time, the National Round Table established in accordance with the principles of the Vienna-based European Monitoring Centre on Racism and Xenophobia (EUMC) which took up its functions in 1998. Enactment of the Anti-Discrimination Directives of the European Union in national law is publicised by an awareness campaign launched by a *FgR* working group which so far has published five so-called Information Letters on this subject.

The *Forum* at present has 80 members, including 50 NGOs operating nationwide or at a supraregional level. The chairmanship and the Secretariat are assigned to the Federal Ministry of the Interior.

353. However, if the fight against extremism, xenophobia and violence is to be successful on a sustained basis, the **socially relevant forces** (families, schools, churches, sports associations, trade unions, employers, etc.) will **have to be involved** on a substantially larger scale. This is the aim of the *Alliance for Democracy and Tolerance - Against Extremism and Violence* which was initiated by the Federal Government and set up on 23 May 2000, *i.e.* the day commemorating the promulgation [1949] of the Basic Law. The aim is to provide, on the broadest scale possible, for the information and mobilisation of the general public and for awareness-raising regarding these issues, with a focus on public information/education and, above all, on providing a set of values. If this Alliance is to succeed in its efforts, the many and various measures and action concepts developed at various levels to fight racism and xenophobia must be efficiently co-ordinated and brought into focus. The relevant governmental measures are widely supported by the media in the Federal Republic of Germany (press and broadcasting media) and community-based groups (civil society) as well as by the majority of the population. In the meantime, more than 1300 initiatives and individuals working in civil society fields have joined the Alliance.

354. Every year, at an official ceremony held on 23 May and attended by high-ranking politicians and representatives of society, the Federal Ministers of the Interior and of Justice award the title of "**Ambassador of Tolerance**" [National Ambassador for Sport, Tolerance and Fair Play] to exemplary initiatives. The most important vehicle for documenting and publicising exemplary involvement in community-based activities [civil society] is the annual competition "**Aktiv für Demokratie und Toleranz**" ["Active support for democracy and tolerance"] in which some 300 groups participate every year. The Alliance for Democracy and Tolerance each year provides funding for this competition to the amount of 200,000 €. The individual cash prizes range from 1,000 to 5,000 euro.

355. The annual [since 2000] "**Victor-Klemperer-Jugendwettbewerb**" ["Victor Klemperer youth competition"] also meets with a huge response. This competition invites young people - individually or as a group - to deal, in an artistic or documentary form, with a subject of political or societal relevance. In each of the preceding years, around 45,000 youngsters took part in this.

B.6.2.3.2 Educational measures taken by the *Länder* for the protection of persons belonging to national minorities against threats or acts of hostility or violence

356. The specific anti-xenophobia concepts developed and implemented by the *Bund* are matched by similar measures taken by the *Länder*. Such measures include programmes with a total promotional budget of much more than 1 million €: projects carried out in Brandenburg *Land* to fight violence, right-wing extremism and xenophobia; Special Programme *Pro Zivilcourage - gegen Rechtsextremismus* ["For civil courage - against right-wing extremism"] in Mecklenburg-Western Pomerania; promotion of cross-cultural activities in Hamburg and Saxony-Anhalt; initiatives, in Lower Saxony, against violation of human dignity; measures and initiatives against racism, xenophobia and discrimination in North-Rhine/Westphalia; prevention of extremism and xenophobia in Schleswig-Holstein; and promotion of the political and social integration of foreigners in Thuringia.

357. The details of the project carried out in **Brandenburg Land**, one of the traditional settlement areas of the Sorbs (Wends), serve as an example: In **1998**, the Brandenburg *Land* Government presented an **action concept against violence, right-wing extremism and xenophobia**; its key elements are the following:

- an alliance for action against violence, right-wing extremism and xenophobia (this project, which is supported with substantial *Land* funds, is intended to mobilise society for tolerance, solidarity and internationality; the Alliance's projects are very heterogeneous);

- condemnation of violence, through intensified public discussion in the media and schools;
- establishing counselling bureaus for the victims of offences committed by right-wing extremists and of offences of suspected anti-foreigner motivation;
- support for counselling services sponsored by local authorities;
- support for the development of local structures for the integration of new inhabitants;
- qualification of professional educators for handling and managing violence and right-wing extremism;
- preventive work with youngsters already having a record of offences in this regard and with youth groups;
- creation of suitable police mechanisms to respond to anti-foreigner violence (example: establishment of "*Mobile Einsatztrupps gegen Gewalt und Ausländerfeindlichkeit*" [Mobile Task Forces against Violence and Anti-Foreigner Hostility]).

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

B.7 Article 7

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

B.7.1 Legal bases of freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of religion

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

359. For the **Danish minority**, an additional legal basis for freedom of assembly and of association is the **Bonn Declaration** of 29 March 1955.

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

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

B.7.2 Extent to which members of national minorities make use of freedom of assembly and freedom of association

361. The groups protected under the Framework Convention have widely used the rights protected under Article 7 of the Convention with reference to freedom of association.

362. These groups are united in various organisations and actively participate in the work of many non-governmental organisations (NGOs).

The organisations of the minorities and ethnic groups in Germany co-operate on a non-committal basis, and all of them are members of the Federal Union of European Nationalities (**FUEN**), an umbrella organisation of national minorities and traditional (autochthonous) ethnic groups in Europe with headquarters in Flensburg. The youth associations of minorities in Germany are members of the umbrella organisation Youth of European Nationalities (**YEN**). (For promotional support for these organisations, cf. the comments in Nos. 842 and 843 below regarding Article 17, para. 2.)

363. Most of the national minorities and ethnic groups in Germany are also members of the European Bureau for Lesser Used Languages (**EBLUL**). These organisations are represented on a(n EBLUL) Committee for the Federal Republic of Germany. (For promotion of the German Committee's activities and the financial situation of the FUEN Office in Brussels, cf. the comments in Nos. 844 - 846 below, regarding Article 17, para. 2.)

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

The Federal Republic of Germany welcomes the co-operation pursued by the national minorities and ethnic groups in Germany as regards preservation of their respective language and culture.

In detail, the groups protected under the Framework Convention are organised as follows:

B.7.2.1 Associations of the Danish minority

364. The chief organisation of the Danish minority for cultural work is **Sydslesvigsk Forening (SSF)**, or *Südschleswigscher Verein* (SSV) [South Schleswig Association], with the *Dansk Generalsekretariat* in Flensburg and a membership of around 13,000. Another 25 separate associations pursuing a wide variety of activities and with a membership of around 12,000 are affiliated to the SSF. Also, there are independent organisations. The political organisation of the Danish minority (and of the National Frisians) is **Sydslesvigsk Vælgerforening** [SSV], or *Südschleswigscher Wählerverband* (SSW) [South Schleswig Voters' Association], with headquarters in Flensburg.

365. The providing body for activities related to schools and nursery schools is **Dansk Skoleforening for Sydslesvig**, or *Dänischer Schulverein für Südschleswig* [Danish Schools Association for South Schleswig]. The Association's primary responsibilities cover the 49 schools and 57 nursery schools maintained for the members of the

Danish minority. In addition, it operates 18 "*Betreute Grundschulen*" ["day-care primary schools"] (including after-school care of children); one adult education institution offering courses in all parts of this [Schleswig] region of the *Land*; one dormitory for school-children in Flensburg; one boarding-school for secondary general school pupils (*Hauptschüler*), grades 8 to 10; two school hostels in the country [outdoor pursuit centres] and one nursery-school camp in Denmark; and a residential adult education college (*i.e.* the Jarplund "residential folk high school").

366. The **church activities** of the Danish minority are organised and supported by the Evangelical Lutheran *Dansk Kirke i Sydslesvig*, or *Dänische Kirche in Südschleswig* [**Danish Church in Southern Schleswig**]. (For further details, see also No. 194 above.)

367. The *Sydslesvigs Danske Ungdomsforeninger (SdU)*, or *Dänischer Jugendverband für Südschleswig* [Danish Youth Association for South Schleswig], is the umbrella organisation for a wide range of youth work activities, and is composed of 72 associations. It also supports recreational centres and sports facilities.

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

B.7.2.2 Associations of the Sorbs

369. The Sorbs also have founded a large number of associations with widely varying objectives. The **umbrella organization** of the Sorbian associations is *Domowina – Zwjazk Łužiskich Serbow*, or *Bund Lausitzer Sorben* [Federation of Lusatian Sorbs], to which 17 organisations of the Sorbs, with more than 7,000 members, are affiliated. These include the Sorbian Scientific Society/*Maćica Serbska z.t. Wědomostne towarstwo* and, for school and cultural matters, *Serbske šulske towaristwo z.t./Sor-bischer Schulverein* [Sorbian Schools Association], *Bund der sorbischen Studierenden* [Union of Sorbian Students], *Sorbischer Künstlerbund* [*Zwjazk serbskich Wum³cow* - Sorbian Artists' Union] and *Bund sorbischer Gesangvereine* [Union of Sorbian Choral Societies]. In the field of youth work, particular mention must be made of the **Sorbian youth association Pawk**. In addition, there are many other associations and support/promoting associations which, partly also from locations abroad, are committed and devoted to cultivating and promoting the Sorbian history, language and culture.

B.7.2.3 Associations of the Frisians

370. The **largest association** of the Frisian ethnic group is *Nordfriesischer Verein* [North Frisian Association] which was founded in 1902. It has about 4,700 members in its 25 **affiliated local** associations. **Other** North Frisians regard the Frisians as a separate ethnic entity. They are organised in the *Friisk Foriining* [Frisian Association] (formerly: *Foriining for nationale Friiske* [Association of National Frisians]) which has around 625 members and politically works together with the Danish minority. The providing body of the academic institution *Nordfriisk Instituut* is the *Verein Nordfriesisches Institut* [Association for the North Frisian Institute]. In addition, there are the *Öömrang Feriin* [Association for *Öömrang*, i.e. the dialect spoken on the island of Amrum/Oomram], the **ffnr** (**f**erian **f**ör en **n**uurd**f**resk **r**adio - Association for a North Frisian Radio Station) and the private foundation *Fering Stiftung* [concerning *Fering*, the dialect spoken on the island of Föhr/Feer]. All of these associations are promoting different priority aspects of the preservation of the language, culture and landscape of Nordfriesland.

371. The interests of the **Saterland Frisians** are represented by *Seelter Buund* [Saterland Union], an association which is dedicated, in particular, to the cultivation of the Saterland Frisian culture and language.

372. The **umbrella organisation** of the Frisians is *Interfrasche Rädj* [*Interfriesischer Rat* - Inter-Frisian Council] which comprises three Frisian Councils: Section North (in Schleswig-Holstein *Land*), Section East (in Lower Saxony *Land*), and Section West (in the Netherlands). Membership of the Frisian Council "Section North" includes four representatives of *Nordfriesischer Verein* [North Frisian Association], two representatives of *Friisk Foriining* [Frisian Association], one representative of *Eiderstedter Heimatbund* [Eiderstedt Union for Local and Regional Traditions], one representative of the *Gemeinde* of Helgoland, and one representative of *Nordfriisk Instituut* [North Frisian Institute]. The Section East brings together the associations of East Frisians and Saterland Frisians. The main associations in the East Frisian area are: *Ostfriesische Landschaft* (a public-law corporation), *Landwirtschaftlicher Hauptverein für Ostfriesland* [Main Agricultural Association for Ostfriesland], *Oldenburgische Landschaft* (a public-law corporation) and *Friesischer Klootschießerverband* [Frisian Curling Association]. The Saterland Frisians are represented by *Seelter Buund*. **In addition**, there are, throughout the East Frisian area, **many local clubs** dedicated to the cultivation and preservation of Frisian customs and folklore.

B.7.2.4 Associations of the German Sinti and Roma

373. To safeguard representation of their interests, members of the German Sinti and Roma have formed associations and - in line with the federal structure of Germany -

Land Associations. The **Central Council of German Sinti and Roma** is the **umbrella organisation of nine *Land* Associations** of German Sinti and Roma and of a number of regional or local associations and institutions. The Lower Saxony *Land* Association of German Sinti, one Sinti and Roma association in Hamburg and a number of smaller organisations of German Sinti, or of German Sinti and Roma, or of German and foreign Roma are independent organisations.

374. **A number of organisations not affiliated to the *Central Council*** and some elders of family clans of German Sinti formed the ***Sinti Allianz Deutschland e.V.*** [Sinti Alliance Germany, reg'd]. As stated by the Alliance, it was founded in 1999/2000 by twenty representatives of tribes and is the umbrella organisation of nine - previously independent - Sinti organisations and one Lowara tribe. The Sinti Alliance sees itself as representing those Sinti who feel committed to the Sinti's traditional way of life with its historically evolved precepts and prohibitions governing the conduct of their lives, and who wish to preserve this social and cultural system. The Alliance's work priorities are the development of political concepts and supporting these concepts *vis-à-vis* governments, parliaments and public authorities. Other fields of activity, as stated by the Alliance, are strengthening the Sinti culture through cultural projects and supporting Sinti families in social matters. In addition, the Alliance provides care of elderly people and represents the interests of victims of the Nazi regime. The Alliance seeks to establish a legal basis to enable the Sinti to exercise their civil rights in keeping with the Sinti's taboo system.

B.8 Article 8

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

B.8.1 Legal bases, and coverage of freedom of faith, freedom of conscience, freedom to profess a religious or philosophical creed, and the right to undisturbed practice of religion (freedom of worship)

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

376. The guaranteed practice of religion covers all ritual acts prescribed or customary in the respective religion, especially divine services, ceremonies, processions, prayers, administration of sacraments, ringing of bells and other expressions of religious life. Undisturbed practice of religion is ensured not only for the individual, but also for the individual in communion with others, and for religious communities as such and for religious societies. Like all fundamental rights which, by their wording, are of unqualified validity, the practice of religion is limited by concurrent basic rights of others and by other constitutionally guaranteed legal rights [objects of legal protection]. In case of concurrence, care must be taken to strike an optimum balance between freedom of religion and the other - concurrent - right protected under the Constitution.

377. Germany does not have a state church, *i.e.* there is no official religion of the State, no unity of, or institutional/organisational linkage between, state and church, and particularly no state jurisdiction as regards church matters, and no specific governmental supervision. Like all other religious communities, the Churches are autonomous organisations, independent of the state, with their own specific tasks.

378. Article 3, para. 3, of the Basic Law provides that nobody shall be disfavoured because of his/her affiliation or non-affiliation with a religious or philosophical/ideological creed.

379. There are no legal provisions referring to the creed of persons belonging to national minorities. In Saxony, however, Article 10 of the Treaty between the Holy See

and the Free State of Saxony of 24 July 1996 explicitly lays down that the Catholic Church shall preserve and protect the specifically Catholic Sorbian cultural heritage. In addition, the Free State of Saxony undertook to do its utmost to support the Catholic Church in these endeavours.

B.8.2. Religious affiliation of persons belonging to national minorities

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

B.8.2.1 Religious affiliation of the Danes

381. The church activities of the Danish minority are organised and supported by the Evangelical Lutheran *Dansk Kirke i Sydslesvig*, or *Dänische Kirche in Südschleswig* [Danish Church in Southern Schleswig], which closely co-operates with the private-law organisation *Dansk Sømands- og Udlandskirke* [Danish Church Abroad / Danish Seamen's Church - *DSUK*] with headquarters in Odense/Denmark. (For further details, see No. 194 above.)

B.8.2.2 Religious affiliation of the Sorbs

382. The religious situation of the Sorbs does not differ from that of the rest of the resident population; this is to say, for example, that the majority of Sorbs in Lower Lusatia are unaffiliated. To the extent that the residents of Lower Lusatia adhere to a denomination, affiliation is mostly with the Evangelical Church.

On several occasions, the Foundation for the Sorbian People supported **projects related to Sorbian practice of religion**, e.g. editing of a Lower Sorbian hymnbook and refurbishing/restoration of the *Wendisch-Deutsche Doppelkirche* [so-called "double church": the Evangelical Wendish (Lower Sorbian) and German churches are co-located in one building and are connected by a shared sacristy] in Vetschau/Wětošow (Lower Lusatia). A church working panel organises Wendish-language services; in the period 1987 - 2001, for example, 93 Evangelical services held in Lower Sorbian were attended by 7,761 churchgoers.

The majority of the Sorbs in Saxony are members of the Christian churches, with about **half each** belonging to the **Protestant Church** and to the **Catholic Church**, respectively.

383. The Protestant Sorbs in the Sorbian settlement area in Saxony are members either of the Protestant Church of Berlin-Brandenburg/Lower Silesian Upper Lusatia¹, or of the Lutheran-Protestant *Land* Church of Saxony.

The Protestant Sorbs of Brandenburg are, as a rule, members of the Protestant Church in Berlin-Brandenburg - Silesian Upper Lusatia. It should be noted, however, that no data regarding the breakdown of religious affiliation by ethnicity are collected.

384. The **Sorbian Superintendent in Bautzen** attends to the Sorbian believers in the area of the **Saxony Land Lutheran Protestant Church**. Among others, his duties are to hold Sorbian-language services and social gatherings in parishes which have no Sorbian-speaking minister.

385. In **Brandenburg**, too, an increasing number of regular church services, sermons and Bible classes are held in the Sorbian language by a number of Sorbian-speaking ministers and preachers in varying places; these activities are promoted, in particular, by the *Verein für sorbischen Gottesdienst* [Association for Sorbian-Language Church Service] and by *Landeskirchliche Gemeinschaft* [Land Protestant Church Union].

386. **Serbske ewangelske towarstwo z.t.**, or *Sorbischer evangelischer Verein e.V.* [Sorbian Protestant Association, reg'd], is an **association of Protestant Sorbs**. It organises a Sorbian Protestant Church Congress once per year and other meetings. *Domowina-Verlag* is the publishing house for the monthly *Pomhaj Bóh*, or *Hilf Gott* [Help God], for Protestant Sorbs; publication of this monthly, with a circulation of 800 copies, is supported with state-provided funds by the *Stiftung für das sorbische Volk* [Foundation for the Sorbian People].

387. The **area of the Catholic Sorbs** essentially covers the region of the towns of **Bautzen, Kamenz and Hoyerswerda**. While in this region with a Catholic tradition and with two **dioceses** [bishoprics] (**Görlitz** and **Dresden-Meißen**), the Sorbian-speaking inhabitants in most cases form the majority, also German is spoken on many church-related occasions, and in a number of parishes, divine services are held in Sorbian on a regular, and sometimes even daily, basis. Twelve Sorbian-speaking priests are available for this purpose. The Church endeavours to preserve and promote the specifically Catholic Sorbian cultural heritage and the Sorbian language in particular.

388. As an association of Sorbian Catholics, the **Cyrril and Methodius Association** [*Towarstwo Cyrila a Metoda z.t.*] supports the Catholic pastoral and cultural life of the Sorbs and, with state-provided funding, edits the weekly *Katolski Posoł* [Catholic

¹ Explanatory note: the Berlin-Brandenburg Protestant Church and the Protestant Church of Silesian Upper Lusatia merged in 2003.

Herald] published by the *Domowina* Publishing House, with a circulation of 2,360 copies, and also publishes other religious literature of the Catholic Sorbs.

B.8.2.3 Religious affiliation of the Frisians

389. Those **North and East Frisians** who are members of a religious community **mostly are of Protestant faith** while the smaller group of **Saterland Frisians** are **Catholics for the major part**. Frisians usually attend services held in German. Occasionally, Frisian-language services are held in a number of churches in Nordfriesland. A Working Group of *Nordfriisk Instituut* [North Frisian Institute] developed a Frisian hymn-book for church use, which has been published in the meantime. By presentation and volume, it is very similar to the German-language hymnbook, and it can be used for all religious occasions. Responding to requests by Saterland Frisians, the Catholic Church on special occasions holds services in Saterland Frisian.

B.8.2.4 Religious affiliation of the German Sinti and Roma

390. The religious orientation of the German Sinti and Roma is more or less the same as for the majority population in the various regions of Germany. The majority of German Sinti and Roma are either Protestant or Catholic Christians. They attend services held in German.

B.9 Article 9

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

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

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

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

Article 9, paragraph 1: (Obligation

- to recognise freedom to hold opinions and to receive and impart information and ideas also in cross-border exchanges; and
- to ensure that national minorities are not discriminated against in their access to the media)

B.9.1.1 General legal bases of freedom of expression and information

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

for, analysis and discussion. Freedom of expression is accorded to all German nationals and thus, of course, to the groups protected under the Framework Convention, and to foreigners.

392. The basic right to free speech primarily provides protection against government interference. But in addition, it places the State under the obligation to safeguard this freedom. Article 5, para. 1, 1st sentence, of **the Basic Law also guarantees freedom of information** - the right to inform oneself [without hindrance, from generally accessible sources] - as a particular basic right. Such protection extends both to active procurement of information and to merely receiving information. Especially the Danish minority in Schleswig-Holstein make - transfrontier - use of broadcasting programmes and press products from the Kingdom of Denmark in their traditional settlement area.

B.9.1.2 Specific legal bases of freedom of the press and freedom of broadcasting

393. In its para. 1, 2nd and 3rd sentences, Article 5 of the **Basic Law** guarantees **freedom of the press and freedom of reporting by means of broadcasts and films**, without previous censorship [*a priori* control]. Freedom of the press and broadcasting particularly implies the principle of governmental non-intervention, which prohibits any state interference which is not compatible with freedom of the press and broadcasting or which is not warranted by the limitations of such rights as provided under Article 5, para. 2, of the Basic Law.

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

395. Freedom of broadcasting, like freedom of the press, is an essential factor in the public opinion-forming process and articulation of the political will. Like the press, broadcasting has institutional autonomy. For compliance with the constitutional mandate of broadcasting, it will not suffice for the State to refrain from any interference whatsoever and, in all other respects, to leave broadcasting for the social actors to deal with. Rather, the requirement is for some regulatory structure. The Federal Republic of Germany has the so-called **dual broadcasting system** - *i.e.* the **existence of public-service and private broadcasters side by side**; within this framework, the State guarantees that, through the overall offer by all broadcasters, programmes meet the requirements stipulated in the Constitution for balanced diversity (including cultural

diversity), *i.e.* promoting the individual's freedom of expression and thereby ensuring participation in the democratic process of forming the political will [articulating public opinion].

396. The federal structure of Germany assigns **responsibility for broadcasting**, and thus for ensuring diversity of opinions, to the *Länder*. The legal basis for broadcasting is provided by the **Broadcasting Inter-State Treaties** concluded **between the Länder**, which lay down the **minimum requirements** according to which the *Länder*, within their respective jurisdiction, issued detailed regulations in their **Land Media Acts**. These comprise the *Land*-specific programme requirements and provisions to secure pluralism of opinions and freedom of expression (in this regard, cf. the specific examples given in paras. 433, 453, 463, 464 below). The *Land* Media Acts also regulate the licensing conditions for private broadcasting (cf. also the comments below, regarding para. 2 of Article 9).

B.9.1.2.1 Participation of representatives of national minorities in media control bodies

397. **Article 3 (paras. 1 and 3) of the Basic Law prohibits any unequal treatment** not objectively justified, especially if such treatment is based on a person's **descent** [birth; race], **language**, (national or social) **origin**, with regard to **access to the media** so that also the national minorities and ethnic groups protected under the Framework Convention may have access on the same conditions as the majority population. In this regard, particular mention must be made of the supervisory and control bodies entrusted with the task of safeguarding diversity of opinions and ensuring compliance with the established broadcasting programming principles. The **relevant major political, ideological and social groups** are granted adequate participation in the **supervisory bodies** of public-service broadcasters and of the *Land* Supervisory Authorities for Private Broadcasters [*Land* Broadcasting Institutions], *i.e.* the Broadcasting Board and the Broadcasting Commission/Media Council. In addition to representing the interests of their associations or groups, the members of these bodies also contribute comprehensive and multi-faceted views on socially important issues to the deliberations of these bodies.

398. However, as regards the efforts of the Central Council of German Sinti and Roma to obtain representation of their national minority on the media supervisory boards, the *Länder* point out that compliance with this request, especially in view of the small number of Sinti and Roma living in a given *Land*, raises legal and practical problems.

By its Decision of 25 August 1998, the Federal Constitutional Court (*BVG*) ruled that the Central Council does not have a claim to a seat on the supervisory bodies of

Deutschlandradio and of *Hessischer Rundfunk*, either in terms of Article 3, para. 1 (principle of equality), or under Article 5, para. 1, 2nd sentence (freedom of the press), of the Basic Law. In its constitutional complaint, the Central Council had, among others, put forward the argument that the Central Council of Jews in Germany was represented on the supervisory bodies, but that the Central Council of German Sinti and Roma was not. In its Decision, the Federal Constitutional Court took account of the fact that, like other denominational groups, the Central Council of Jews in Germany, as a denominational group, was represented on the supervisory bodies while the German Sinti and Roma regard themselves as a national minority with their own language and cultural identity.

399. Controlling the public-service broadcasters primarily is the broadcasters' internal responsibility and is incumbent on the supervisory bodies, *i.e.* the Broadcasting Board and the Board of Administration. Responsibility for controlling private broadcasters lies with the *Land* Supervisory Authorities [*Land* Broadcasting Institutions].

400. However, the task of these supervisory bodies is not to represent the interests of the groups/organisations delegating the respective members, but rather is to act as a trustee for the public interest and thus to prevent any biased interference and biased programming and to ensure that appropriate and fair account is taken, within the overall programme, of all major political actors and groups. Accordingly, the Federal Constitutional Court **did not invest any socially relevant group** - including, for instance, a **national minority** - with the **right to be included in the membership of supervisory bodies**, and consequently did not regard a group's non-inclusion as an act of discrimination.

401. The Central Council intends to appeal to the European Court of Human Rights in Strasbourg to obtain its representation on the Broadcasting Boards of broadcasting institutions. In the Council's view, the aforementioned *BVG* Decision is contrary to European law.

402. **Some representatives or members of national minorities have been elected to broadcasting bodies.**

Also, at the suggestion of Schleswig-Holstein, one (female) member of the Television Board of *Zweites Deutsches Fernsehen* (*ZDF* - Second German Television, or Channel II) belongs to the Danish minority.

403. In accordance with the Act on Private Broadcasting in Saxony of 18 January 1996, a Sorbian representative nominated by the Sorbs' associations is a member of the Assembly of *Sächsische Landesanstalt für privaten Rundfunk und neue Medien* [Saxon *Land* Supervisory Authority for Private Broadcasting and New Media]. The Saxon

Landtag delegated a representative of the Sorbian umbrella organisation *Domowina* to the Broadcasting Board of *Mitteldeutscher Rundfunk (mdr)*.

404. In Brandenburg, too, a representative of *Domowina* is a member of the Broadcasting Board of *Rundfunk Berlin-Brandenburg (RBB, previously ORB)* and of the Media Council of *Landesmedienanstalt Berlin-Brandenburg* [Berlin-Brandenburg Land Supervisory Authority for Private Broadcasters/Media].

405. Any socially relevant organisation - *i.e.* including organisations of the national minorities - is entitled to make nominations for the election (carried out by the Schleswig-Holstein *Landtag*) of the Media Council of the *Unabhängige Landesanstalt für Rundfunk und neue Medien (ULR, the Schleswig-Holstein supervisory authority for private broadcasters)*.

406. From the comments made by the Central Council of German Sinti and Roma on the present report (cf. Part D) it follows that the Rhineland-Palatinate *Land* Government, in the context of a revision of the *Land* Media Act, plans to renounce its seat on the board of the future *Landeszentrale für Medien und Kommunikation* (the control body, *i.e.* the *Land* supervisory authority, for private media).

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

408. The aforementioned freedoms may, as a matter of principle, also be exercised by the national minorities in their respective minority language (as regards use of minority languages in general, cf. also the comments under Article 10 below). For the extent to which minority languages are included in the media, cf. the comments below, regarding paras. 3 and 4 of Article 9.

B.9.1.2.2 Requests for broadening the Danes' and Frisians' access to broadcasting

409. As regards the view taken by the Advisory Committee (ACFC; in their "Opinion on Germany" - CM(2002)43, referring to Germany's first State Report - nos. 83 and 84) that the competent authorities should re-examine the Danish minority's needs in terms of radio and television programmes and the possibility of supporting the creation of programmes aimed specially at this minority, and that the German authorities should envisage the possibility of increasing the presence of Frisian in the media, the following is pointed out once more to preclude any misconceptions:

1. The rule of governmental non-intervention in broadcasting means that broadcasting organisations themselves, not the Government, decide on broadcasting programme schedules. Article 11 of the European Charter for Regional or Minority Languages therefore places the Contracting Parties under an obligation only to the extent that "the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media".

Thus, on account of the broadcasting corporations' freedom of programming, the *Land* of Schleswig-Holstein is limited in the extent to which it can become involved in the development of broadcasting programmes. Thus, also in respect of issues regarding the protection of minorities, the legislator is limited to making appeals to the addressees of legislation. For this reason, German broadcasting laws only contain programming principles worded as requests that are addressed to those responsible for making programmes and to the autonomous media bodies. The latter are then responsible for actually implementing these principles.

Accordingly, the "NDR Inter-State Treaty" (*NDR-Staatsvertrag*) provides that *NDR* [*Norddeutscher Rundfunk* broadcasting corporation] shall "support the protection of minorities" in the programmes it broadcasts (Section 7, subsection 2). Its programming mandate says that "regions in northern Germany, their culture and language are to be taken adequately into consideration in the programmes it broadcasts" (Section 5, subsection 2).

Further examples can be found in Section 22 (1) of the *Land* Broadcasting Act (*Landesrundfunkgesetz - LRG*) for private broadcasting stations, in Section 15 (2) of the *LRG* for full radio programmes and, with regard to the priority admission of private broadcasting companies, in Section 17 (2) of the *LRG*.

2. In addition to the general legal conditions mentioned above, the number of facilities and programmes that are already available need to be stressed which have not been taken sufficiently into consideration in the Committee's Opinion.

- In the field of films and radio productions, audiovisual works are funded, *inter alia*, by *Kulturelle Filmförderung* [Cultural Film Promotion, Schleswig-Holstein (reg'd)] and by the *Gesellschaft zur Förderung audiovisueller Werke in Schleswig-Holstein*, i.e. the *MSH* [Limited Liability Company for the Promotion of Audiovisual Works in Schleswig-Holstein]. In this context, primarily works referring to Schleswig-Holstein and, of course, works by minorities are eligible for funding.
- It is possible to receive radio and TV programmes from neighbouring countries in the given minority's own language, direct and without any restrictions. Danish programmes are an integral part of the channel allocation plans.
- There are four "Open Channels" available in Schleswig-Holstein for citizens' broadcasting stations (locations: Kiel, Lübeck, Flensburg, and Husum). They give citizens the possibility to air their own programmes on TV and on the radio.

The Open Channels give minorities, in particular, a platform for airing programmes in Frisian or Danish. Persons residing in *Sønderjyllands Amt* (South Jutland county), *i.e.* in Denmark, also have access to these channels. Production grants are also available.

- The range of programmes broadcast by *NDR 1 Welle Nord* in the Frisian language can be given as an example of minority radio programmes. In the year 2001, for instance, the programme "*Ferteel iinjens*" ["Tell a tale"] relating the stories of over 100 listeners met with a huge response and has been included in programming, with the result that this project is to be continued. The professional information presented by **NDR** on the **Internet** also deserves special mention in this connection. Frisian content can be accessed on the Internet in various Frisian idioms, as well as information on Nordfriesland, its history, its culture and, above all, the Frisian language. In this field, the NDR co-operates closely with the *Nordfriisk Instituut* ["North Frisian Institute"] in Bredstedt/Bräist.

3. Six Frisian-language radio programmes from the islands of Sylt, Föhr and Amrum, which were produced as part of a Frisian Language Promotion project of *Unabhängige Landesanstalt für Rundfunk und neue Medien* (*ULR* - Independent Land Supervisory Authority for Broadcasting and the New Media), can be downloaded from the homepage of *ferian för en nuurdfresk radio* (*ffnr* - Association for a North Frisian Radio Station).

Since the summer of 2003, *ULR* - with its radio and TV 'Open Channels' - has organised a total of eight workshops to train Frisians and Danes in working with a camera and in a cutting/editing room, or with a microphone and recorder. The works produced during these workshops have, since spring 2004, also been broadcast by the Flensburg (television) and the Heide/Husum (radio) Open Channels.

This project was carried out by the [private] media bureau *Medienbüro Riecken* which regularly produces Frisian documentaries and Frisian radio broadcasts and helps people to have their inputs aired over the four *ULR* Open Channels.

B.9.2 Article 9, paragraph 2:

Clarifying note:

The non-discriminatory licensing procedure does not contravene the obligation to provide for non-discriminatory access to the media for persons belonging to national minorities

410. Regulation of broadcasting falls within the jurisdiction of the *Länder*. Article 5, para. 1, 2nd sentence, of the *Basic Law* (freedom of broadcasting) does not require a *Land* to adopt a specific organisational form of broadcasting. However, the *Land* is obliged to make certain provisions to maintain freedom of broadcasting. As a matter of

public interest, broadcasting must be operated above party lines and in full independence and must be protected against any biased intervention. The public-service broadcasters, in particular, must furnish comprehensive information within their overall programme and allow full pluralism of opinions. As regards private broadcasting, the legislator also must ensure that such private operators meet the constitutional requirements and, in particular, that a maximum of balanced diversity is achieved. The existing regulations regarding licensing of broadcasters are based exclusively on objective criteria. The licensing conditions are laid down in the various *Land* Media Acts.

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

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

B.9.3 Article 9, para. 3 Obligation

- not to hinder the creation of printed media by persons belonging to national minorities; and
- to support the creation of their own broadcasting media

B.9.3.1 The possibility of creating and using broadcasting media

411. As regards the legal scope for the creation and use of media, cf. the comments above on para. 1 of Article 9. It is pointed out once more that the national minorities and the majority population enjoy the same rights and possibilities as regards freedom of the press and of broadcasting. Also under the present promotional policies of the *Bund* and the *Länder* (cf. the comments above on Article 5, para. 1), the groups protected under the Framework Convention can make practical use of freedom of the press and broadcasting. In this respect, account must be taken of the fact that, given the different size and the resultant varying economic and practical capabilities of the protected groups, these latter use the media on a different scale.

B.9.3.2 Granting the possibility of creating and using printed media to national minorities

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

B.9.3.2.1 Printed media of the Danish minority

413. The Danish minority has its own **bilingual daily newspaper** ("*Flensburg Avis*"). The publisher's headquarters is in Flensburg; there are local editorial offices in [the town of] Schleswig, in Husum and Niebüll. It has a circulation of some 6,600 copies, part of which is distributed north of the border. According to an expert analysis, this newspaper is read every day by 15,000 people in the Schleswig region.

414. A **Press Service** which is affiliated to *Sydslesvigsk Forening* [South Schleswig Association], *i.e.* the chief cultural organisation of the Danish minority, supplies information about the Danish minority to the media in Germany and Denmark. The Danish minority also makes use of Danish press products which are available for a wide spectrum of subjects.

415. In 1999 and again in 2003 in letters addressed, *inter alia*, to the *Zeitungsverlegerverband Schleswig-Holstein e.V.* [Schleswig-Holstein Association of Newspaper Publishers, reg'd], the Minister-President of Schleswig-Holstein *Land* encouraged the addressees to integrate "linguistic particularities which determine the specificity of our *Land*" in their publications; intensification of the pertinent efforts made so far would be welcomed.

B.9.3.2.2 Printed media of the Sorbian people

416. For the Sorbian people, the following Sorbian-language print media are published on a regular basis (status: 2004):

- ***Serbske Nowiny*** (*Sorbische Zeitung* - "Sorbian Newspaper") -1650 / 2100 / 3000 copies
A daily in Upper Sorbian, published on Mondays through Fridays as an evening paper; on Fridays: including specific supplements, e.g. literature/arts, youngsters' supplement, sports supplement (*Soko³ske listy*); once per month a German-language supplement, 3000 copies (also sold over the counter)

Circulation: Mondays through Thursdays: 1,650 copies; Fridays: 2,100 copies

- **Nowy Ąasnik** (*Neue Zeitung* - "New Weekly") -1,100 copies
A weekly in Lower Sorbian, with a German-language portion; published on Saturdays
- **Rozhlad** (*Umschau* - "Outlook") - 610 copies
A monthly periodical for Sorbian culture, language, literature and art, with articles in the Upper and Lower Sorbian languages
- **Serbska Šula** (*Sorbische Schule* - "Sorbian School") - 210 copies
Educational journal, with articles in the Upper and Lower Sorbian languages; 10 editions per year
- **P³omjo / P³omje** (*Flamme* - "Flame") -1,600 / 850 copies
Children's and youngsters' monthly journal
Płomjo: Upper Sorbian edition - 1,600 copies
P³omje: Lower Sorbian edition, 850 copies
- **Katolski Poso³** (*Katholischer Bote* - "Catholic Herald") - 2,360 copies
Upper Sorbian weekly of the Catholic Sorbs
- **Pomhaj Bóh** (*Gott hilf* - "Help God") - 800 copies
Protestant monthly in Upper Sorbian

417. The publishing house *Domowina-Verlag* which is supported with state-provided funds by the foundation *Stiftung für das sorbische Volk* is the most important medium for producing and distributing Sorbian publications. This publishing house has a wide range of publications on offer (school textbooks; fiction and poetry; newspapers, periodicals/journals, etc.). In addition, there are other publishing houses which now and then, without relying on public subsidies, produce and distribute Sorbian-language publications. Many publications on Sorbian social and cultural history, language development, study of the material culture and customs and study of civilisation and science of art are also brought out in German, e.g. by the Sorbian Institute and *Maćica Serbska*, the Sorbian Scientific Society.

B.9.3.2.3 Printed media for the Frisians

418. In the Frisian settlement area, the *Verband der Zeitungsverlage Norddeutschland e.V.* [Association of Newspaper Publishers for Northern Germany] takes the protection of minorities and of linguistic groups very seriously. (For the recommendation addressed by the Minister-President of Schleswig-Holstein *Land* also to the *Zeitungsverlegerverband Schleswig-Holstein e.V.* [Schleswig-Holstein Association of Newspaper Publishers, reg'd] - to integrate "linguistic particularities which determine the specificity of our *Land*" in their publications - cf. No. 415 above.) For this reason, and thanks to

editorial work offered free of charge by the *Nordfriisk Instituut (NFI)* and on account of requests to this effect by readers, **reports in the Frisian language** have become an integral part of **a number of newspapers in the North Frisian speech area**.

419. In the North Frisian speech area, the following **daily newspapers** carry journalistic **texts in the Frisian language once per month** (1/2 page): *Der Insel-Bote* [Island Herald], *Husumer Nachrichten* [Husum News], *Nordfriesland Tageblatt* [Nordfriesland Daily Newspaper] and *Sylter Rundschau* [Sylt Review]. The texts are written or edited by the *Nordfriisk Instituut (NFI)*.

420. Also, **North Frisian articles** are published at irregular intervals in "**Nordfriesland**" (a monthly journal, ed. by *NFI*), "**Flensburg Avis (Kontakt)**", "**Der Helgoländer**" (a monthly for the island of Heligoland), and "**Sylt Aktuell**" (a weekly publication for the island of Sylt).

421. The following **monolingual newspapers** are published in **Frisian**: ***En krumpen üt e Wiringhiird*** (published by *Nordfriesischer Verein der Wiedingharde/Wiringhiird* three to four times a year at irregular intervals), ***Nais aw frasch*** ["Frisian News"] (published by *Friisk Foriining* two to three times a year at irregular intervals) and ***Di Mooringer Krädjer*** ["The Mooring Frisian Rooster"] (published about two times per year at irregular intervals).

Articles in the Saterland Frisian language regularly appear in the local editions of the regional newspapers read in the Saterland.

The following dailies are published in this region:

General-Anzeiger, Rhauderfehn (about 10,830 copies)

Münsterländische Tageszeitung, Cloppenburg (about 20,000 copies)

Nordwest-Zeitung, Oldenburg (about 130,000 copies)

B.9.3.2.4 Printed media for the Sinti and Roma

422. Publication of print media in the Romany language would be against the fundamental view of the German Sinti that their language should be used within their families and family clans only, and that no written form should be developed. On the other hand, however, the Central Council [of German Sinti and Roma] regularly distributes, in the German language, articles and comments to the press and also to its affiliated associations. Other organisations of the German Sinti and Roma also provide information through information services and/or circulars. Roma organisations also use their Romany language for this purpose. The Documentation and Cultural Centre of German Sinti and Roma publishes a series of booklets (in German).

423. On the basis of **state-provided promotion of the press activities of the Central Council of German Sinti and Roma** and the **Documentation and Cultural Centre of German Sinti and Roma** and in accordance with the principle of self-management, it is for the responsible representatives of this ethnic group in the two institutions to decide on the release of articles in Romany to the press and to edit such articles within the limits of the overall funds available.

B.9.3.3 Broadcasting media for the national minorities

424. As in the case of press products, creation of a group's own media in the field of broadcasting (radio and television broadcasting) depends on the size of the protected group and its economic capacity. Where creation of own broadcasting media is not expedient or not feasible, "Open Channels" are usually available. These are used for local and regional dissemination of non-commercial broadcasting items. In this way, individuals, social groups/citizens groups, organisations, associations, unions and institutions can, independently and on their own responsibility, produce broadcasting items and have them aired. These items must conform to the general programming principles, must not contain any commercial advertisements, must be on a non-profit basis and must not be provided for remuneration. No definitive findings are available as regards the extent to which these "Open Channels" are used by the groups protected under the Framework Convention.

425. The Danish minority at irregular intervals uses the Open TV Channel for airing videos about this minority in the Danish or German language in their region.

426. Since the summer of 2003, the Schleswig-Holstein Independent *Land* Supervisory Authority for Broadcasting and the New Media (*Unabhängige Landesanstalt für Rundfunk und neue Medien - ULR*) - with its radio and TV 'Open Channels' - has organised a total of eight workshops to train members of the Danish minority and of the Frisian ethnic group in working with a camera and in a cutting/editing room, or with a microphone and recorder. The works produced during these workshops are now also broadcast by the Flensburg (television) and the Heide/Husum (radio) Open Channels. The project report will be published shortly. This project was carried out by the [private] media bureau *Medienbüro Riecken* which regularly produces Frisian documentary films and Frisian radio items and helps members of the minorities to have their inputs aired over the four *ULR* Open Channels.

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

B.9.3.3.1 Broadcasting media for the Danish minority in Schleswig-Holstein

427. In the settlement area of the Danish minority in the north of Schleswig-Holstein *Land*, a particular situation exists as regards use of broadcasting media. As the settlement area borders directly on Denmark, the members of this minority can receive the entire broadcasting programme of the Kingdom of Denmark. Consequently, no special need for developing their own broadcasting media has arisen so far.

428. Both in its *Aktuell* current affairs reporting and in the programmes of the *Heimat, Kultur und Wissenschaft* Desk ["Our Region, Culture, and Science"] as part of news-feature and magazine programmes, the radio broadcasting programme of *NDR 1 Welle Nord* reports on events in the German-Danish border region, on books, stage productions and exhibitions, on regional co-operation and economic and political developments.

429. The private broadcasting station *Radio Schleswig-Holstein (R.SH)* disseminates a daily Danish-language news programme on weekdays (at 17:55) for the Schleswig region of the *Land*. In addition, there are a TV model test project of *Norddeutscher Rundfunk (NDR)* in Danish and programmes of the Danish regional TV stations for Sønderjylland [South Jutland, or North Slesvig] on subjects concerning the Danish minority.

430. In Flensburg and the surrounding region it is now possible again to receive, over cable, the broadcasts of the Danish station *Danmarks Radio P2*. This makes it possible, for instance, to listen to Danish-language church services.

431. In response to an inquiry by the State Chancellery, the *Unabhängige Landesanstalt für Rundfunk und neue Medien (ULR)* - which is the responsible body as regards reception, via cable, of the Danish TV programme - stated that no difficulties encountered in receiving, via cable, the Danish TV programme *DR1* in Schleswig-Holstein had come to its knowledge. Since *DR1* is a terrestrial broadcasting programme that can usually be received in the northern parts of Schleswig-Holstein *Land*, feed-in of *DR1* in the respective cable systems of Schleswig-Holstein must be given priority, provided that the signal can be received at the respective cable head-end with the existing local technical capacity, *i.e.* with an average antenna load. The *ULR* has not received any complaints or obtained any own findings as regards any problems encountered in this respect.

B.9.3.3.2 Broadcasting and new media for the Sorbian people

432. In the traditional settlement areas of the Sorbian people in the Free State of Saxony and in Brandenburg *Land*, public-service broadcasting has developed an ex-

tensive programme in the two **Sorbian languages**. The programme is devoted, in particular, to the fields of information, culture and education. 'Culture' is understood in the largest sense of the word; this thematic section also covers reports on traditions/folklore and on the life of clubs and associations, reviews of stage productions and of books, and talks with Sorbian authors and other persons engaged in the cultural sector. In addition, there are news, commentaries, topical reports, especially on current affairs in the region, and religious contributions. The musical sector covers the range from Sorbian folk songs to modern Sorbian popular songs.

433. Under Section 6, subsection 3, of the Saxon Act to implement the Agreement on *Mitteldeutscher Rundfunk (mdr)* of 27 June 1991, **broadcasts of the *mdr* must take account of the interests of all segments of the population – including the minorities.** *Mitteldeutscher Rundfunk (mdr)*, with its Sorbian **studio in Bautzen**, broadcasts a **daily radio programme in Upper Sorbian**: on Mondays through Saturdays, for three hours during the early morning programme, and on Sundays, around noon, for one and a half hours, and occasionally live transmissions as well. In addition, a 2-hour **youth programme** entitled "**Radio Satkula**" ["Satkula" is the name of a Sorbian brook, cf. the works of Jurij Brezan] is aired every Monday. It covers news, reports, modern Sorbian and international music, and other reporting items. The programme is developed and presented by Sorbian youngsters. This programme is also aired by *Rundfunk Berlin-Brandenburg (RBB)*. Leaving special broadcasts aside, this amounts to an airtime of 22.5 hours per week in the Upper Sorbian language.

434. The daily midday programmes of *Rundfunk Berlin-Brandenburg (RBB)* in the Lower Sorbian (Wendish) language are broadcast by *mdr* at the same time.

435. Since September 2001, the ***mdr's Landesfunkhaus Sachsen*** [Saxon *Land* broadcasting centre] airs the ½-hour Sorbian language programme *Wuhladko* ["Outlook"] on Sorbian subjects (with German subtitling). The initial transmission can only be received over the air [terrestrial broadcasting] while the broadcast is repeated over satellite in the morning of the respective following Tuesday. Also, every Sunday, a **dual-channel** [dual-tone: German and Sorbian] **transmission** of the short **children's TV programme "Sandman"** can be received in the Upper Sorbian language. Both the *mdr* regional TV magazine *Sachspiegel* ["Saxon Mirror"] and *mdr-Radio Sachsen* regularly report in German about Sorbian subjects.

436. Under Article 4 of the *RBB Inter-State Treaty*, ***Rundfunk Berlin-Brandenburg (RBB)***, like *mdr*, has to **take account**, in its programme, of the cultural diversity of Brandenburg *Land* and **of the Sorbian culture and language**.

The RBB's Cottbus studio has a daily one-hour radio programme in Lower Sorbian on Mondays through Fridays. On Sundays, a 90-minute programme is aired. In addition,

since last year, a half-hour youth magazine entitled "*Bubak*" [Bubak: an elf of Wendish folklore] has been broadcast twice a month. This brings the total of sound broadcasting aired in the **Lower Sorbian language to 7.5 hours per week**. In addition, RBB also airs the *mdr's* Upper Sorbian programme. This brings the total of sound broadcasting aired in both Sorbian languages to 30 hours [per week]. The RBB's Cottbus studio thus fulfils an important function, in the electronic media sector, as regards familiarisation with the Sorbian culture and providing for Sorbian presence in public life and the general public's awareness.

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

438. **Sorbian TV programmes** are also aired throughout the *Land* outside the traditional settlement area. The TV programme "*Łužyca*" ["Lusatia"], which had already been started by *Ostdeutscher Rundfunk Brandenburg* (ORB), was taken over by *Rundfunk Berlin-Brandenburg* (RBB) and is aired every third Saturday of the month. This is a 30-minute magazine programme in Lower Sorbian, with German subtitling. This magazine programme aims at presenting the Sorbian language, culture, tradition, everyday life and problems. The aim is to foster the Sorbs' emotional ties with their homeland and their national self-assurance. Examples of this are reports on traditions in the handicrafts and on folk arts and crafts which in future might die out. Also, efforts are made to prevent any reduction in the younger generation's respect and esteem for the Sorbian language.

439. It is **possible to produce Sorbian films** with subsidies granted by the Foundation for the Sorbian People or the joint Berlin/Brandenburg film promotion firm *Medienboard Berlin-Brandenburg GmbH*. Over the past few years, the production of a number of Sorbian films has been subsidised. These are:

- cartoon films: *Zuk a suk* (1996; about two bumble-bees); *Šapkowe kuski* (2003)
- a (video) film series on Sorbian history - translations into Lower Sorbian: *Zasedlenje/Zasydlenje* (2002; "Settlement"), *Grožišća/Hrodžišća* (2002; "Castle rampart"), *Kolonizacija* (2002; "Colonisation"), *Dobywanje kraja* (2002; "Land Reclamation"), *Město* (2002; "The Town"), *Reformacija a pismojstwo* (2002; "Reformation")

and Literature"), *Rane rozswětłarstwo/Zažne rozwětlerstwo* (2002; "Early Age of Enlightenment"). *Narodne wozroženje/Narodne wozrodženje* (2002; "National Rebirth"); *Młodoserbske hibanje* ["Young Sorbian Movement"]; *Weimarska republika* ["The Weimar Republic"]; *Serby w Nacionalsocializmje* ["Sorbs during the Nazi Era"]

- Co-operation projects with *Ostdeutscher Rundfunk Brandenburg* (ORB; now replaced by RBB): *Bužo nam tam lipa kwisć* (about Sorbians in Australia; 1995), *Nažeja pši kapje* (Sorbian traces in South Africa; 1997), *DIWAN jo pši nas WITAJ* (about the WITAJ project in nursery schools; 2000).

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

441. Also, it should be pointed out that **Sorbian**, as a Slavic language, is **related to Polish and to Czech** and that, on account of the Sorbs' settlement area being close to the borders with Poland and the Czech Republic, **Polish and Czech radio and television broadcasts can be received** to the extent technically feasible. Transmission and direct reception of radio and television broadcasts in Lower Sorbian have been explicitly regulated, with due regard to the availability of technical capabilities, on the basis of the retransmission provisions of Sections 37 and 38 of the Inter-State Treaty between the *Länder* of Berlin and Brandenburg on Co-operation in the Field of Broadcasting (Inter-State Treaty on Media Services - *MStV*) as amended on 21 December 1998.

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

B.9.3.3.3 Broadcasting and new media for the Frisians in Germany

443. **Programmes in the Frisian language** are only offered on a **very limited scale** in the Frisians' traditional settlement area in the *Länder* of Schleswig-Holstein and Lower Saxony. So far, no Frisian-language television programmes are available.

444. Once per week, the radio programme of *NDR 1 - Welle Nord* has, since 1989, aired a 1-hour evening broadcast about Schleswig-Holstein, which also includes about 3 ½ minutes in the Frisian language ("*Freesk for enarken*") as a sub-regional broadcast for Nordfriesland *Kreis*. Also, there are regular 1-hour feature broadcasts

in the Frisian language (e.g. on 1 December 1999: "*A nuardfresken eran an üüb sia*" - The North Frisians and the Sea).

445. At irregular intervals, the private station *R.SH* [Schleswig-Holstein Radio] airs a 1-hour special single-subject broadcast in the Frisian language at 19.00 hours, in the sub-regional transmission area of the entire West coast and the Flensburg/Schleswig region.

446. From October 1999 until December 2000, a programme of *Radio Friislon* was broadcast by *Offener Kanal Westküste* (Heide/Husum) on every first Monday of the month (at 15.00 - 15.30) and was repeated on every third Monday at the same time. The aim was to show that it is possible to produce extensive, attractive Frisian-language programmes. *Radio Friislon* is open to the diversity of languages spoken in Nordfriesland, the 'land of languages', and especially to the Frisian language with its various dialects. The programme was produced by *Nordfriisk Instituut (NFI)*, in cooperation with the "*ferian för en nuurdfresk radio (ffnr)*" [Association for a North Frisian Radio Station]. The broadcasting station *NDR [Norddeutscher Rundfunk]* provided its contributions to this programme free of cost. The presenters of *Radio Friislon* were trained by *NDR 1 - Welle Nord*. So far, a total of eight Frisian-speaking staff members received such training. The magazine programmes were recorded on CD's and also aired by *Offener Kanal Westküste* [Open Channel West Coast]. However, this station does not cover all parts of the Frisian speech area. Because of the costs involved, the *ULR* [Schleswig-Holstein supervisory authority for broadcasting and the new media] has so far not been able to comply with the wish for remedying this situation.

447. A big success was the Frisian story-telling competition "*Ferteel iinjens*" ["Tell a tale"] advertised in 2001 by the radio station *NDR* jointly with the *Nordfriisk Instituut (NFI)*, Nordfriesland Savings Bank and Bredstedt Savings and Loan Bank and which drew contributions from 75 interested participants. The winners' stories were presented at a large public event in Niebüll and also aired on *NDR Welle Nord*.

448. In October 2004, the project "*Radio für das Saterland*" was initiated in cooperation with the Open Channel *Ems-Vechte-Welle* and *Seelter Buund*. One of the aims of the project concept is to enhance active language proficiency, especially of young people, by direct encounters with the language. To support this project, the Lower Saxony *Land* Supervisory Authority for Private Broadcasters (*Niedersächsische Landesmedienanstalt*) provides funds to the amount of 25,000 €.

449. For the production of **Frisian video films**, a studio was set up in 2001, with project funds provided by the Federation, in the assembly building of *Friisk Foriining* [Frisian Association] in Stedesand. The project was sponsored by *Nordfriisk Instituut* in

co-operation with the Frisian youth group *Rökefloose* ["flock of ravens"] and was completed by mid-2002.

Especially the private media bureau Riecken (formerly in Kiel; since 1 February 2003 in Rausdorf near Trittau) lately has made itself a name with its productions. Under a commission by *Friesischer Radioverein* (*ferian för en nuurdfresk radio*, *ffnr* - Association for a North Frisian Radio Station), Frisian-language documentary films have been produced since the summer of 2002 on a two-monthly basis. So far, the following films were produced or have been shown on TV or at the cinema:

Delegasjon üt Berlin än Kil tu besäk bai e nordfriiske [A delegation from Berlin and Kiel visits the North Frisians] (around 10 minutes)

100 iir Nordfriesischer Verein [The 100th anniversary of the North Frisian Association] (around 2 minutes)

Wat deet Berlin for e nordfriiske? - Friiske önj e bundesdäiswoolkampf 2002 [What does Berlin do for the North Frisians - Frisian in the *Bundestag* election campaign 2002] (18 minutes)

Apätj unti dilätj? - E tukamst foon e nordfriiske spräke [Upwards or downwards? - The future of the North Frisian language] (20 minutes)

450. Short versions of all of these films are available on the Internet (www.ffnr.de), and full-length versions are shown by *Offener Kanal Flensburg*, at public screen showings in Nordfriesland, and on video cassettes for sale.

In addition to this, the media bureau produces, for the *ffnr*, monthly Frisian-language Internet radio items of about 4-minutes' length and entitled "*Radio Redbad*" ["Redbad" was a legendary Frisian king]. These are reports, reflecting the point of view of the Frisian ethnic group, on subjects such as culture and minorities policy.

451. Under the Inter-State Treaty on *Norddeutscher Rundfunk* (*NDR*) which was concluded by the Free and Hanseatic City of Hamburg and the *Länder* of Mecklenburg-Western Pomerania, Lower Saxony and Schleswig-Holstein, the programming mandate of *Norddeutscher Rundfunk* as a broadcasting corporation under public law stipulates, *inter alia*, that adequate room must be given in the programme to the North German region, its culture and language (Section 5, subsection 2, of the *NDR* Inter-State Treaty).

452. **Niedersächsische Landesmedienanstalt** [Lower Saxony *Land* supervisory authority for private broadcasters] **supports non-commercial local broadcasters and the Open Channels**. It is especially in the programmes of these broadcasters with a focus on regional and local settings that specific cultural features and linguistic minorities are

included and presented. In the East Frisian (Ostfriesland) area, this also applies to the Saterland Frisians.

453. As only a relatively small segment of the population is the target group of television programmes in the Sater [Seeltersk] Frisian language, there have been no regular broadcasts so far. In compliance with the programming mandate (Section 5, subsection 2, in conjunction with Section 3, of the *NDR Inter-State Treaty*), the *NDR* regional programme (*i.e.* *N3*) **sporadically airs broadcasts about Sater Frisian** [Seeltersfräisk].

454. Lower Saxony *Land* ensures that also **productions in the Sater Frisian language** are subsidised within the framework of cultural promotion. Three films in the Low German language were subsidised through *nordmedia Fonds GmbH* which is operated jointly by the *Länder* of Lower Saxony and Bremen and other partners. On the other hand, productions in the Saterland Frisian could not be subsidised under these schemes for the simple reason that no applications for pertinent project funding have so far been submitted. Lower Saxony will continue to draw attention to the availability of promotional funding and will endeavour to encourage pertinent productions.

B.9.3.3.4 Broadcasting and new media for the German Sinti and Roma

455. Since the German Sinti and Roma are dispersed more or less over the entire area of the Federal Republic of Germany, creation of their own broadcasting media or their participation in the so-called Open Channels is difficult on account of the actual situation or for economic reasons. Therefore, the primary interest of associations of German Sinti and Roma is to keep up the dialogue with broadcasters and the print media so as to help to achieve unprejudiced reporting and to develop public awareness of the possibility that ill-considered reports and notices might foment prejudices that still exist in parts of society. The position taken by the German Sinti with regard to their language was already described above.

456. The **radio programme *MultiKulti*** [*MultiKulti*: word derived from "multicultural"] of ***Rundfunk Berlin-Brandenburg (RBB)*** which also broadcasts a section in the **Rromany language** of the Rroma of South Eastern Europe (Sundays, at 21.30 - 22.00 hours), addresses this programme mainly to **foreign Rroma** living in the Greater Berlin region.

457. In the *Land* of Hesse, **television programmes in Rromany** can be broadcast over the '**Open Channel**'. At present, such facilities exist in the cities of Kassel, Gießen and Offenbach/Frankfurt.

458. In **Rhineland-Palatinate**, individuals and groups **can, on their own responsibility, air television programmes** over the so-called '**Open Channel**'. It is not known whether any programmes in Romany have been broadcast so far.

459. On account of the state-provided promotion of the Documentation and Cultural Centre of German Sinti and Roma and the principle of self-management, **it is up to the responsible representatives of the ethnic group in this institution to use the available public funds also for audiovisual productions.**

B.9.3.3.5 Aims pursued by the organisations of national minorities with regard to broadcasting and new media

460. One of the current media-related political aims of the umbrella organisations of the minorities in Germany is to bring about that, also outside the activities described above, the broadcasting media will provide wider coverage of minority-related subjects and more intensive, unprejudiced reporting so as to supply the population of the Federal Republic of Germany with more information about this part of the nation's population and the minorities' own identities. In connection with this aim, the Danes, Sorbs and Frisians also express the wish for having their languages included in additional offers by the audio-visual media.

Article 9, paragraph 4: (Obligation to
- facilitate access to the media for persons belonging to national minorities,
- promote tolerance, and
- permit cultural pluralism

461. As regards facilitation of access to the media by the national minorities and ethnic groups protected under the Framework Convention, **cf. the comments above** on paras. 1 and 3 of Article 9. The question of promoting tolerance and permitting cultural pluralism is essentially covered in the comments above on para. 1 of Article 9, where - in the context of defining freedom of broadcasting in terms of constitutional law - both elements are presented as a basis for freedom of broadcasting which the State must ensure. Some of the **Land Media Acts** have explicitly **included these elements, with particular reference to minorities**, without confining them to the groups protected under the Framework Convention.

462. For instance, the following provision was included in the Inter-State Treaty on the Co-operation of **Berlin and Brandenburg** in the Field of Broadcasting of 29 February 1992 (this provision continues to apply also under the Treaty's amendment of 1 January 1999):

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

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

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

B.10 Article 10

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

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

(3) The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

B.10.1 Article 10, para. 1 (Obligation to recognise the right to use minority languages)

B.10.1.1 Legal bases of the right to use minority languages

465. The obligation flowing from Article 10, para. 1, *i.e.* to promote the preservation of minority languages, (also laid down as an aim in Article 7, para. 1 (d), of the European Charter for Regional or Minority Languages: "... the facilitation and/or encouragement of the use of ... minority languages ...") is fulfilled in Germany in the following way:

The right of the members of national minorities to use their language in daily life is protected by Article 2, para. 1, of the Basic Law, which guarantees the right to free development of personality. This freedom is also ensured in the context of the freedoms of expression, of the press and of broadcasting [reporting by means of broadcasts] as guaranteed under Article 5, para. 1, of the Basic Law. Accordingly, there are no legal restrictions in the Federal Republic of Germany as regards the use of a minority language in private or public life.

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

467. In January 2004, a draft "Act to Promote Frisian in the Public Sphere (Frisian Act)" - aimed, in particular, at regulating promotion of the Frisian language in various fields - was introduced in the Schleswig-Holstein *Landtag*. (For details, cf. section 5.1.4.7, No. 153, above.)

B.10.1.2 Use of minority languages in general

468. Use of the minority languages in public is generally accepted by the German population. No reservations exist in this respect. Languages other than German are used to a far greater extent by the large numbers of foreigners living in Germany; such use does not meet with any problems within society, with the exception of a few right-wing extremists.

B.10.1.2.1 Use of the Danish language

469. For the major part, members of the Danish minority use the Danish language in the private sphere. But account must also be taken of the situation in mixed-nationality marriages where German usually prevails. Danish is spoken within the organisations of the Danish minority. Constant use and promotion of the Danish language provide the basis for all minority-related activities. Of particular importance for proficiency in the Danish language are the Danish private schools, especially also for the children from mixed-nationality marriages.

470. With a view to encouraging the use of such languages, Schleswig-Holstein *Land* publishes brochures (entitled "*Sprache ist Vielfalt*" ["Language is diversity"]) containing information on the language situation of the speakers of regional or minority languages and on the Regional/Minority Language Charter's implications for the language-related rights of such speakers.

471. Staff members speaking the Danish language are available in the specialised clinics of the *Land*.

It should be pointed out that direct nursing and other care of persons in need of nursing and care is *not* a public-sector responsibility, but rather is carried out mostly by private-sector and free non-profit institutions. For instance, only 8 % of the more than 1,000 approved nursing facilities in Schleswig-Holstein are provided by incorporated public-law institutions. None of these facilities is provided directly by the *Land*. Therefore, it is not possible to lay down any requirements to be met by the various providing bodies as regards the use of the minority language Danish. However, the Ministry with responsibility in this field has until now not been notified of any cases

which might give reason to require certain institutions to provide permanently for staff with knowledge of this language.

472. By far the majority of the speakers of Danish in the Schleswig region of the *Land* are members of the Danish minority. The Danish Health Care Service for South Schleswig (the registered association *Dansk Sundhedstjeneste for Sydslesvig e.V.*) attends to the social, health-related and charitable matters of the Danish minority. *Dansk Sundhedstjeneste* is a member of the Schleswig-Holstein *Land* Association of *Deutscher Paritätischer Wohlfahrtsverband* [German Non-Denominational Welfare Association]. As a partner of the public health service, its activities also include tasks laid down in the Health Services Act. Affiliated to *Dansk Sundhedstjeneste* are, among others, a nursing home, several residential homes for the elderly, and a number of home health care services. The elderly are offered holiday stays at a resthome operated by *Dansk Sundhedstjeneste* in Denmark. In addition, services are offered by a social counselling bureau, voluntary services making home visits to elderly people, and 18 senior citizens' clubs. In the Schleswig region of the *Land*, *Dansk Sundhedstjeneste for Sydslesvig e.V.* works as a home health care service and therefore receives a subsidy as provided under Section 6, subsection 2, of the *Landespflegegesetz* [*Land* Home Care/Nursing Act].

473. Also, the Danish senior citizens are represented on the Advisory Committee for the Elderly of Flensburg City.

474. A number of the staff of the Psychiatric Clinic in the Schleswig region of the *Land* speak Danish.

475. At the four *Kreis* hospitals of Nordfriesland *Kreis*, especially in Niebüll, Danish-speaking patients can, at least to some extent, be received and treated in their own language. The website of the *Kreis* hospitals is also available in Danish (www.kh-nordfriesland.de).

B.10.1.2.2 Use of the Sorbian language (Sorbian and bilingualism)

476. Although many Sorbs are aware of the fact that actual use of the Sorbian language is the essential characteristic of belonging to the Sorbian people and of Sorbian identity, this language nowadays is being replaced by German in public life (e.g. public events such as 'citizens' assemblies') and often even in family life. Speakers of Sorbian do not live by themselves, but in constant contact with speakers of the majority language, *i.e.* German. By now, all Sorbs are bilingual. Oddly enough, the advantage provided by the Sorbs' bilingualism turns into a disadvantage when the bilingual speaker is compelled, more or less politely, by people around him/her to use the language that is not his/her mother tongue. This is tantamount to giving up

one's mother tongue. Since nobody can be compelled to learn the Sorbian language, it is up to all those responsible for Sorbian matters to continue to enlist support for, and raise awareness of, esteem for the Sorbian language, the use and learning of this language and the advantages of bilingualism.

477. Promotion of the Sorbian language is not aimed at preferential treatment of Sorbian. Promotion of minority languages always is an attempt to ensure the same conditions for the lesser used language as for a widely used language. This objective was discussed in **Schleife on 3 September 2001** at a **conference held with mayors and Landräte** [chief executive officials of *Kreise*] **of the Free State of Saxony and of Brandenburg Land**. On that occasion, the then State Minister for Scientific Affairs and Arts emphasised that it was the Saxon State Government's primary concern to enhance the overall population's appreciation of the Sorbian language. To this end, he said, it was important that the speakers of Sorbian should be encouraged, explicitly and constantly, to use the Sorbian language. Nor should esteem for this language just be confined to tolerance, but German-speaking Lusatians, too, should attain German-Sorbian bilingualism. Bilingualism of Lusatia presented an opportunity to all citizens living in Lusatia.

The aim is to have as many inhabitants of the Sorbian settlement area, especially children and youngsters, grow up as bilingual speakers or at least have a passive command of the Sorbian language. This is the prerequisite for use, on an equal footing, of both languages, e.g. on the occasion of [public] 'citizens' assemblies', family celebrations or sports events.

478. In the Free State of Saxony, there are various regions of the Sorbian settlement area where the Sorbian language is part of everyday life to a varying extent. In a number of places of the area between Kamenz/Kamjenc, Bautzen/Budyšin and Hoyerswerda/Wojerecy, the Sorbian language is passed on as the native tongue to the younger generations. In this region, Sorbian is the preferred language of everyday communication, spoken by all generations in public life, child care institutions and schools; it lends a specific character to everyday life in villages, church-related activities and family life. Nevertheless, also in these respects, there is a risk of the Sorbian language being replaced by German. In these times, which are influenced and moulded by the media in so many and various ways, children from infancy are confronted with the German language, but seldom experience use of the Sorbian language.

479. In Middle Lusatia (around Hoyerswerda/Wojerecy und Schleife/Slepo), the Sorbian language is only passed on within very few families. For most children in that region, Sorbian no longer is their mother tongue. Therefore, the efforts made by young parents to have their children take part in the *Witaj* Project so that they can,

from infancy, learn Sorbian as a secondary language are particularly commendable. They show that young people do take an interest in the language native to this region and that a growing desire is felt to reanimate this language. In the 2004/05 school year, the Schleife primary school for the fifth time enrolled, as first-graders, children who had acquired a basic knowledge of Sorbian in a *Witaj* group in nursery school. In Hoyerswerda, this happened for the fourth time. This is a promising first step towards increased use of the Sorbian language in this region.

480. An optimistic outlook is also warranted by a comparison with the situation of other minority languages spoken in Europe, which shows that increased use of a language can indeed be achieved. Decreased use of a given language does not entail the inescapable consequence that development in this direction would continue and inevitably lead to definitive discontinuation of the active use of this language. There are regions in Europe where revived self-assurance and the re-awakened will to preserve one's own identity and culture also resulted in increased use of the language. Therefore, a programme such as the "*WITAJ* Project" may be realistically expected to have good chances of success.

B.10.1.2.3 Use of the Frisian language

481. The North Frisian language still is, to a major extent, the language spoken within the family and the language for communication in public, especially among the Frisians living on the islands and in the northern continental region (extending from the German-Danish border to the town of Bredstedt/Bräist). In mixed-language marriages, German and Frisian are increasingly being used as languages of equal rank. Use of the Frisian language is not confined to specific institutions of the minority, but is part of normal social life in Nordfriesland and the island of Helgoland. The Frisian language is used both in everyday life and on official occasions. Frisian language proficiency, which is reflected in active use of the language, is found within the administrations of Nordfriesland and on Heligoland Island, in hospitals, nursing facilities, police departments, working life as well as many other places. Moreover, use of the Frisian language is also evidenced by the fact that Frisian-language street names and bilingual German-Frisian place-name signs can be found in many North Frisian places. Everyday use of the Frisian language is also evidenced by a large number of Frisian names for restaurants and other catering businesses.

482. In addition, Frisian language instruction at school, which at present is followed by about 1,500 pupils, is enormously important for developing Frisian language proficiency. The Frisian language is also taught in nursery schools and courses offered by adult education and other educational institutions.

483. The Frisian Council pointed out that the Frisian language had, over the past few years, experienced a certain revival in Nordfriesland and on Helgoland and is now much more present in the general public's awareness than it was even a few years ago.

484. Use of Sater Frisian [*Seelterfräisk*] by the Saterland Frisians is gradually increasing since school-children are taking a greater interest in learning this language and children and the grandparent generation have started to communicate in Sater Frisian again.

485. The purchase, with public funds, of the Scharrel railway station for use as a cultural centre in the Saterland conveyed the clear message that cultivation of the Sater Frisian language is a matter of importance to the *Land* Government. This centre is open to all citizens, and its planned activities cover all spheres of daily life.

B.10.1.2.4 Use of the Romany language

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

B.10.1.3 Governmental promotion of the use of the languages of national minorities

487. There are many and various ways in which the state promotes the learning and use of minority languages (cf. the comments on the various obligations). In particular, efforts are encouraged also among the general public to keep these languages alive by using them within the family and in extra-familiar everyday-life situations. In this regard, the cultural value of the minority languages for Germany's cultural life is particularly emphasised so that, on account of the resultant self-esteem and self-assurance, the younger generation will be more willing to adopt these languages and pass them on. The structures established for the administration of matters of their own concern provide the users of Danish, Frisian, Sorbian and Romany with the practical scope for using the given language also in an extra-familiar context.

B.10.2 Article 10, para. 2

(Obligation to make efforts to ensure, on a scale in line with existing requirements, the conditions which would make it possible to use the minority languages in relations with the administrative authorities)

B.10.2.1 Present scope for using minority languages in relations with public authorities, and additional scope for such use as envisaged by minority organisations

488. Under German law, the official language is German. Thus, as regards the citizens' dealings with public administration, German is the official language under Section 23 of the [Federal] Administrative Procedure Act. The *Länder's* Administrative Procedure Acts or Public Administration Acts also lay down German as the official language. German also is the official language in court.

489. The obligation under para. 2 - *i.e.* to ensure the conditions required for using minority languages - specifically refers to areas inhabited, traditionally or in substantial numbers, by members of national minorities, and in Germany applies especially to the settlement areas of the Danish minority, of the Sorbian people, and of the North Frisians and Saterland Frisians. The German Sinti and Roma are dispersed more or less throughout Germany, while no major number of them - in quantitative terms comparable to those of the aforementioned groups - is known to live in one particular place or region.

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

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

492. With a sticker campaign advertising the language proficiency of its staff members, the Schleswig-Holstein *Land* Government seeks to reduce inhibitions regarding use of regional or minority languages. As part of the keynote theme "*Sprache ist Vielfalt in Schleswig-Holstein*" ["Language is diversity in Schleswig-Holstein"], the campaign was presented in May 2002 by the Minister-President. In the meantime, around 650 stickers have been sent to agencies and other institutions of the *Land*.

493. The national minorities and ethnic groups suggest that for better minority language communication on the part of the staff of local and regional administrations, local authorities might encourage participation in language courses and that, when staff members are being recruited and assigned to posts, their proficiency in the minority language might be particularly taken into account as an additional qualification. As can be gathered from the following, this suggestion has been followed up.

494. As regards recruitment practice in Schleswig-Holstein, for example, it is pointed out that in 2000 a parliamentary debate took place on the requirement that decisions on the recruitment of staff for *Land* service positions should, as a matter of principle, include the applicants' knowledge of the regional or minority languages as a qualification criterion. The *Land* Government had welcomed this practice if and where such language proficiency was required for the specific post. In such cases, knowledge of these languages may be included in the assessment of the aptitude, qualifications and professional achievements of the applicants for such posts.

B.10.2.2 The present scope for using minority languages in relations with public authorities - by language

B.10.2.2.1 The present scope for using the Sorbian language in relations with public authorities

495. In the **German-Sorbian areas**, both German **and the Sorbian language** are admitted in relations with the **authorities** and administrations **of the *Land* and local governments**. This right is expressly stipulated in Sections 9 and 11 of the Act on the Sorbs' Rights in the Free State of Saxony (Saxon Sorbs Act - *SächsSorbsG*) of 20 January 1999 and in Section 23 of the Administrative Procedure Act of Brandenburg *Land*. These provisions provide for the general possibility to submit applications, petitions, records, deeds or other documents in the Sorbian language. The translation of such applications etc. into the German language is taken care of by the authority concerned. No costs for translations are charged to the citizen. At the local authority level in the Sorbian settlement area in Brandenburg, however, only very few cases have become known where applications were submitted, or deeds drafted, in the Sorbian language.

496. With regard to the use of the Sorbian language, the Free State of Saxony, in connection with Article 10, points out that public authorities, especially local administrations in the German-Sorbian settlement area, are fully aware of the obligation to allow use of both German and Sorbian as the official language. Therefore, appropriate considerations and efforts are already underway to achieve progress as regards use of the Sorbian language. In this context, reference is made to the letter of 20 November 2002 addressed by the State Minister of the Interior to the Federal Minister of the Interior:

497. In the view of the Saxon State Ministry of the Interior, the constitutional provisions of Articles 33, paras. 2* and 3**, and 3, para. 3, of the Basic Law preclude general inclusion of **knowledge of the Sorbian language as a qualification criterion for employment with public authorities in the Sorbian settlement area**. The performance principle requires equal eligibility to public office on the basis of aptitude, qualifications and professional ability. The candidate's origin and/or his/her belonging to a particular ethnic group must not be a determining factor of selection and consequently, as a matter of principle, may not be used as a discretionary criterion for selection among candidates who in all other respects have the required qualifications. In a very restricted number of cases, an exception may be made if so required for the post to be filled.

498. Accordingly, the State Ministry of the Interior considers it admissible to recognise knowledge of the Sorbian language as a proper qualification if the post of a contact person within the meaning of Section 11 of the Saxon Sorbs Act (*SächsSorbg* - Act on the Sorbs' Rights in the Free State of Saxony)*** is to be filled, because command of the Sorbian language is part of the core competence required for such a post. Also, to a certain extent, it is considered admissible to include command of the Sorbian language as a desirable additional qualification in job advertisements for a post where its holder will have contact with personal callers. However, in view of the fact that Sorbian is spoken as a foreign language by a very small part of the non-Sorbian population, this approach entails the risk that, in violation of the equality principle [prohibition of discrimination], non-Sorbian applicants would factually be placed at a disadvantage on account of their national origin. Therefore, command of the Sorbian lan-

* "(2) All Germans are equally eligible for any public office according to their aptitude, qualifications and professional achievements."

** "(3) The enjoyment of civil rights, eligibility for public office, and rights acquired in the public service shall not depend on a person's religious denomination. Nobody may suffer disadvantage by reason of their adherence or non-adherence to a denomination or their other convictions."

*** "Section 11 - Contact Persons of Public Authorities

(1) In the Sorbian settlement area, the public authorities of the Free State of Saxony and the agencies of public-law corporations, statutory institutions and public law foundations under its supervision should, wherever possible, designate as contact person a staff member having command of the Sorbian language."

guage could not be used throughout the *Land's* territory as an additional criterion in the selection-related decisions. Also, it is pointed out that even the designation of a Sorbian contact person is subject to feasibility, especially as regards the available number of Sorbian-speaking applicants who in all other respects have the required qualifications.

499. *Domowina* took the view that the restrictions, as described in the preceding two paragraphs, regarding inclusion of the Sorbian language as a criterion for staff recruitment for public authorities in the Sorbian settlement area did not do justice to the actual situation.

This view was rejected by Brandenburg *Land* - where similar restrictions apply - by pointing out that the argument given by *Domowina* in support of unrestricted inclusion of knowledge of Sorbian as a recruitment criterion was not correct. A second official language did not exist; there was only the right of Sorbs to communicate in the Sorbian language with Saxon and Brandenburg administrative authorities in the traditional settlement area. This, in turn, did not imply that all staff members should be bilingual, but referred to the ability of the given authority to provide for assignments (for example, a relevant provision is section 23, subsection 5, of the Brandenburg Administrative Procedure Act (*VwVfG Bbg*)). Since requiring bilingualism as a criterion applying to *all* staff members was out of the question, it was not possible, either, to generally include bilingualism as an aptitude and qualifying factor for all posts and jobs; rather, this criterion could only be included for those posts which require proficiency in the Sorbian language.

500. A number of the **subordinate agencies of the State Ministry of the Interior of the Free State of Saxony** - especially those in regular contact with personal callers - already have **Sorbian-speaking contact persons**. The State Ministry of the Interior will make sure that the authorities/agencies within its remit will once more be explicitly informed of the aforementioned - limited - possibility to include knowledge of the Sorbian language as a criterion for the selection of job applicants, and will be encouraged to make the widest use possible of this option. In addition, the State Ministry will pass on, to the authorities concerned, the request that they should, in an appropriate way, inform their citizens of the fact that Sorbian-speaking staff is available and can be contacted.

501. The State Ministry of the Interior has followed up on the request for greater provision of **further education relating to Sorbian language acquisition**. The *Akademie für öffentliche Verwaltung* (*AVS* - Academy of Public Administration), which comes within the remit of this Ministry, has since 2003 made a survey of the requirements for such further education within the *Land's* public administration. The *Fachhochschule der Sächsischen Verwaltung* [College of Saxony's Public Administration], which is re-

sponsible for training public officials [civil servants] of the higher intermediate service, was advised that - upon request, especially by the recruiting local authorities in the Sorbian settlement area - the Sorbian language should be included in the optional language courses offered to their staff.

502. Recruitment and further training of the staff of local public service come within the organisational jurisdiction of local governments. By letter of January 2003, the State Ministry of the Interior wrote to the *Land's* local government associations to inform them of the desired approach in this respect and of the existing legal scope for meeting such wishes.

503. In the Sorbian settlement area, **bilingual signs** have been provided for most **places**, towns, *Landkreise* [rural county-type administrative districts], etc., and **public buildings**, institutions, **streets, lanes and roads, squares** and bridges. This is explicitly laid down in Section 10 of the Act on the Sorbs' Rights in the Free State of Saxony (Saxon Sorbs Act) and in Section 11 of the Act to regulate the substance of the Sorbs' (Wends') rights in the Land of Brandenburg (Act on the Specification of the Rights of the Sorbs (Wends)).

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

505. However, within the **area to which the Federal Administrative Procedure Act applies**, the **Sorbs must**, as a matter of principle, **use the German language**.

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

507. In the exclusively Sorbian communities, or communities with a Sorbian majority, in the Free State of Saxony, the Sorbian language prevails in public life. This also goes for administrative authorities and meetings of local/municipal councils. At the same time it is ensured, e.g. by bilingual notices on the bulletin board, that also citizens who only

speak German are included in community life. In these places, in particular, civil marriages are increasingly contracted in the Sorbian language.

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

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

- In the city of Cottbus, the correspondence between the Commissioner for Sorbian (Wendish) Matters and the Sorbian institutions and associations as well as citizens belonging to the Sorbian people takes place, for the major part, in the Lower Sorbian language. Although this provides the basis for handling such petitions in Sorbian, no citizen has so far made a written submission in the Lower Sorbian language to the municipal authorities.
- In Oberspreewald-Lausitz *Landkreis*, Lower Sorbian is very seldom used in relations with administrative authorities although the actual conditions for such use exist, given that the staff of the authorities concerned usually have a command of the Lower Sorbian language. For the *Landkreise* of Spree-Neisse and Dahme-Spreewald, no cases have been reported where citizens contacted administrative authorities in the Lower Sorbian language. However, in the interest of greater responsiveness of administration to citizens, it certainly would be of advantage if a larger number of the staff of public authorities in the Sorbian settlement area could use the Sorbian language.

510. *Domowina*, on the other hand, sees the reason for the limited extent to which Sorbian is used in the general overall conditions, which in instances are unfavourable, as regards use of this language, cf. Nos. 476 - 479 above, under section B.10.1.2.2 (Use of the Sorbian language).

511. Taking account of the aforementioned perceptions of the situation, the Brandenburg *Land* Ministry of the Interior, by letter of 11 November 2002, recommended to the *Land* Ministries that Sorbian-language proficiency be included as an additional qualification of applicants for vacancies if and where this skill might be of use for performing the envisaged job. At the same time, the addressees of this letter were requested to review, within their respective area of responsibility, the extent to which

actual use is being made of these possibilities, and the further training requirements as regards the Sorbian language. The same information was supplied, by a circular of 3 December 2002, to the local self-administration units specified in Section 3, subsection 2, of the Sorbs/Wends Act (SWG); those local authorities were also asked for information on the extent to which it was ensured that citizens using the Sorbian language could submit oral or written applications in this language or validly submit a document in this language. The answers given by the Ministries showed that so far no problems had been encountered in connection with the Sorbian language, nor had any requests for further training been received, and that the recommendation to include knowledge of the Sorbian language as a factor in recruitment advertising had been complied with.

512. As regards the view taken by the **Advisory Committee** (ACFC; in no. 85 of their "Opinion on Germany" - CM(2002)43, referring to Germany's first State Report) that the German **authorities should make sure that existing legal provisions concerning the use of Sorbian in official dealings are properly implemented in practice** and remedy any shortcoming in this field, the following information has already been provided:

513. Use of the minority language in the traditional settlement areas constitutes an important aspect of the protection and promotion of this minority. The government agencies are trying to further enhance the effective use of the minority language.

514. To the extent that the Sorbian language is rarely used in dealings with public authorities, the experience gained so far suggests that this is due to the lack of demand among the population. People are actually given the opportunity to use this language.

515. Recruitment decisions in the public service are to be based on the applicant's suitability, skills and specialised performance. This explains why knowledge of the Sorbian language can only be taken into account in recruitment decisions if such knowledge is required for the fulfilment of the specific duties.

516. Putting up of notices stating that certain staff members have knowledge of the Sorbian language is viewed with some reserve. The aim is to meet the *existing* demand for use of the Sorbian language in relations with administrative authorities. The obligations arising from the Framework Convention are understood to mean that the relevant needs of the population should be met and that, where relevant, people faced with mental barriers should be encouraged to use the Sorbian language in line with their respective requirements.

517. In response to the concern expressed by the **Advisory Committee** (ACFC; in no. 51 of their "Opinion on Germany" - CM(2002)43, referring to Germany's first State Report) as regards reported **shortcomings in the practical implementation of provisions allowing use of the Sorbian language in relations with public authorities**, the following information has already been provided:

518. The Council for Sorbian Affairs complained some time ago that knowledge of the Sorbian language was not listed as a(n additional) qualification in the Employers' Information Service (*Arbeitgeber-Informations-Service - AIS*).

519. The *Bundesagentur für Arbeit* (*BA* - Federal Employment Agency) has confirmed that only official (national) languages have so far been included as an additional vocational qualification in the specialised computer-based placement system (*computerunterstützte Arbeitsvermittlung - coArb*) and thus in the Employers' Information Service (*AIS*). The Federal Employment Agency provided the following information: "In compliance with international agreements signed by the Federal Republic of Germany for the protection of national minorities and with the *Land* laws and Constitutions of the *Länder* of Saxony and Brandenburg, the Sorbian/Wendish language shall be included. For technical reasons, this measure cannot be implemented before the next software delivery takes place in late August 2002."

520. As regard promotion of language courses for the unemployed, it is pointed out that official (national) languages are generally not funded in the context of further training or advanced training measures. Nevertheless, the Cottbus Employment Office has been offering a service since 9 June 2000 whereby applicants can be granted a three-month training scheme for participation in an intensive language course, during which unemployment benefits and/or unemployment assistance would continue to be paid.

521. An example of active language promotion policy by government agencies is furnished by the *Land* of Lower Saxony. For a number of years, the *Weser-Ems Bezirk* [District] Government has included the criterion "knowledge of Saterland Frisian" in the procedure for inviting applications for vacancies.

The *Weser-Ems Bezirk* Government, when advertising a job vacancy at Sedelsberg primary school starting on 6 August 2001, stated this additional requirement. However, it was not possible to find a teacher who was able to speak and read Saterland Frisian in addition to having the required combination of subjects.

522. The administrative tier of the Lower Saxon *Bezirk* Governments no longer exists as of 31 December 2004, but on the basis of the pertinent information published repeatedly by the Ministry of Culture and Education of Lower Saxony, it may be assumed that the authorities and schools concerned are aware of the general frame-

work and will continue to advertise jobs based on concrete demand. In this regard, the main criterion will have to be the demand for classroom instruction, and nobody will be hired simply because they speak the Saterland Frisian language.

However, special consideration can also be given in the selection process to applicants who can speak and read Saterland Frisian even if this additional requirement is not specified in recruitment advertising. Here, too, the prerequisite is a relevant demand at the school in question.

B.10.2.2.2 The present scope for using the Danish language in relations with public authorities

523. It is only in the city of Flensburg and in a number of adjacent small communities that the Danish minority represents a larger percentage of the population, *i.e.* about 20 per cent. In all other places of the Danish settlement area, the share of the Danish population is much smaller. Under the Kiel Declaration by the *Land* Government of Schleswig-Holstein on the Status of the Danish Minority of 26 September 1949 and the Declaration by the Government of the Federal Republic of Germany of 29 March 1955 [Bonn Declaration] - the content of which is identical with that of the Copenhagen Declaration by the Government of the Kingdom of Denmark of 29 March 1955 - use of the Danish language in courts and in relations with administrative authorities is regulated by general legislation. Thus, under the general laws, only German is admitted for use in courts and administrative authorities. All members of the Danish minority, however, also speak German and use the German language in courts and in relations with administrative authorities.

524. In dealings between Danish-speaking members of the administration and persons belonging to the Danish minority who are staff members of the administration or elected representatives of local government authorities, on the one hand, and Danish-speaking citizens seeking advice, on the other hand, the Danish language is also used in administrative relations. Staff members of authorities in the vicinity of the border participated in Danish crash courses, especially with the aim of having a command of that language when working within transfrontier Territorial/Working Communities or associations; such training will, in the long term, help to reinforce Danish language proficiency.

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

526. Use of German as the language to be used in court and in relations with administrative authorities has so far not raised any problems between the Danish mi-

nority and public authorities, but the organisations of the Danish minority speak up for increased use of their language also in relations with administrative authorities.

527. Positive **examples of language promotion offered to public officials serving with the Schleswig-Holstein administration** are the following:

528. Of the overall number of employees (around 800) of the *Schleswig-Holstein Nord Polizeidirektion* [regional **police** headquarters] - responsible for the *Kreise* of Nordfriesland and Schleswig-Flensburg and for the City of Flensburg - at least 200, *i.e.* around 25 per cent, have a basic knowledge of Danish, allowing them to answer questions and to read documents in that language. The larger agencies, at least, have staff members with a good command of the Danish language; it should be noted in this context that a number of police officers serving with *Schleswig-Holstein Nord* regional police headquarters are ethnic Danes of German nationality. Police forces in general endeavour to improve their staff's language proficiency. For example, two training programmes are funded through the EU promotional programme INTERREG; in the years 2001 - 2003, 350 staff members of the regional police headquarters *Schleswig-Holstein Nord* and *Schleswig-Holstein Süd* attended Danish language courses of several weeks' duration and of varying learning intensity levels.

529. Flensburg *Finanzamt* [**Revenue Office**] stated that, in view of the geographic proximity to Denmark, particular care was being taken to accommodate the needs of resident **taxpayers** from the Danish speech area. Thus, the criteria for selection of staff for the Preliminary Turnover Tax Return office include having a command of the Danish language. It is this unit of Flensburg *Finanzamt* that has the most frequent contacts with Danish companies.

530. Given its location in the border zone, [Flensburg as] the 'stronghold' of Danish in Schleswig-Holstein has for some time already sought to adjust its services to the fact that the staff's knowledge of Danish is of great importance to a client-oriented **municipal administration**. Danish courses are offered to beginners, and financial grants are available for employees taking part in Danish courses outside the municipal further training facilities. For advanced learners, workshops in Danish have been on offer once per week for a number of years already. Danish is an integral part of the basic training of the Flensburg professional **fire brigade**. Finally, an EU project (INTERREG III A) for **transborder qualification** of prospective executive personnel (*Løver 2002*) is carried out with the *Kreise* of Nordfriesland and Schleswig-Flensburg and with Sønderjylland *Amt* with the aim of improving language proficiency on both sides of the border.

B.10.2.2.3 The present scope for using the Frisian languages in relations with public authorities

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

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

533. In January 2004, a draft "Act to Promote Frisian in the Public Sphere (Frisian Act)" - aimed, in particular, at regulating promotion of the Frisian language in various fields - was introduced in the Schleswig-Holstein *Landtag*. (For further details, cf. the comments in section 5.1.4.7 - No. 153 - above, and the reference in No. 467 above.)

534. Within the Husum Police Headquarters, which is responsible for Nordfriesland *Kreis*, some 5 % of the staff speak the Frisian language at least so well that they are able to converse in this language with the citizens of their community. These officers also indicate their language proficiency on their office doorplates and on lapel stickers.

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

536. In relations with public authorities, the North Frisian and the Sater Frisian languages do not yet have the status due to them. As a rule, the members of this ethnic group use the German language in court and in relations with administrative authorities. One of the reasons is that the population segment that is proficient in the Frisian language generally constitutes the minority even in their Frisian settlement areas. The Frisian ethnic group expects that, upon entry into force of the "Frisian

Act", the situation regarding the status and use of the Frisian language in relations with public authorities in Schleswig-Holstein will improve. Some Civil Registry Offices in Nordfriesland, however, already provide for civil marriages in the Frisian language.

537. Also in **Saterland Gemeinde in Lower Saxony**, it is possible to have civil marriages and other **official acts performed in the Frisian language**. Public officials of that local authority indicate their proficiency in Saterland Frisian on their office door-plates.

538. In Saterland *Gemeinde*, no problems exist as regards submission of legal documents drafted in Saterland Frisian. The administration has staff members who can process such documents. Citizens can state their case in Saterland Frisian. The replies will equally be furnished in this language. Also, applications may be submitted in Saterland Frisian. In practice, however, no use has been made of this facility.

539. The facilities and staff that may be required for oral and written translation are available in Saterland *Gemeinde*. In this context, it should be pointed out that it is relatively difficult to write Saterland Frisian, and thus considerable work is involved.

540. Also, the local authority [*i.e.* Saterland *Gemeinde*] is prepared at any time to draft documents in the minority language. So far, however, no requests to this effect have been made.

541. So far, no official documents of Saterland *Gemeinde* have been published in Saterland Frisian; however, pertinent preparations are underway with regard to short official communications (e.g. notices on the bulletin board), especially as regards standard texts, which are then to be published as bilingual notices.

B.10.2.2.3 Regarding the question as to whether the Romany language can be used in relations with public authorities

542. The German Sinti and Roma see Romany as a language that is used within the family and the family clans of the Sinti and Roma. In their dealings with German authorities, they use the German language and object to their own language being learnt and used by administrative officials who are not members of this minority. However, the German Sinti and Roma wish that there should be no problems involved when Romany is used in contacts of Sinti and Roma as administrative staff members, on the one hand, and as citizens seeking advice, on the other.

543. In view of the fact that the German Sinti and Roma grow up as bilingual speakers of Romany and German and, as a rule, have full command of both lan-

guages, the need to use Romany in relations with administrative authorities has not yet emerged.

Any problems arising in this context can be handled, for instance, by the Düsseldorf-based Counselling Bureau of the North-Rhine/Westphalia *Land* Association of German Sinti and Roma. To help Sinti and Roma in their dealings with public authorities is one of the specific tasks of this counselling bureau.

**B.10.3 Article 10, para. 3
(Language used in pre-trial procedures and criminal proceedings -
arrest and accusation)**

544. Section 184 of the Organisation of the Courts Act lays down that the **official language in court is German**. However, the constitutional stipulations regarding fair trial and due process of law (Articles 2, para. 1, and 20, para. 3, of the Basic Law) entail the **obligation** for courts also **to take note of declarations** made by parties to a lawsuit **in a foreign language**. If the court hearing is attended by **persons who do not know the German language**, an **interpreter** must be called in (Section 185 of the Organisation of the Courts Act).

545. Similarly, during preliminary investigation by the public prosecutor, the accused must be informed, in a language he/she understands, of the offence with which he/she is charged and must be given an opportunity to present his/her view [in that language] on the alleged offence. As soon as it becomes obvious that communication is not possible for language reasons, involvement of an interpreter is mandatory also in this case. Articles 5, para. 2, and 6, para. 3, *litt. a*, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) also stipulate this right. Paragraph 3 of Article 10 of the Framework Convention does not contain any obligations going beyond the ECHR provisions, and thus in Germany is already part of the [established] law in force. Apart from a few exceptions, however, **the members of the groups protected under the Framework Convention understand German** so that these problems do not arise in practice.

546. **Special provisions** governing language use in court exist with regard to **Sorbian**. The Unification Treaty of 31 August 1990 explicitly provides that the Sorbs shall - continue to - have the right to speak Sorbian in court in their home *Kreise* and that this right shall remain unaffected by Section 184 of the Organisation of the Courts Act (Annex - I Chapter III, Subject Area A, Section III 1, of the Unification Treaty of 31 August 1990). This provision is implemented in the *Länder* of Saxony and Brandenburg.

547. The signs indicating the courts in the traditional settlement area [Lower Lusatia] of the Sorbian (Wendish) people in **Brandenburg** are bilingual. If Sorbs wish to litigate in

their own language, translators are called in. So far, however, no case has become known where a Sorb invoked this right in a court of Brandenburg *Land*. In the Sorbian settlement area [Upper Lusatia] of the Free State of **Saxony**, all courts have bilingual signs. In addition, the Saxon Higher Administrative Court also uses German-Sorbian letterhead stationery. In every court in the Sorbian settlement area of the Free State of Saxony, at least one staff member has a command of the Sorbian language so that citizens can also state their case in Sorbian. This right is actually being made use of.

B.11 Article 11

(1) The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

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

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

B.11.1 Article 11, para. 1 (Obligation to recognise the right to use personal names in the minority language)

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

549. In order to meet the obligations flowing from Article 11, para. 1, of the Framework Convention, the **Act on Name Changes by Minorities** (*MindNamÄndG*) of 22 July 1997 was passed on the basis of provisions in the Act ratifying the Framework Convention (Federal Law Gazette II 1997, p. 1406).

The **members of national minorities** and of other ethnic groups traditionally resident in Germany to whom the Framework Convention and the German law governing names apply, **may assume the minority-language version of their names** by making a pertinent declaration before the Registrar [of the Civil Registry Office]. With the 13th General Regulatory Order Amending the General Regulatory Order to Implement the Act on Civil Status ("Standing Instructions for Registrars and Their Supervisory Authorities with regard to the Act on Civil Status") of 02 June 1998 (Supplement to the *Bundesanzeiger* [Official Gazette of the Federal Republic], no. 107), which entered into force on 01 July 1998, account was taken of the Framework Convention by including the provisions of the Act [on Civil Status] in Section 381 a of the Standing Instructions for Registrars and having them applied in civil registry office practice. Adaptation of a name may be effected by translation of the name into a minority language if the

name also denotes a specific term and thus is translatable from one language into another. If the name cannot be translated, it may be adapted to the phonetic particularities of the given minority language. Members of national minorities whose former names in the respective minority language were given a German form or were changed to some other name, may again assume those original names. A pertinent declaration before the Registrar suffices for adapting a name to the special features of the given minority language.

550. The Standing Instructions for Registrars and Their Supervisory Authorities take account of the orthographic particularities of the names of members of national minorities by providing that the diacritics (graphic accents, hooks, etc.) in names or other words shall be retained unchanged. The change of a person's surname at birth will affect the married name of the person making such declaration only if the spouse also makes such a name-change declaration before the Registrar. Extension of such name changes to the children of the person making the declaration or to their spouses is governed by the provisions of the Civil Code of the Federal Republic of Germany.

551. Section 3 of the Act on Name Changes by Minorities [*MindNamÄndG*] provides that no fees shall be charged for acceptance of a declaration to this effect and for its certification or judicial recording [authentication].

552. The number of persons making use of the right to have their names changed is not covered by the statistics of the Civil Registry Offices. There are no provisions laying down any general obligation of Civil Registry Offices to report such information to any registry supervisory bodies.

**B.11.2 Article 11, para. 2
(The right to display, in the minority language, signs, inscriptions and other information of a private nature)**

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

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

555. The Danish minority, the Sorbian people and the Frisian ethnic group make intensive use of this right. The German Sinti and Roma who regard Romany solely as the language of the members of this minority usually do not set any store by public markings and inscriptions in the Romany language.

**B.11.3 Article 11, para. 3
(Obligation to endeavour to display topographical indications also in the minority language when there is a sufficient demand)**

B.11.3.1 Extent of the obligation to provide bilingual topographical indications

556. The regulation regarding provision of topographical markings also in the minority language applies to areas inhabited traditionally by substantial numbers of members of a national minority. This clause only imposes the obligation on public authorities *to endeavour* to achieve this objective, and in this respect, additional conditions must be met as well.

B.11.3.1.1 Status as regards provision of bilingual topographical indications in the Sorbian settlement area in the *Länder* of Brandenburg and Saxony

557. In the Sorbian settlement area, bilingual signs must be provided for places, towns, *Landkreise* [rural county-type administrative districts], etc., and public buildings, institutions, streets, lanes and roads, squares and bridges. This is laid down, as a directory provision, in Section 10 of the Act on the Sorbs' Rights in the Free State of Saxony [Saxon Sorbs Act] and, as a peremptory provision, in Section 11 of the Act to regulate the substance of the Sorbs' (Wends') rights in the Land of Brandenburg [Brandenburg Sorbs (Wends) Act].

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

559. The Ministry of Urban Planning and Housing, Cultural Affairs, and Sports published a Ministerial Order on Bilingual Traffic Signs/Road Signs in the Traditional Settlement of the Sorbs, of 1 March 1999 (Brandenburg Official Gazette, p. 284); implementing the relevant provisions of Federal and *Land* legislation, this Order regulates bilingual signposting in the Sorbs' traditional settlement area. A survey conducted by subordinate road traffic authorities [highway boards] in October 2002 on the implementation of the Ministerial Order showed that the **requirements** stipulated in the Order

had, for the major part, been met. In those cases where **replacement** of the signs was considered **disproportionate** (because they had been put up only shortly before the issue of the Order, and additional marking with Sorbian-language stickers was not feasible), the road construction authorities **promised** to provide **bilingual inscriptions** as soon as the respective signs were replaced.

560. Also, the majority of the local authorities and *Landkreise* of the Sorbian settlement area included, in their Main Municipal Ordinances [*Hauptsatzung* - "standing orders": a local authority code of regulations], the obligation to provide bilingual signs for public buildings, institutions, streets, lanes and roads, squares and bridges. In view of the current budget situation, this commitment is implemented gradually, *i.e.* bilingual signs are put up for new streets or when streets are renamed, or bilingual inscriptions are provided on signs that have to be replaced.

561. Thus, Section 6 (2) of the Main Municipal Ordinance of Cottbus/Choæebuz Municipality lays down that bilingual German-Sorbian signs shall be provided for public buildings and establishments, as well as for streets, lanes and roads, squares and, if named, bridges. So far, around 50 to 60 per cent of the signs for streets and squares in Cottbus are bilingual; most of the buildings of the municipal administration are also marked with bilingual signs. The Main Municipal Ordinances of all *Gemeinden* forming part of the *Amt* [local authority union] of Burg/Spreewald [Borkowy/B³ota] include acknowledgement of their being part of the Sorbs' traditional settlement area, and provisions on gradual bilingual signposting for public buildings and establishments, streets, lanes and roads, and bridges. This requirement has been met for public buildings, and provision - to be phased according to the current budgetary situation - of [bilingual] street nameplates in the local communities has been started. The Main Municipal Ordinance of the town of Drebkau/Drjowk [Spree-Neisse *Landkreis*] stipulates bilingual signposting for public buildings and establishments. It is planned to provide such signs gradually, depending on the need for replacement/repair. A *Kreistag* decision requires Spree-Neisse *Landkreis* to provide bilingual signs for all *Kreis* roads in the Sorbs' traditional settlement area, with due regard to economic efficiency, *i.e.* at the time of replacement of the road signs concerned. If a sign is damaged and therefore must be replaced, a bilingual sign must be put up at once.

562. In response to the **Advisory Committee's suggestion** in no. 53 [of their "Opinion on Germany" - CM(2002)43] - that the **obligation** of municipalities **to adopt bilingual signposting** (Article 103 of the Brandenburg Sorbs/Wends Act) in the Sorbs' settlement area in Brandenburg should **not fail to be complied with** on account of **financial considerations** - the following comments were provided:

563. According to Section 3 (2) of the Act on the Specification of the Rights of the Sorbs (Wends) (*Sorben-(Wenden)-Gesetz* - SWG), a municipality belongs to the

traditional settlement area of the Sorbian people if the features mentioned in this Act apply to them. Even though municipalities, given their closer association with the given local situation, are responsible for establishing whether the requirements have been met, taking decisions in this matter is not left to the free judgment or to the discretion of the municipalities; rather, this is a mandatory non-discretionary decision that is fully subject to examination by the local government supervisory authorities and will be referred to the competent courts if the relevant municipality refuses to accept the decision taken by the local authorities' supervisory body.

564. Up to now, none of those local communities that have not established that they belong to the traditional settlement area have actually proven that they meet the legal prerequisites required for establishing that they do actually belong to the traditional settlement area. The Sorbian organisations claim that the latter is the case in a few communities, but so far they have not, in any of these cases, furnished any verifiable evidence that might refute the assessment made by the competent local authorities.

565. Brandenburg *Land* points out that, contrary to the view put forward by *Domowina*, this also applies to the Forst/Baršæ Municipality, into which the former *Gemeinde* of Horno (which already in 1994 acknowledged being part of the traditional settlement area) was incorporated in 2003, because this declaration by the formerly autonomous local authority [*Gemeinde*] continues to be valid also for - but only for - the respective town district of the incorporating municipality, without any further enactment being required.

566. Regarding the requirement stipulated in Article 11, para. 3, that topographical indications should be displayed also in the minority language, the **Advisory Committee** [ACFC], in no. 86 [of their "Opinion on Germany" - CM(2002)43], considered that the German authorities should step up their efforts to **speed up the full implementation** of the legal **provisions on bilingual signposting** in areas traditionally inhabited by Sorbs.

Germany's comments are as follows:

567. Monolingual signposts in Brandenburg are being replaced by bilingual signposts in accordance with Section 11 of the "Act to regulate the substance of the Sorbs' (Wends') rights in the *Land* of Brandenburg" (*Sorben (Wenden)-Gesetz - SWG*). The details of bilingual signposting are regulated by the Decree of 1 March 1999 issued by the Ministry of Urban Planning, Housing and Transport on the use of bilingual traffic signs/road signs in the traditional settlement area of the Sorbs (Wends)

568. Monolingual signs will not be replaced by bilingual signs immediately in all communes, but will in part be replaced whenever, at regular intervals, old signs are

replaced by new ones anyway. This might mean that in some cases replacement of signs will extend over a longer period of time. This does not, however, contravene the obligations ensuing from the Framework Convention which does not require immediate replacement of signs, but allows longer periods of time in which the necessary measures can be implemented. If all signs had to be replaced immediately, this would result in an additional workload for the affected local authorities, exceeding their capacity and incurring additional costs that would be beyond their financial means.

569. Moreover, the problem is just a minor one since, as a rule, there is not a total lack of bilingual signs; it is just that they have not yet been installed in the envisaged form throughout the given community. This can be attributed to the fact that, as stated above, these measures will be implemented over a certain period of time, and thus the matter will take care of itself in the future.

B.11.3.1.2 Status as regards provision of bilingual topographical indications in the Frisian settlement area in Schleswig-Holstein

570. Under the Second Act to Implement the European Charter for Regional or Minority Languages, which entered into force on 19 September 2002, Schleswig-Holstein **allowed** the use or introduction of the traditional and correct forms of **place-names in the North Frisian language**. Also, some communities traditionally have street signs in Frisian.

571. This undertaking is implemented by the **possibility to put up bilingual place-name signs (German/Frisian) in the North Frisian speech area** (sign 310, under the Road Traffic Regulations [Highway Code]). The legal basis is provided by a Decree of the Schleswig-Holstein *Land* Ministry of Economics, Labour and Transport of 20 August 1997). Interested local authorities in Nordfriesland *Kreis* can submit applications to this effect. By 31 December 2002, **applications** had been filed **by ten local governments** (Borgsum/Borigsem on the island of Föhr/Feer; Bredstedt/Bräist; Dagebüll/Doogebel; Kampen/Kaamp on the island of Sylt/Söl; Nebel/Neebel on the island of Amrum/Oomram; Niebüll/Naibel; Norddorf/Noorsaarep on the island of Amrum/Oomram; Risum-Lindholm/Risem-Lonham; Süderende/Söleraanj on the island of Föhr/Feer; and Utersum/Ödersem on Föhr/Feer). The Frisian ethnic group, Nordfriesland *Kreis* and the local authorities belonging to this *Kreis* have been informed of this option, *inter alia* in the *Land* Government's brochure entitled "*Sprache ist Vielfalt*" ["Language is diversity"] (cf. Item 19 of the brochure).

572. In January 2003, under a **decision on a specific case**, the Ministry of Economics, Labour and Transport approved bilingual or **Frisian-language signposting also**

with regard to **direction signs** (sign 386-50, under the Road Traffic Regulations) for the Frisian cultural centre **Andersen-Hüs in Risum-Lindholm**.

573. The draft "Act to Promote Frisian in the Public Sphere (Frisian Act)" introduced by *Sydslesvigsk Vælgerforening* (SSV - South Schleswig Association of Voters) in the Schleswig-Holstein *Landtag* (in this context, cf. - in particular - No. 153 above) also contains provisions on bilingual signposting for buildings and place-name signs and on bilingual official seals and letterheads. During the hearing on the bill, various suggestions were put forward to the effect that bilingual topographic indications, *i.e.* in German and Frisian, should be allowed in Nordfriesland *Kreis* and on the island of Helgoland.

B.11.3.1.3 Status as regards provision of bilingual topographical indications in the Danish settlement area in Schleswig-Holstein *Land*

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

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

B.11.3.1.4 Status as regards provision of bilingual topographical indications in the settlement area of the Saterland Frisians in Lower Saxony

576. The Second Act to Implement the European Charter for Regional or Minority Languages, which entered into force on 19 September 2002, guarantees the use or introduction of the traditional and correct forms of **place-names in the Saterland Frisian language** [*Seelterfräisk*].

Adequate signposting was provided.

B.11.3.1.5 No bilingual topographical indications in the Romany language

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

B.12 Article 12

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

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

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

B.12.1 Article 12, para. 1

(Measures in the fields of education and research to foster knowledge of the languages etc. of national minorities)

B.12.1.1 Responsibilities as regards fostering of knowledge *inter alia* about national minorities

578. Under the federal structure of the Federal Republic of Germany, compliance with this provision is ensured by the *Bund* and the *Länder*. Within the educational system of the *Länder*, promoting the knowledge of the culture, history, languages and religion of the respective minorities/language groups as well as of the majority population is part of the curricula of publicly maintained and private schools.

579. However, an important role in imparting knowledge of the culture of the national minorities and protected ethnic groups, in and outside schools, is also played by the state institutions for civic education, *i.e.* the Federal Agency (*BpB*) and the *Land* Centres for Civic Education. The materials compiled by these agencies with regard to issues of the co-existence of the various cultures represented in Germany are used as instruction material both in schools and in adult education (on this point and with regard to the educational mandate of schools, cf. the comments on Article 6, Nos. 276 - 302 above).

B.12.1.2 Measures in the field of (school and adult) education to foster knowledge about national minorities

B.12.1.2.1 Legal bases as regards education concerning knowledge *inter alia* about national minorities

580. An educational mandate implementing the provisions of Art. 12, paragraph 1, is laid down, for example, in Section 2 of the **Lower Saxony Schools Act** stipulating that pupils shall be enabled "... to develop their faculties of perception and sensitivity and

their capacity for expressing themselves, with the inclusion of the relevant regional variety of Low German or of Frisian, ..."; in Section 4 of the **Brandenburg Schools Act** which provides that the pupils' ability and readiness shall be enhanced to understand their own culture as well as other cultures, with particular reference to the Sorbian (Wendish) culture; and in Section 2 of the **Saxon Schools Act**, under which all schools in the Free State of Saxony shall impart basic knowledge of the history and culture of the Sorbs. In this context, it must be noted that, as part of school education, knowledge of the culture and language of these minorities in Germany is passed on to a much greater extent in the respective traditional settlement area than in other parts of the national territory. It is especially in the schools of the protected groups (private schools of the Danish minority and publicly maintained schools for the Sorbian people) - cf. our comments on Article 13 below - that classroom instruction deals with the language, literature, culture, traditions and folklore, and history of the respective group in a particularly intensive way.

B.12.1.2.2 Measures in the field of education with regard to the various national minorities and ethnic groups

B.12.1.2.2.1 Measures in the field of education with regard to the German Sinti and Roma

581. On account of the historical events during the Nazi rule of force, the history and the culture of the German Sinti and Roma, which is reflected in the Romany language, are included in school education throughout the Federal Republic.

As regards imparting of knowledge of the history and culture of the German Sinti and Roma who live dispersed in almost all parts of the Federal Republic, the following examples can be given:

582. In **Baden-Württemberg**, the following measures have been agreed by the Ministry of Education and Cultural Affairs in co-operation with the Baden-Württemberg *Land* Association of German Sinti and Roma: At the *Landesinstitut für Erziehung und Unterricht* [*Land* Institute for Education and Instruction] in Stuttgart, a Working Group "*Sinti und Roma in Deutschland*" will be established, to co-operate with the Documentation and Cultural Centre of German Sinti and Roma in Heidelberg. Teachers and educators, representatives of the "Union of German Sinti and Roma - Baden-Württemberg *Land* Association" and of the Heidelberg-based Documentation and Cultural Centre are represented on this Working Group. The Working Group is to give new impulses for the inclusion, in classroom instruction, of the history, culture, and suffering of German Sinti and Roma. The Documentation and Cultural Centre will be included in the number of non-school educational institutions, e.g. with the task of preparing school trips to Heidelberg. The *Land* Institute for Education and

Instruction has prepared a brochure for use in classroom instruction for analysing, and attempting to come to terms with, the history of the Sinti and Roma. In addition, the *Land* Government endeavours to induce educational publishing houses to take increased account of the Sinti and Roma in textbooks and other educational media.

Also, in Baden-Württemberg *Land*, a brochure entitled "*Zwischen Romantisierung und Rassismus: Sinti and Roma 600 Jahre in Deutschland*" ["Vacillating between romanticising and racism: 600 years of Sinti and Roma living in Germany"] was published in November 1998 jointly by the Baden-Württemberg *Land* Centre for Civic Education and the Union of German Sinti and Roma - Baden-Württemberg *Land* Association. It contains articles by writers and scholars, and is primarily intended for teachers and professionals in adult education. It is intended to impart the basic and background knowledge that helps to counter the development of prejudices and to develop and raise public awareness.

583. In **Bavaria**, the *Land* Association of Sinti and Roma has a seat on the board of trustees of the foundation *Stiftung Bayerische Gedenkstätten* [Bavarian memorial sites] which was set up on 1 June 2003. Also since 2003, the Sinti's and Roma's history of persecution has been included in teacher follow-up training. Information on the culture and history of the German Sinti and Roma is provided by the Bavarian *Land* Centre for Civic Education in the brochures "*Nationalsozialismus - Band III*" ["National Socialism - Volume III"] and "*KZ Dachau*" ["Dachau Concentration Camp"]. In addition, the *Land* Centre in 2003 published a wall newspaper (including photos and texts) entitled "Sinti and Roma" (about 6,000 copies).

584. The persecution and murdering of Sinti and Roma also are subjects regularly covered by the activities referring to memorial sites. Study trips are organised, for schools of all types, to the *KZ* memorial sites and to regional concentration camps and *KZ* workcamps. The Union of German Sinti and Roma (Bavaria *Land* Association) is invited to take part in the development of specific models for visits by school children to these memorial sites.

585. The new curricula for all types of schools place greater emphasis than before on intercultural education. The latter is intended also to cover treatment of the language, culture, history and religion of German Sinti and Roma.

586. Information on the culture and history of the German Sinti and Roma is provided, for instance, in the brochures "*Nationalsozialismus - Band III*" ["National Socialism - Volume III"] and "*KZ Dachau*" ["Dachau Concentration Camp"] published by the Bavarian *Land* Centre for Civic Education. Also, the *Land* Centre plans to publish a general survey of the culture, history, language and religion of the German Sinti and Roma.

587. Within the Senate Authority for Schools, Youth and Sports of the *Land* of **Berlin**, staff members from both the schools and youth services sectors deal with the current situation of Sinti and Roma. The provisional Framework Curricula for Education and Instruction at the Berlin Schools for the subjects 'history' and 'political science' include, of course, the Sinti and Roma in the treatment and discussion of the Nazi ideology and of its enforcement by means of persecution and extermination. The Berlin schools also avail themselves of the opportunity to invite Sinti and Roma as external speakers/lecturers. The *Landesinstitut für Schule und Medien (LISUM - Land Institute for Schools and the Media)* operates a media rental service which makes video cassettes on this subject available to Berlin schools.

588. In 1990, the *Land* Association of German Sinti and Roma established a social services/youth work Counselling Bureau in Berlin. The staff members of this Bureau are Sinti. Its main tasks are social counselling and general assistance with the enforcement of indemnification claims of victims of the Nazi regime who are members of this national minority. In addition, awareness-raising activities forming part of school and out-of-school youth education and adult education, or presented at public events, are carried out with the aim of providing basic information about Sinti and Roma in order to reduce misconceptions and prejudices.

589. Since December 2002, as part of the measures designed to promote the self-organisation of Roma and Sinti by means of employment and protection of livelihoods, the *Regionale Arbeitsstelle für Ausländerfragen* [Regional Workshop for Foreigners' Issues] in Berlin has trained 'school helpers' who - as mediators between schools, on the one hand, and Roma and Sinti families, on the other - promote mutual understanding of the cultural background of the respective other side. This is to ensure continuous school attendance and to enhance the educational opportunities of the members of this group.

590. In the *Land* of **Hamburg**, public information about the history and identity of this minority who have traditionally been living also in Germany, has been stepped up as part of civic education. Thus in Hamburg, a number of books and brochures were published on the subject of the living together of different cultures and nationalities; among these is the publication entitled "*Wir sprechen viele Sprachen*" ["We speak many languages"] (a reading book with picture writing, which is also used as a first reader in classes attended by Roma). The Senate Commissioner for Foreigners' Issues (this institution is now replaced by the Integration Consultative Council of the Senate Authority for Social and Family Affairs) published a brochure entitled "Roma and Sinti in Hamburg" which is designed to foster understanding of the culture and history of the Roma and Sinti in Hamburg. Also, the Hamburg *Land* Centre for Civic Education in

2002 published its documentation on "The Nazi persecution of Roma and Sinti in Hamburg".

591. In **Hesse**, school education includes the history and culture of the Sinti and Roma, as provided under the framework curricula for schools. On behalf of the Hessian Ministry of Education and Cultural Affairs and in co-operation with *Fritz-Bauer-Intitut*, the Hessian *Land* Institute for Pædagogics has developed pertinent educational materials. In 1998, the Hessian Ministry of Culture established the *Pädagogisches Büro Nationale Minderheiten: Sinti und Roma* [Educational Bureau for National Minorities: Sinti and Roma] and integrated it within the Hessian *Land* Institute for Pædagogics. A priority element of the mandate therefore is follow-up training of the teachers of Hessian schools with regard to the history and culture of the Sinti and Roma, both in a narrower and broader sense. However, in addition to its responsibilities within the Hessian *Land* Institute for Pædagogics, the Educational Bureau was assigned an additional task by the Hessian Ministry of Education and Cultural Affairs, namely implementation of this matter at the university level and in society at large.

592. Against this background, the Educational Bureau, under the auspices of the Hessian *Land* Institute for Pædagogics, carried out the following activities during the period under review:

- advisory services for classroom instruction projects of various schools
- development of teaching materials:
 - teacher guidance material "Sinti and Roma in Films", ed. by Charlotte Bernard and Marlis Sewering-Wollanek; *Pädagogisches Büro nationale Minderheiten: Sinti und Roma / Hessisches Landesinstitut für Pädagogik*. Wiesbaden 2001. (= *Materialien zum Unterricht* [Materials for Classroom Instruction], 135A).
 - various hand-outs for school classes
- presentation of the [permanent] Exhibition organised by the Documentation and Cultural Centre of German Sinti and Roma on the subject of "The Genocide of Sinti and Roma during the Nazi Era"; this activity was carried out in co-operation with the *Verband Deutscher Sinti und Roma* [Union of German Sinti and Roma] / Hesse *Land* Association, the municipality of Marburg, the Marburg *Philipps-Universität*, the Marburg *Cineplex*, and the *Land* Theatre in Marburg. This project networked the three aforementioned fields of activity (further training of teachers; university activities; society) in such a way that they complement each other. 750 school children visited the Exhibition and were introduced to this particular subject.

593. Under the remit to raise public awareness of matters related to Sinti and Roma, the following activities were carried out during the period under review:

- advisory services and monitoring of exhibitions organised by other bodies:

- *"Roma in Rumänien"* [Roma in Romania], photo exhibition, Marburg, November 2001
- *"Vom Verschwinden der Kindheit"* ["About the loss of childhood"], Marburg, February-March 2003. As part of the programme accompanying this exhibition, the Educational Bureau presented the film *"Abschied von Sidonie"* ["Farewell to Sidonie"] (by Karin Brandauer) and a lecture.
- interviews with the press and local radio stations
- lectures, e.g. for the Fulda *Fachhochschule* [university of applied sciences]
- participation in pertinent working panels (Working Panel "Sinti and Roma" of the *Fritz-Bauer-Institut*; membership of the *Gesellschaft für Antiziganismusforschung* [Society for the Study of Anti-Gypsy Attitudes])
- Presentation of the exhibition organised by the Association of German Sinti and Roma / Hesse *Land* Association with the support of Hesse *Land* on the 600 years of the history (of persecution) of Sinti and Roma in Hesse, with an accompanying cultural programme. The target groups of this exhibition are school children and teachers, in particular.
- A total of 40 interviews were carried out in connection with a publication containing reports by contemporary witnesses in view of analysing and assessing the history of Sinti and Roma in Hesse, which was edited by the *Land* Association of Sinti and Roma and funded by Hesse *Land*. At present, written transcripts of these interviews are being made. The reports by contemporary witnesses will subsequently be published.

594. The **Lower Saxony Land** Centre for Civic Education, within the framework of activities related to memorial sites, deals with the history of the persecution of the Sinti and Roma during the Nazi era. It holds meetings on this subject, and carries out research on the fate suffered by the Sinti and Roma in the concentration camp [KZ] of Bergen-Belsen. Discrimination against the Sinti and Roma in post-war Germany was the subject of several meetings which also dealt with matters related to indemnification for wrongs suffered during the Nazi era.

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

596. Also, it should be mentioned that, on 26 and 27 September 2002, the *Landesinstitut für Schule* - on behalf of the competent *Land* Ministry - organised the specialist conference "*Schulische Bildung von Kindern aus Sinti- und Romafamilien*" ["School education of children from Sinti and Roma families"] in the town of Soest, which was attended by experts from schools, churches, supervisory school authorities, local authorities, and the *Land* Association of German Sinti and Roma.

597. The **Rhineland-Palatinate** *Land* Centre for Civic Education has, together with the Pædagogical Centre, developed educational materials on the subject of "*Sinti und Roma - Eine deutsche Minderheit*" ["Sinti and Roma - A German minority"]. A key feature of these materials is that, rather than developing a "minority science" as seen from the perspective of the majority population, the perspectives of both the majority and the minority are represented to the same extent.

598. In **Schleswig-Holstein**, current information on the activities and the situation of the German Sinti and Roma is provided in one of the chapters of the *Land* Government's Minority Report. Once per legislative period - last in December 2002 - the *Land* Government submits its Report on Minorities to the Schleswig-Holstein *Landtag* and publishes it in the form of a brochure.

599. As of January 2001, the **Federal Government** has allocated funds to the Documentation and Cultural Centre of German Sinti and Roma in Heidelberg for establishing an "Education Section" staffed with two employees. The cross-*Land* tasks of this Section include the development of materials for the supplemental homework-assistance and language classes to be taught by teachers coming from this minority/language group for interested children and, in addition, encouragement to introduce such courses in Romany also in Hesse. The Hessian *Land* Association of German Sinti and Roma takes part in these efforts. The *Land* Government co-ordinates the assignment/employment of suitable teachers with these organisations. In the view of the *Land* Government, 8 to 10 participants coming from this minority/language group will be sufficient to warrant the introduction of a pertinent course. This also goes for the area of adult education.

600. The **Bundeszentrale für politische Bildung** (*BpB* - Federal Agency for Civic Education, FACE) dealt intensively with the subjects regarding the Sinti and Roma minority, especially in various publications of the series "*Informationen zur politischen Bildung*" ["Information on Civic Education"] which reach a large number of teachers/educators and other multipliers.

B.12.1.2.2.2 Measures in the field of education with regard to the Sorbian people

601. Passing the cultural heritage on to upcoming generations is seen by the **Brandenburg Land** Government as a basic condition for the survival of the national culture of the Sorbian or any other people. This requires, first of all, achievement of active and passive command of the given language. Accordingly, the *Land* Government aims, to the extent possible, at promoting achievement of Sorbian language proficiency in the field of public education.

In addition, however, the aim must be to initiate the upcoming generations into their people's history and traditions, to promote identification with one's own roots, and to foster readiness to take an active part in forms of, and activities related to, cultural expression. In some areas, such participation is to be achieved without any public intervention or support; there is a great interest, in particular, in cultivating Sorbian customs and folklore, and this in turn opens up a wide field for potential active participation.

Another important aim is to get children and adolescents interested in familiarising themselves with Sorbian culture, to foster their readiness to accept the cultural specificity of their community environment, and to encourage them to experience Sorbian culture in its full diversity. These aims will have to be achieved, in particular, by schools and children's day-care centres (cf. the Brandenburg Schools Act (*Brandenburgisches Schulgesetz - BbgSchulG*), Sections 4, subsection 5, 2nd sentence; 5; and 109, subsection 1, 2nd sentence, no. 3; and the Children's Day-Care Centres Act (*KitaG*), Section 3, subsection 2, no. 5).

602. In addition to the efforts aimed at familiarising children, preferably even pre-schoolers, in the Sorbs' traditional settlement area with the Sorbian (Wendish) language as a vehicle of cultural identity, related - specific and varied - possibilities are offered on a regional basis to children and youngsters for leisure-time activities involving the cultivation/preservation of the language and culture, including cultivation of customs.

603. A wide range of activities aimed at cultivating/preserving the Sorbian language and culture are pursued in the *Kreise* of Dahme-Spreewald, Oberspreewald-Lausitz and Spree-Neisse and in the city of Cottbus. The *Domowina* - Federation of Lusatian Sorbs [*Domowina - Zwajsk Łužiskich Serbow z.t.*] runs its own youth recreational centre in Cottbus/Choæebuz. The youth recreational centre "*Insel*" ["Island"] in Lübben/Lubin pursues the cultivation and preservation of Sorbian folklore and customs as one of its key tasks. One staff position of this youth recreational centre is subsidised by the *Land* under the Programme to subsidise the payroll costs incurred for qualified social

education workers in youth and community work and in socio-educational work for young people.

604. In addition, the *Kreise* and Cottbus Municipality subsidise a large number of projects involving young people and mostly organised by youth initiatives, citizens' groups and clubs dedicated to the preservation of traditions, and/or local authorities.

605. A report on the situation of the Sorbian people in the Free State of **Saxony** is submitted pursuant to Section 7 of the Saxon Sorbs Act by the Saxon State Government to the Saxon *Landtag* [*Land Diet*] at least once per legislative period. The report is published for release to the general public. In May 2004, the second "report on the situation of the Sorbian people" (editing deadline: 31 July 2003) was transmitted by the Saxon *Land* Government to the *Landtag*. Additional activities by the Saxon *Land* Centre for Civic Education include, for instance, publication - in co-operation with the *Domowina* Publishing Company - of a "Short History of the Sorbs" appearing in the series of publications covering the history, geography and political system of the region. This publication closes with the following words: "The Sorbs' future lies in their bilingualism. Thus they will, on the one hand, face up to the economic needs and requirements and, on the other hand, preserve and further develop the Sorbian culture which has a rich tradition. This, in turn, fulfils an important function as a mediator between Germans and Slavs and contributes towards understanding, friendship and good-neighbourly relations among peoples."

B.12.1.2.2.3 Overarching educational measures in Schleswig-Holstein referring to all of the national minorities or ethnic groups living in this *Land*

606. Information about the respective culture of the Danish minority, of the ethnic group of Frisians and of the minority of German Sinti and Roma is provided by the Schleswig-Holstein *Land* Government especially in the Minority Report, already mentioned under no. 598 above, which is published as a brochure. The Schleswig-Holstein *Land* Centre for Civic Education plans a revised republication of the brochure entitled "Minorities in the German-Danish Border Region".

B.12.1.2.3 Educational objectives of national minorities and ethnic groups

607. In response to the wish expressed by the national minorities and ethnic groups for a nation-wide overview over the four groups, the Federal Government published the aforementioned information brochure (cf. No. 21 above).

B.12.1.3 Measures in the field of research and tertiary education to foster knowledge about national minorities

608. In the field of research, several *Länder* of the Federal Republic of Germany established state-run research institutions with the pertinent terms of reference, or on a continuous basis support private research institutions of the minorities. On the subject of promotional policy, cf. the comments above on Article 5, para. 1.

B.12.1.3.1 Research activities regarding the Danish minority

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

B.12.1.3.2 Research activities with regard to the Sorbian people

610. The Sorabistics Institute of Leipzig University offers a course of Sorbian Studies for a Master's degree or for the teaching profession. This is the only university institution available in Germany to students training to become teachers for Upper and Lower Sorbian instruction at schools of all types and to students preparing for a Master's Diploma with a major or minor in Sorbian. The number of required subjects stipulated in the curricula and the required diversity of choices as regards courses of study in linguistics, study of literature, political and regional geography, subject-specific didactics, practical use of the Upper and/or Lower Sorbian language as a mother tongue, a secondary language or a foreign language, have created a shortage of teaching posts at the Institute. The staff of the Sorabistics Institute cannot cover the teaching requirements in the field of Cultural Studies, including history, cultural history, study of the material culture and customs, and minority issues.

611. Therefore, staff members of *Sorbisches Institut e.V.* are employed as temporary lecturers. In the view of representatives of the Sorbs (*Domowina* and *Sorbischer Schulverein*), these staffing arrangements are inadequate in some cases; in particular, criticism was expressed with regard to the staffing situation in the Didactics sec-

tion. At present, one research assistant holds half a post, for subject-specific didactics, under a limited employment contract (the time limit refers only to this person's period of employment, and not to the established post).

612. Since March 2003, the grade C4 professorship for Sorbian studies [Sorabistics] and thus the post of director of the Sorabistics Institute of Leipzig University have been filled.

The majority of the students enrolled at the Sorabistics Institute are Sorbs who, for the major part, are native speakers. Lower Sorbian students - whose number has dropped since the 1989 "Political Change" - enrol on the Institute's course of study without any native-speaker knowledge of Sorbian. Also, there are some [ethnic] Germans who complete a full course of study in Sorabistics.

613. So far, the courses are generally held in Upper Sorbian and, on a limited scale, in Lower Sorbian. Since university textbooks and other teaching materials are commercially available only in rare cases, the Institute's faculty and guest lecturers themselves develop the relevant materials. In part, these are patterned on teaching materials developed for other Slavonic languages and based on treatises and publications on various fields of Sorabistics.

614. After the marked decrease in the number of students enrolled at the Institute in the wake of the political change [*i.e.* the 1989 "peaceful revolution" and Germany's unification], a slightly rising tendency now emerges with regard to numbers. According to the pertinent official statistics, 16 students were enrolled in the Master's degree courses in the 2002/2003 winter semester. Another four students take Sorbian studies as a minor, and five students are enrolled in the doctor's degree programme in Sorabistics.

615. An increasing number of students are interested in obtaining one of the three scholarships covering a 10-month period (2 semesters) which, for the past six years, the Foundation for the Sorbian People has granted every year to East European students who are interested in following a partial course of study in Sorabistics at Leipzig University. The grant holders of previous years came from the Czech Republic, Poland, Russia, Ukraine, Serbia and Bulgaria. Also, scholarships for the duration of one or two semesters are occasionally granted (by *DAAD* [German Academic Exchange Service], *ERASMUS* or *SOCRATES*) to foreign students, e.g. from the Czech Republic, the U.S.A., Canada, Japan.

616. **No** specifically Sorbian-language courses or lectures are offered for any **other fields of university study**. This means that Sorbian university graduates - if their profession requires use of the Sorbian language or special knowledge of the history and present situation of the Sorbian people - will rely on the knowledge acquired at *Sorbi-*

sches Gymnasium or will acquire it by self-study. They also can take additional courses in Sorbian history and culture. These offers are open, in particular, to language multipliers such as teachers, journalists, clergymen, writers, actors and staff members of Sorbian institutions.

617. In addition, research in the field of Sorabistics in the Free State of Saxony and in Brandenburg *Land* is carried out by *Sorbisches Institut*. The research priorities of the Sorbian Institute are linguistics, empirical cultural research, and the cultural and social history of the Sorbian people. At present, the Institute has an establishment of 31.5 posts, of whom 19 are scholars. The Institute is financed with public funds provided through *Stiftung für das sorbische Volk* [Foundation for the Sorbian People].

618. In the field of linguistics, the Institute also is engaged in pan-Slavonic dialect research and contributes to the work on the multinational Slavic linguistic atlas. Those involved in the related practical work have a great demand for manuals and textbooks which the Institute develops on a periodical basis. *Sorbisches Institut* also has at its disposal the *Sorbische Zentralbibliothek* [Sorbian Central Library] with some 90,000 volumes (books and journals), and *Sorbisches Kulturarchiv* [Sorbian Cultural Archives] with about 500 running metres of records and files. Like a national library, the Sorbian Central Library collects all Sorbian and Sorabistic editions and continuously publishes a "Sorbian Bibliography". The Archives preserve and explore the essential documents of Sorbian cultural development from more than four centuries. *Sorbisches Institut* combines its scholarly studies with the support of specific projects in the field of cultural and language promotion. Thus, on the basis of sociolinguistic studies, concepts/suggestions are developed for focused promotion of the Lower Sorbian language.

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

B.12.1.3.3 Research activities with regard to the Frisians

620. Research activities with regard to the North Frisians

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

621. *Friesisches Seminar* [Frisian Institute] of Flensburg University primarily provides training of teachers for employment with Schleswig-Holstein schools.

The two aforementioned institutions for Frisian training are maintained and/or co-funded by Schleswig-Holstein *Land*.

622. As a central scholarly institution in Nordfriesland, the *Nordfriisk Instituut* [*Nordfriesisches Institut* - North Frisian Institute] in Bredstedt/Bräist is of great importance to the cultivation and promotion of, and research on, the Frisian language, culture and history. In particular, its scholarly activities and publications cover the languages, history, and study of the geography and civilisation of Nordfriesland. The Institute has a specialised library and archives and offers seminars, courses, workshops and lectures. The Institute's providing body is the *Verein Nordfriesisches Institut*, with a membership of around 850, and its work is funded, in particular, by state and local authorities.

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

623. At Flensburg University, teaching of part (at least six hours per week) of the Frisian course of study is covered, under a pertinent agreement, by a qualified staff member of *Nordfriisk Instituut*; for the resultant loss of research capacity, a compensatory payment is made to the *Instituut*. In addition, the teaching requirements are met by teaching assignments [lectureships] covering six hours per semester (2003/2004 winter semester) and one seconded lecturer (14 hours per week per semester).

624. For Frisian philology, Kiel University at present employs one grade C3 professor and one academic assistant as well as two other temporary lecturers.

625. No detailed information on public funding of university curricula can be provided prior to the introduction of a cost/results accounting scheme. On the one hand, university-related expenses were budgeted under the *Hochschulvertrag* of December 2003. Under this arrangement, tertiary education institutions can now carry out their human resources planning in a more flexible way; one of the measures taken to provide this wider scope was to suspend mandatory application, in the years 2004 and 2005, of university staffing schedules. On the other hand, the stated direct expenses only cover part of the total expenditure which includes, among others, administrative expenses and overhead cost, expenses for office and classroom space, etc. Universities are developing a cost/results accounting scheme so as to ensure that expense/service relations can be defined more precisely.

Moreover, in view of the small number of persons involved, providing information on direct payroll costs is problematic because this would allow conclusions regarding

protected personal data, especially income-related data, so that no detailed information can be provided on this point.

626. Therefore, the following figures on public funding only show aggregate partial expenses incurred for Frisian education offered by the two universities. For Flensburg University, a total amount of around 9,000 € has been allocated in the 2004 budget for teaching material and teaching assignments [lectureships], and a total of 30,676 € is budgeted for the aforementioned teaching contract with the *Nordfriisk Instituut [NFI]*. Additional payroll costs are incurred for a - seconded - grade A 12 lecturer. Kiel University [CAU - *Christian-Albrechts-Universität*] in 2003 spent a total of around 138,000 € on personnel expenses of the Frisian Philology department.

627. Overall (Kiel and Flensburg Universities), the number of students has mostly remained at an unchanged level over the past few years. The aggregate figures for both universities were: 2001/2002 winter semester: 56; 2002/2003 winter semester: 54; and 2003/2004 winter semester: 51 students. At Flensburg University, however, the number dropped from ten to seven students in this period. Candidates for a doctor's degree were not enrolled for the 2003/2004 winter semester.

628. Under the amended Teacher Examination Regulations of 11 September 2003 and a pertinent ministerial order, students training to become teachers at elementary schools and secondary modern schools can now (as of the 2003/2004 winter semester) follow this course of study for teaching 'Frisian' also as a regular classroom subject or, as before, as an extension or complementary subject. It is planned to include the related subject-specific requirements also in the Examination Regulations. This will help to stabilise and increase the number of students enrolled for Frisian.

629. In addition, in order to promote the protection of regional and minority languages, all students training to become teachers for the subject 'German' at schools providing general education shall, also in future, attend one course in Frisian or Low German. Further, it is intended to comply with the pertinent constitutional mandate in future by explicitly including Frisian in the detailed schedules for the subject 'German'.

630. Despite the *Land's* tight budget situation, promotional funding of *Nordfriisk Instituut [NFI]* has been continued on the same scale over the past few years. In 2002 and 2003, the institution-based promotional funding granted by the *Land* to the *NFI* amounted to 209,600 euro. For 2004, institution-based support was increased to 214,000 euro. Since 1997, the *NFI* has been granted an additional annual amount of 30,700 € to compensate for the financial implications entailed by the so-called *Hochschulkompromiss* [compromise reached in connection with the ongoing reform of higher education]. In addition, both *Land* and (since 2000) federal funds are allocated - in co-

ordination with the Frisian Council (*Frasche Rädj*) Section North - to the *NFI* for projects of special importance.

631. For **research activities in respect of the Saterland Frisians**, cf. section B.5.1.7.3.2 (Fields of promotional measures for the Frisian ethnic group), Nos. 230 - 232 above, regarding research on the Saterland Frisian history, culture and language.

B.12.1.3.4 Research activities with regard to the German Sinti and Roma

632. Research projects by outsiders [non-Gypsies] on the language, history and culture of the German Sinti and Roma are strictly rejected by the members of this minority. Such rejection is based on the experience with the pseudo-scientific race-related research undertaken by the National Socialists [Nazis]. While at that time the Sinti and Roma at first responded openly to scholars who researched their language and culture, and in many instances supported these researchers, they later had to realise that this research was used as an instrument for racist purposes and was followed by the Nazi genocide of the Sinti and Roma. Against the background of this experience, the organisations of the German Sinti and Roma take the view that the language and culture of the minority should not be a subject of research by non-Sinti or non-Roma. Therefore, the study of the history and culture of this minority is mainly carried out by the Documentation and Cultural Centre of German Sinti and Roma which is under the minority's own administration (in this regard, cf. the comments under B.5.1.7.4.1, Nos. 236 - 240, above). Universities and other scientific/scholarly institutions deal with research subjects concerning the persecution of the Sinti and Roma under the Nazi rule of force.

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

634. The *Gesellschaft für Antiziganismusforschung* was founded in Marburg in July 1998. The Society has been tasked with providing educationalist support to the *Pä-*

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

635. The relevant section of the Marburg *Philipps-Universität* carried out the following activities during the period under review:

- Seminars held at the Department of Historical Science / Institute for East European History; these regularly cover the history and present situation of East European Roma in the narrower and wider sense.
- Seminars held at the Department of Pædagogics, which deal with the history and present situation of the German Sinti and Roma, their place in German society and at school.
- Monitoring of assessed essays prepared by students on these subjects; over the past few semesters, an increase in the number of such coursework papers has been observed.
- Administering intermediate examinations [required for entry to the final examination for a university diploma] which by now, although only infrequently, also include subjects related to the Sinti and Roma.

B.12.2 Article 12, para. 2
(Public information regarding national minorities by means of
- teacher training;
- textbooks;
- contacts among students/pupils and teachers of different communities)

B.12.2.1 Fostering knowledge of national minorities through contacts among students/pupils and teachers of different communities

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

B.12.2.2 Fostering knowledge of national minorities through teacher training

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

B.12.2.2.1 Imparting knowledge of the Danish language in teacher training

638. The teachers of the private schools of the Danish minority are/were trained either in Denmark or in Germany. Their in-service (follow-up) training is either in the hands of the Danish Schools Association [*Dansk Skoleforening for Sydslesvig*] or by institutions of the Kingdom of Denmark. In Schleswig-Holstein, a course of studies in Danish is offered (for details, cf. the comments regarding para. 1 of Art. 12, No. 609 above). The Danish private schools primarily use textbooks published by Danish educational publishing companies, but also educational materials developed by these schools themselves to take account specifically of the Danish minority's situation and history, as well as German textbooks. The development, entailed by the Bonn/Copenhagen Declarations of 1955, of transfrontier promotion of minorities on the basis of the reciprocity principle has ensured that for the minorities on both sides of the border - Danes in Germany, and Germans in Denmark - adequate opportunities exist for teacher training and for access to textbooks.

639. With the specific aim of ensuring recruitment of teachers belonging to the Danish minority who are able to teach all subjects included in the curriculum in the Danish language, Section 5 (3) of the Federal Educational Grants Act (*BAFöG*) grants members of the Danish minority unrestricted subsidised educational advancement for attending a training institution located in Denmark if such training is not available in Germany. This applies, for instance, to teacher training since in the Federal Republic of Germany the subjects included in the curriculum are, as a rule, taught in the German - but not in the Danish - language.

B.12.2.2.2 Imparting knowledge of the two Sorbian languages in teacher training

640. In the Sorbs' settlement area (Free State of Saxony and Brandenburg *Land*), teaching of the Sorbian language (Upper Sorbian and Lower Sorbian/Wendish) and Sorbian-language subject-specific instruction are given at publicly maintained schools. In the Free State of Saxony, new curricula for the 2004/2005 school year were introduced for these subjects for grades 1 through 4 of elementary schools and for grades 5 through 7.

641. Basic training of Sorbian teachers in Sorbian studies [Sorabistics] - for the teaching profession - is offered by Leipzig University (in Saxony). This University trains the majority of Sorbian-language teachers.

642. The Ministry for Education, Youth and Sports of Brandenburg *Land*, jointly with Potsdam University (Institute for the Study of Slavic Languages and Literatures, and Centre for Further Education), prepared an extension course of studies regarding Sorbian (Wendish) for teachers of lower secondary grades [*i.e.* secondary education stage I of German schools], which started on 1 April 1998. The aim is to qualify some 20 teachers for teaching Sorbian (Wendish) at schools. As notified by *Domowina*, however, the extension course of studies was discontinued after three runs.

643. A continuation course of studies for acquiring teaching qualification for secondary education stage II had been in preparation but, as notified by *Domowina*, was not introduced.

644. For the school subject '**Sorbian (Wendish)**', **framework plans** were developed for **primary education**, for **secondary education stage I**, and for the **upper secondary grades** of *Gymnasien* [grammar schools]. These plans were established by teachers from Brandenburg *Land* in co-operation with a linguist from Magdeburg University. The Commission's work was co-ordinated by the *Land* Institute for Pædagogics and by *Arbeitsstelle Bildungsentwicklung Cottbus* (*ABC* - Cottbus Workshop for Educational Development).

As stated by *Domowina*, these framework plans, which entered into force in 1991, are actually applied and used for all levels of school education; at the same time, however, a new set of curricula - which also take account of various forms of bilingual instruction - is being developed under the lead responsibility of *Arbeitsstelle Bildungsentwicklung Cottbus* (*ABC* - Cottbus Workshop for Educational Development) (for details on *ABC*, cf. No. 648 below).

645. In addition, **native speakers of Sorbian are trained as teachers of a number of additional school subjects** which, under the present and future "breakdown of approved subject hours", can be taught in the Sorbian language. If these persons successfully complete these studies, the Free State of Saxony guarantees their public service employment. *Domowina* points out, however, that this can be realised in practice only if student teacher preparatory service is provided for.

646. The offers regarding central and regional **follow-up/in-service training of Sorbian teachers** are essentially demand-oriented at present. The Saxon *Akademie für Lehrerfortbildung* [teacher follow-up training college], for instance, during the study course period September 1998 - February 1999, offered a course on the subject "*Methodische Anregung zur Textarbeit im Sorbischunterricht*" ["Methodology for working with texts in Sorbian classes"] for teaching posts at *Realschulen* [secondary schools,

with lower secondary grades (*i.e.* secondary education stage I) and *Gymnasien* [grammar schools; schools with upper secondary grades], and a course entitled "*Unterwegs nach Europa - Mehrsprachigkeit statt Einsprachigkeit*" ["On our way to Europe - Multilingualism instead of unilingualism"]. In addition, regional follow-up training is offered to teachers who teach Sorbian as a foreign language or as their native language, for instance "*Methodische Anregungen zur Textarbeit im Sorbischunterricht für Lehrer, die Sorbisch als Fremdsprache unterrichten*" ["Methodology for working with texts in Sorbian classes, for teachers who teach Sorbian as a foreign language"]. Teachers who teach other subjects in the Sorbian language, can take part in centrally or regionally organised follow-up training in subject-specific and multidisciplinary studies. The regional follow-up training activities offered so far also comprise follow-up training which is advertised and carried out in the Sorbian language.

647. The **education schedule** established by the **Bautzen Regional Schools Office** for the 2003/2004 school year covers two courses for primary school teachers in the German-Sorbian settlement area and four courses for lower secondary school [*Mittelschule*] teachers in the German-Sorbian settlement area. In July 2004, trainees who had successfully completed the first annual intensive course in the Sorbian language received their final certificates. These are teachers at primary and lower secondary schools (coming under the supervision of Bautzen Regional Schools Office) who thereby have obtained the qualification for teaching at a Sorbian or a bilingual school. The next annual intensive course is scheduled to take place in the 2004/2005 school year.

Domowina takes the view that such teacher follow-up training cannot, in the long term, substitute direct training of Sorbian native speakers taking a course of study for the teaching profession. (For the existing offers of relevant teacher training, cf. B.12.1.3.2, Nos. 610 - 616, above.)

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

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

649. For follow-up training of teachers, funds are available to *Arbeitsstelle Bildungsentwicklung Cottbus (ABC)*. In addition, a teachers' instructor specially qualified for

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

650. Under the lead responsibility of *Sächsisches Staatsinstitut für Bildung und Schulentwicklung* [State Institute for Education and School Development], *Comenius-Institut*, the *schulartübergreifendes Konzept* [**Overarching Concept for All Types of Schools**] for "**Bilingual Sorbian-German Schools**" was developed for schools providing general education in the German/Sorbian settlement area. At present, this concept is being evaluated.

651. The Ministries of Science and of Education of Brandenburg *Land* and the Free State of Saxony in July 2002 signed an Administrative Agreement providing for **pooling of university training of Sorbian teachers** (for all types of schools) at **Leipzig University**.

652. Training of Sorbian teachers at Leipzig University [in Saxony] takes account of the linguistic and cultural differences between Upper Lusatia (Saxony: Sorbs; Lower Sorbian) and Lower Lusatia (Brandenburg: Sorbs/Wends; Upper Sorbian/Wendish). Brandenburg *Land* covers 50 per cent of the expenses incurred for a post provided by Saxony *Land* for a **lecturer for special tasks - with the inclusion of Lower Sorbian - at the Slavonic Studies Institute** of Leipzig University.

653. In addition, with the aim of meeting the medium-term demand for Sorbian teachers in Brandenburg, an **extension course of study for in-service training** of about ten to fifteen teachers is, **starting in 2003**, offered every two years in Cottbus under the responsibility of Leipzig University. The Administrative Agreement has been implemented for the greater part; the required posts at Leipzig University have been filled.

654. As regards the concern expressed by the Advisory Committee (ACFC) in no. 61 of their "Opinion on Germany" - CM(2002)43 - that ending of the existing further training at Potsdam University might have an adverse effect on follow-up training of teachers, the information was supplied that centralisation of further training of Sorbian teachers at Leipzig University ensures that adequate account will be taken of the Lower Sorbian language in training.

655. This information was contradicted by *Domowina* which expressed the view that the extension course of study for Brandenburg teachers had not yet been instituted and that the Administrative Agreement was by no means implemented: despite resource sharing by the two universities, the *Institut für Sorabistik* of Leipzig University - given the Institute's insufficient staffing level - was not able to ensure an adequate level of training, especially teacher training with particular reference to practical language use.

656. Also, *Domowina* pointed out that ten pupils who had left the *Sorbisches Gymnasium Bautzen* after taking the school-leaving examinations [*Abitur* - A levels] applied for a university place at the *Institut für Sorabistik* during the 2004/2005 academic year - including six applicants for a **course of studies for the teaching profession** - but that the Institute **did not offer such a course of study**. For example, the lectureship post for "subject-specific didactics, instructional theory, theory of teaching and learning" has for several years already been filled under a limited employment contract; this contract will expire at the end of the 2004/2005 winter semester.

657. Instruction in the **Sorbian history and culture** is provided mainly by the **Adult Education Centre**, "Lower Sorbian language and culture" Section. This form of further training is recognised by Schools Offices as "follow-up training of teachers".

658. The level of language proficiency varies among the staff members of Sorbian institutions. With a view to assimilating the proficiency levels of the various staff members, a **two-year teacher training course** is offered in co-operation between Potsdam University, *Arbeitsstelle Bildungsentwicklung Cottbus (ABC)* and the *Verein Weiterqualifizierung im Bildungsbereich (WiB e.V.)* [Association for Further Vocational Qualification in Education] under a commission by the Brandenburg Ministry for Education, Youth and Sports; the course is designed to impart knowledge of the Sorbian language, history, culture and literature and skills regarding the structuring of subject-specific Sorbian-language instruction, and successful completion of the course confers an **additional qualification for bilingual teaching and learning** under the Brandenburg Teacher Training Act. For participation in this scheme, the teaching load of trainees is reduced by three hours. Ten teachers have already successfully completed this training, and another eight teachers started their further training.

At present, 9 teachers take part in a qualification programme in Leipzig and are supported by their respective Schools Office by reducing the teaching load by three hours for participation in this scheme and changing the regular teaching schedule to enable trainees to attend their 1-day course on Tuesdays.

Contrary to the doubts expressed by *Domowina*, this activity also includes Brandenburg, as stated by this *Land*.

659. *Domowina* finally pointed out that, contrary to the recommendation in no. 438 in the Report of 5 July 2002 submitted by the Committee of Experts for the implementation of the European Charter for Regional or Minority Languages, there was no **supervisory body** that would be responsible for monitoring the measures taken to further develop education in the Sorbian language and for drawing up periodic reports of its findings. The responsible staff members of the Regional Schools Office were entrusted with many and various other tasks, and it was thus not possible for them to carry out this assignment properly. Therefore, *Domowina* recommended that a section staffed with Sorbian specialists be set up at the Bautzen Regional Schools Office.

The Free State of Saxony, on the other hand, takes the view that the present structure of school inspection [by Schools Offices] - *i.e.* that, for every type of school, matters of Sorbian schools are handled by a Sorbian staff member, of the supervisory authority, responsible for schools - is a suitable arrangement, especially against the background of the drastic decrease in the number of pupils, for attending to the specific Sorbian interests and also for ensuring that the curricular offers, and final qualifications conferred, by Sorbian schools correspond to those provided by neighbouring "German" schools. This view is shared by the Sorbian professional association *Sorbischer Schulverein e.V.* [Sorbian Schools Association, reg'd].

B.12.2.2.3 Imparting knowledge of the Frisian languages in teacher training

660. For Frisian education/training, the *Land* [of Schleswig-Holstein] maintains or co-funds three institutions:

- *Friesisches Seminar* [Frisian Institute] of Flensburg University, which especially provides training of teachers for Schleswig-Holstein schools;
- the chair of Frisian Philology at Kiel University (*CAU - Christian-Albrechts-Universität*), which also is responsible for *Nordfriesische Wörterbuchstelle* [North Frisian Dictionary Institute];
- *Nordfriisk Instituut* (*NFI - North Frisian Institute*), which focuses its activities on the promotion of, in particular, scholarly and pedagogic work for Nordfriesland, on the Frisian language, history and culture, and on documenting and re-searching the North Frisian language, history and culture.

661. Frisian is offered as a subject forming part of the course of studies for the teaching profession for primary and secondary modern schools and *Realschulen* at Flensburg University (*UF - Universität Flensburg*). Teaching is ensured by a part-time (honorary) lecturer and by teaching assignments at present totalling 15 hours per week per semester. The associate professorship, amounting to six hours per week/semester is held by the Director of the *Nordfriisk Instituut* (*NFI - North Frisian Institute*)

in Bredstedt/Bräist. The *NFI* receives a yearly payment to compensate for the resultant loss of scholarly work capacity.

662. The University of Kiel (*Christian-Albrechts-Universität - CAU*) offers "Frisian philology" as a post-graduate study subject, both as a major and minor, for the M.A. degree and doctor's degree. Frisian studies are also offered to students training to become teachers at *Realschulen* or *Gymnasien*. For this subject matter, *CAU* has a grade C3 professorship.

663. Under the Teacher Examination Regulations which entered into force at the end of 1999, both universities include Frisian in the course of studies for the teaching profession, *i.e.* as a complementary subject (18 - 20 hours per week per semester) or as an extension subject (e.g. 40 hours per week/semester for teachers of primary and secondary modern schools) and, from the 2001/02 winter semester onwards and upon individual request, as a second subject for teachers at primary and secondary modern schools.

664. Overall (Kiel and Flensburg Universities), the number of students has mostly remained at an unchanged level over the past few years. During the 2003/2004 winter semester, both universities had a total of 51 students enrolled on these courses.

665. Under the amended Teacher Examination Regulations of 11 September 2003 and a pertinent ministerial order, students training to become teachers at elementary schools and secondary modern schools can now (as of the 2003/2004 winter semester) follow this course of study for teaching 'Frisian' also as a regular classroom subject or, as before, as an extension or complementary subject. It is planned to include the related subject-specific requirements also in the Examination Regulations. This will help to stabilise and increase the number of students enrolled for Frisian.

666. *Nordfriesische Wörterbuchstelle* [North Frisian Dictionary Institute] has regular contacts with the Frisian Academy of Leeuwarden [Netherlands Province of Friesland], with *Mertens Instituut* of the Royal Netherlands Academy of Sciences, with the professorial chairs for Frisian in Groningen and at the two Amsterdam universities, and with *Nordfriisk Instituut* [North Frisian Institute] in Bredstedt (Germany).

667. There are no additional training programmes for Frisian-language teachers in Lower Saxony. The educational materials developed by the **Sater Frisian** teachers themselves are used mainly in primary education. They are based on materials for English lessons in primary school, materials developed, as part of the teaching and learning system, in the context of the pilot project "*Plattdeutsch in der Schule*" ["Low German in School"], and materials from the Nordfriesland and West-Friesland speech

areas. Within the framework of teacher follow-up training, it is planned to develop a concept for learning Saterland Frisian at the primary education level.

B.12.2.2.4 Imparting knowledge of Romany in teacher training

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

669. However, the **Central Council favours supplemental instruction for interested children of German Sinti and Roma**, where **teachers coming from the minority deal with school subjects in the Romany language** so that the children's knowledge of Romany will be enhanced. Within the *Länder*, however, only limited numbers of teachers with sufficient language proficiency are available. The Central Council also favours language courses for members of the minority on a private basis and as part of adult education, to be carried out by teachers coming from the minority.

670. The **Sinti Allianz** sees **imparting of their mother tongue Romany** - also in this field - as the **exclusive responsibility of the families and clans** of the Sinti community and takes the view that instruction in the mother tongue is not possible since the Sinti's language does not have a written form and consequently no literature exists in this language.

671. **Use of the Romany language in the publicly maintained school system is confined**, for the reasons already given, **to pilot projects for children of German and foreign Roma** in those cases where larger numbers of them live close to each other. The

organisations of German Sinti and Roma set great store by having the existing state-run and [state-] acknowledged system of schools and education used by the children of German Sinti and Roma without any limitation as has been the case so far. The Central Council of German Sinti and Roma and, independent of the Council, the *Sinti Allianz Deutschland* and other organisations therefore object to separate schools or school classes for Sinti and Roma only. Obviously this also is the parents' wish since the children of the German Sinti and Roma go to local regular and/or secondary schools.

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

673. **Various schools in Hamburg**, with a larger share of Roma children, have **Roma employed as teachers** and/or school social workers. The culture of the Sinti and Roma and fine-arts subjects are included in classroom instruction. The *Landesinstitut für Lehrerbildung und Schulentwicklung* (LI - Land Institute for Teacher Training and School Development) offers follow-up training to those Roma who are employed with Hamburg schools. At seven schools in Hamburg (one primary school and six secondary modern schools and *Realschulen* [secondary technical schools]), Romany is offered also for German Sinti and Roma by four Roma teachers and Roma school social workers. Teaching in the mother tongue is integrated into regular instruction, by having Roma teach the classes with the support of a "team partner". In part, educational materials are bilingual. In this regard, care is taken to include the history and the literature of the German Roma and Sinti in classroom instruction.

674. Since 1993, the *Landesinstitut für Lehrerbildung und Schulentwicklung* (LI - Teacher Training and School Development Institute) in **Hamburg** has promoted and **supported school education of Roma and Sinti children**. This includes:

- conceptual development of school programmes also for German Roma and Sinti children;
- follow-up training of teachers and of Roma employed in schools;

- development of educational material;
- production of an information film on school-related issues - also in the Romany language of the German Sinti - for Roma and Sinti parents;
- counselling for parents, pupils, schools and the competent authority.

675. The Hamburg *Landesinstitut für Lehrerbildung und Schulentwicklung* (LI - Land Institute for Teacher Training and School Development) also takes care of the counselling of specialised teachers who receive follow-up training or additional qualification for teaching in the minority language Romany. The Institute keeps a list of the relevant courses offered by Hamburg schools; information on such activities is given at irregular intervals in the periodical "*LI Magazin*". With regard to any extension required, or the qualification, of the offered courses, the responsible lecturers of the Institute confer with the supervisory school authorities and with the 'German Language' Section of the Senate Authority for Schools.

676. Relevant teacher training is offered in **North-Rhine/Westphalia**. For example, the focus of a project carried out in Hamm is on teacher training activities. These are planned to cover the discussion and analysis of the experience made with the project, and co-operation between various projects and exchanges of experience with other projects (Hamburg, Bremen, Denmark, the Netherlands). In addition, the related documentation provides for the information of, and exchanges with, individuals and groups other than those involved in such projects.

In Hamm and Cologne, for instance, materials for instruction and regional follow-up training have - with the participation of locally resident Sinti and Roma - been developed to inform on the culture complex and history of the Sinti and Roma and to provide, in the class environment, for closer links between the Sinti and Roma and the school.

677. In **Hesse**, the aforementioned *Pädagogisches Büro Nationale Minderheiten: Sinti und Roma* [Educational Bureau for National Minorities: Sinti and Roma] offers **follow-up training of teachers** and supports projects carried out by schools. As a first step, the subjects referring to the history and present-day life of the Sinti and Roma and to anti-Gypsy attitudes were incorporated in the framework curricula for sociology, history and social studies, which were adopted in 1995.

678. Subsequently, under a 2-year project, **educational materials** were developed for **history instruction** and first made available to schools in the 1998/99 school year. The establishment of the Bureau is the third step of the envisaged fundamental educational concept, within the framework of the Hessian Schools Act of 1997, for the inclusion of the history and culture of the Sinti and Roma in school education. In

2001, the Bureau developed material designed for teachers on the subject of "Sinti and Roma in films - **Information on documentaries and feature films**".

679. The Educational Bureau is to create the conditions for generally and adequately introducing the history and present-day life of the Sinti and Roma, the subject of anti-Gypsy attitudes, and the culture of the Sinti and Roma in a form adapted to the respective age groups and school subjects in the Hessian schools. Teachers are to be provided with reliable information on this subject matter which so far has been neglected by scholarly research and which has been the subject of stereotyped judgments. The target group of these awareness-raising efforts is the majority population so as to reduce information deficits and prejudices on a long-term basis. Therefore, these activities are designed to have both a *Land*-wide and a regional impact. Follow-up training offered for teachers include lectures and seminars, literary research and supply of literary works, and the introduction to newly developed educational materials. Also, the Bureau gives advice to schools and initiates and co-ordinates regional and local projects. It provides for transfer of current research findings and co-operates with scholarly institutions and with its counterparts in other *Länder* and with institutions and organisations of the Sinti and Roma. Organised events and meetings help to develop a dialogue between the minority and majority populations.

680. To give some examples of activities carried out by the Educational Bureau under the auspices of the Hessian *Land* Institute for Pædagogics:

- Organisation and monitoring of pertinent in-school further education (e.g. a "Pædagogical Day" for the entire teaching staff of a school).
- Presentation of the [permanent] Exhibition organised by the Documentation and Cultural Centre of German Sinti and Roma on the subject of "The Genocide of Sinti and Roma during the Nazi Era"; this activity was carried out in co-operation with the Association of German Sinti and Roma / Hesse *Land* Association, the municipality of Marburg, the Marburg *Philipps-Universität*, the Marburg *Cineplex*, and the *Land* Theatre in Marburg. This project networked the three aforementioned fields of activity (further training of teachers; university activities; society) in such a way that they complement each other. 750 school children visited the exhibition and were introduced to this particular subject.
- Further education organised within the Hessian *Land* Institute for Pædagogics.
- Follow-up training courses at *Studienseminare* [institutions for the professional training of teachers].
- Establishment of a co-ordinators' network of all Hessian teachers dealing with subjects concerning Sinti and Roma, with the aim of interrelating and enhancing their work so as to achieve synergy effects.
- Joint presentation of the exhibition organised by the Association of German Sinti and Roma / Hesse *Land* Association on the 600 years of the history (of persecu-

tion) of Sinti and Roma in Hesse, with an accompanying cultural programme. The target groups of this exhibition are school children and teachers, in particular.

- Conclusion of a work performance contract with a teacher offering homework assistance (covering 12 hours/week of instruction) for Sinti and Roma children. This offer of homework assistance is well received by the Sinti and Roma concerned.
- A total of 40 interviews were carried out in connection with a publication containing reports by contemporary witnesses in view of analysing and assessing the history of Sinti and Roma in Hesse, which was edited by the *Land* Association of Sinti and Roma and funded by Hesse *Land*. At present, written transcripts of these interviews are being made. The reports by contemporary witnesses will be published afterwards.

681. Recruitment of members of the minority, who did not take the state examination for teachers, for teaching Romany to Sinti and Roma is made possible and facilitated by the opening of schools [to such instructors], as stipulated in the Hessian Schools Act, and by the extension of schools offering whole-day classes.

682. In **North-Rhine/Westphalia**, similar activities are carried out for teacher follow-up training. For classroom instruction and regional follow-up training, materials were developed to provide information on the culture and history of the Sinti and Roma. A teacher follow-up training project carried out in Hamm covers discussion and analysis of the experience made with the project, and co-operation between various projects and an exchange of experience with other projects (Hamburg, Bremen, and Denmark and the Netherlands). In addition, the related documentation provides for the information of, and exchanges with, individuals and groups other than those involved in such projects.

683. In **Bavaria**, the central state agency for teacher follow-up training continuously deals with the problems of ethnic linguistic minorities. Current educational objectives are tolerance, living together harmoniously, understanding, and respect for linguistic and cultural minorities. *Land*-organised teacher follow-up training courses, which also cover intercultural education, regularly deal with these subjects. This includes follow-up training of teachers with regard to the culture, history, language and religion of the German Sinti and Roma.

684. For the 2004/05 winter semester, the *Akademie für Lehrerfortbildung und Personalführung* [Academy for Teacher Follow-up Training and Personnel Management] in Dillingen [Bavaria] offers the following Intercultural Education course : Course No. 358 (15 - 17 December 2004) on the subject "*Umgang mit Minderheiten am Beispiel der Sinti und Roma - von der Vergangenheit bis zur Gegenwart*" ["Relations with minorities as illustrated by the case of the Sinti and Roma - from the past up to this date"].

The course content is described as follows: "Relations with minorities are an important indicator of a society's political culture and thus a central subject of civic education. The case of the Sinti and Roma is given by the course as an example in illustration of the fate experienced by a minority in Germany. Such education does not only refer to the persecution during the Nazi era, and to discrimination and marginalisation - which until this day are a reality in everyday life - but is also concerned with the Sinti's and Roma's self-perception and cultural identity. Lectures and talks with witnesses to the events are planned to introduce the participants to a complex issue. By joint effort, participants are expected to translate the subjects covered into presentations for practical classroom use.

685. The Ninth Ordinance amending the Bavarian *Lehramtsprüfungsordnung I* (*LPO I* - Teacher Examination Regulations I) which entered into force on 1 August 2002, included "intercultural education" as an examination subject in Section 36, subsection 3, no. 2, of *LPO I* (section School Pedagogy) under *lit.* (d): "Education, advancement and counselling in schools and classroom instruction". In addition, the subject "intercultural education" was included, as an item of pedagogical training, in the ordinances - which entered into force on 04 August 2003 - to amend the Admission and Training Regulations for colleges training teachers for publicly maintained schools.

686. In **Rhineland-Palatinate**, the State Pædagogical Centre and the *Land* Centre for Civic Education developed information material on the subject of "Sinti and Roma - a German Minority". This material is made available to the schools of this *Land*.

687. In the *Land* of **Berlin**, the *Landesinstitut für Schule und Medien* (*LISUM* - Berlin *Land* Institute for Schools and the Media) organises a number of follow-up training courses on the subject of "Intercultural Learning", which include the language group of the Sinti and Roma.

As part of its Working Papers series, LISUM published "*Geschichte der Sinti und Roma in Deutschland; Darstellung und Dokumente*" ["History of the Sinti and Roma in Germany; Description and Documents"], and in the series *Didaktische Materialien* ["Didactic Materials"], the volume entitled "*Von Berlin nach Lodz und Auschwitz, Materialien zum nationalsozialistischen Massenmord*" ["From Berlin to Łódź and Auschwitz - Materials on the Nazi-era massacre"]. Also, in co-operation with the publishing house Hentrich & Hentrich, the volume "*...die vielen Morde*" (*Dem Gedenken an die Opfer des Nationalsozialismus*) ["...those many murders" (In remembrance of the victims of National Socialism)] was published and distributed at Berlin schools. A large number of documents are dedicated to the memory of the Sinti and Roma as one of the seven groups of victims.

688. In **Lower Saxony**, as part of the follow-up training scheme "*interkulturelles Lernen*" [intercultural learning], regionally and centrally organised teacher follow-up training courses are occasionally offered which impart knowledge of cultural, social and

historical aspects of the situation of the Sinti and Roma to teachers, and also offer didactic/methodological aids in view of promoting schooling progress and integration. The Lower Saxony Association of German Sinti, as well as local initiatives, are involved in designing and organising these follow-up training courses.

B.12.2.3 Imparting knowledge of minority languages in teacher training - as perceived and assessed by the national minorities

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

B.12.3 Article 12, para. 3 (Equal opportunities for access to education at all levels for persons belonging to national minorities)

B.12.3.1 Legal bases regarding equal opportunities for access to education

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

B.12.3.2 Promotional measures to support equal opportunities for access to education

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

692. Cf. Nos. 300 -302 above (concerning Article 6) for the German comments on the **Advisory Committee's finding** - regarding the provisions of Article 6 - (no. 80 of their "Opinion on Germany - doc. CM(2002)43 - referring to Germany's first State Report) **that children of Roma/Sinti, *inter alia*, were over-represented at lower secondary schools and special schools for under-achievers and correspondingly under-represented at intermediate and grammar schools** and that measures were required to remedy this situation.

As regards governmental promotion measures, a number of examples are given below:

B.12.3.2.1 Promotional measures in Schleswig-Holstein to support equal opportunities for access to education

693. In Schleswig-Holstein, a project was initiated in 1995 for the employment of educational assistants at Kiel schools to tutor Sinti and Roma children. Funding of the project is ensured, in the medium term, by an earmarked [purpose-linked] grant included in the *Land* budget for covering related payroll costs of the *Land* Association of German Sinti and Roma, Kiel. As of the 2002/2003 school year, five women are employed on this project: four Sintessas and one teacher acting as a co-ordinator at three schools. The objective of this project is to create more and better educational opportunities for Sinti children.

B.12.3.2.2 Promotional measures in the *Land* of Bremen to support equal opportunities for access to education

694. Bremen has, for many years already, gained experience with promoting the schooling progress of Sinti children. Following a developmental and organisational stage, a "Model Test: Promoting Sinti Children at School" which was financed with EC funds was introduced as early as in 1986. This project was originally developed for a four-year period and after this period was continued as part of regular classroom instruction. In its present form, the scheme for Sinti promotion has been in existence since 1990. Three state-employed teachers and one very dedicated Sintessa working with the Bremen *Sinti-Verein e.V.* and funded by the Senate Authority for Education and Science at present ensure social-educational support. The experience gained by teachers through their participation in the model project and the good co-operation with the local Sinti Association helped to bring about the present situation where nearly all Sinti school-age children living in Bremen regularly attend school and an increasing number of them successfully complete their schooling. On the basis of the experience made with the Sinti project, a similar promotional project was developed in 1997 for Roma children. At present, four state-employed teachers are

assigned to this project. Implementation of the project is similar to that of the Sinti project.

B.12.3.2.3 Promotional measures in Lower Saxony to support equal opportunities for access to education

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

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

B.13 Article 13

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

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

B.13.1 Article 13, para. 1 (Right of national minorities to their own private educational and training establishments)

B.13.1.1 Legal bases regarding private schools and private nursery schools

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

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

B.13.1.2 Private schools and private nursery schools of the respective national minorities and ethnic groups

B.13.1.2.1 Privately provided schools and nursery schools of the Danish minority

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

699. The school and nursery school system of the Danish minority is privately organised: The providing body for activities related to schools and nursery schools is *Dansk Skoleforening for Sydslesvig*, or *Dänischer Schulverein für Südschleswig* [Danish Schools Association for South Schleswig], which is subject to the state's legal supervisory control [*i.e.* supervision limited to the question of legality of administrative activities]. At present it operates 50 schools of varying levels, and 57 children's day-care centres. The schools are of the following types: primary schools and secondary

modern schools, three *Realschulen* [secondary technical schools], two comprehensive schools, one *Gymnasium* [grammar school], one boarding school, and one residential adult-education school. All of these schools are state-acknowledged and are provided by voluntary bodies. The teaching objectives and facilities of these schools and the academic training of their teachers are equivalent to those of publicly maintained schools.

700. In response to the concern expressed by the Advisory Committee in nos. 56 and 57 of their "Opinion on Germany" [CM(2002)43] - that the Danish schools (all of which are organised by private providing bodies) in Schleswig-Holstein might in future be granted only insufficient subsidies - the following information is provided:

701. As regards the payroll costs and material expenses of the private schools operated by the Danish minority, Schleswig-Holstein *Land* pays a per-pupil contribution which corresponds to the amount expended, on a *Land* average, for a pupil at a comparable publicly maintained school in 2001. The subsidy is calculated on the basis of the average amounts identified by the *Land* Statistical Office, in the official school statistics for 2001 (based on the statistical data for 2000), for a pupil of a comparable publicly maintained school. The payroll cost share included in the average amounts is increased by the corresponding percentage of the annual salary increments for teachers with the status of civil servants at publicly maintained schools.

702. The proposal made by the Advisory Committee on the Framework Convention [ACFC] to continue the dialogue corresponds to the ideas of the *Land* Government. At the suggestion of the *Land* Government and based on the wish to arrive at a solution as regards the strained relations that had emerged between the *Land* Government and the Danish minorities on account of budget-related decisions, a working group - with the Ministry for Education, Science, Research and Cultural Affairs as the lead agency - was set up, in early summer 2002, jointly with the Danish Schools Association and in close co-ordination with the Minister-President's Commissioner for Minorities. This working group developed proposals which, if implemented from 2006 onwards, would accord the pupils of Danish schools equal status with those of German publicly maintained schools.

B.13.1.2.2 Privately provided schools and nursery schools of the Sorbian people

703. Throughout the Free State of Saxony and Brandenburg *Land*, *i.e.* including the entire settlement area of the Sorbian people, the respective *Land* Constitution and the relevant *Land* laws ensure that both children's day-care centres and schools can, on principle, be established by private providing bodies; this, of course, is also guaranteed to Sorbian (Wendish) associations. In the Free State of Saxony, for instance, 13 of the 31 Sorbian and bilingual children's day-care centres in the settle-

ment area are provided by local authorities, seven are provided by *Christlich-Soziales Bildungswerk Ostsachsen e.V.* [Christian-Social Educational Association for Eastern Saxony, reg'd], and five by *Sorbischer Schulverein e.V.* [Sorbian Schools Association]; two centres each are provided by *Arbeiterwohlfahrt* [Workers' Welfare Association] and the Catholic Church, and one each by the German Red Cross [DRK] and a parents' action group. All other educational institutions of the Sorbian-German settlement area in Saxony which offer instruction in the Sorbian language, especially the schools, are state-provided. A similar structure exists in Brandenburg.

B.13.1.2.3 Private schools and private nursery schools of the Frisians and the Sinti and Roma

704. The children of the Frisian ethnic group and of the German Sinti and Roma usually attend the local children's day-care centres provided either by the state or voluntary bodies. The large majority of the children of both groups attend publicly maintained schools. Some of the children of the Frisian ethnic group go to schools of the Danish minority. These minorities do not want to have their own day-care centres and schools.

B.13.2 Article 13, para. 2

(No financial obligations are entailed for the State on account of the right to set up and manage private schools and private nursery schools)

705. In addition to the funds provided by **Schleswig-Holstein Land** for the payroll costs and material expenses of the grant-aided independent schools of the Danish minority (cf. No. 701 at the end of section B.13.1.2.1 – "Privately provided schools and nursery schools of the Danish minority"), the Danish school system in Germany (schools and nursery schools) is subsidised on a considerable scale by the Kingdom of **Denmark**. The basis for this funding, which includes Danish subsidies and applies *vice versa* to the funding of the private school system of the German minority in Denmark, was provided by the Bonn and Copenhagen Declarations of 1955. A number of local authorities in Schleswig-Holstein grant subsidies for the operation of - both German and Danish - nursery schools.

706. In order to meet the requirements laid down for Sorbian and bilingual children's day-care centres, the providing body of the respective institutions receives an allowance for supporting measures, in addition to the general subsidies, from the Free State of **Saxony**.

Brandenburg Land grants general subsidies which are used by the minority's institutions for specific projects.

In response to the request made by *Domowina* in this respect, *i.e.* that provisions similar to those existing in Saxony should be introduced in Brandenburg for subsi-

dising Sorbian-language or bilingual children's day-care centres, the *Land* of Brandenburg points out that such promotion comes within the responsibility of the *Stiftung für das sorbische Volk* [Foundation for the Sorbian People] which *is* subsidised by the *Land*.

B.14 Article 14

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

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

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

B.14.1 Article 14, para. 1 (Right of national minorities to learn their minority language)

707. The freedom of the individual to learn a language of his/her choice, free of any outside influence, especially without interference by public authorities, is generally protected by Article 2, para. 1, of the Basic Law. Governmental promotion of language learning is discussed in the comments below on paragraph 2 of Article 14.

708. Also, under the legal order in Germany, Roma and Sinti are free to confine cultivation of their language to their own community and to pass the language on to younger generations.

B.14.2 Article 14, para. 2 (Obligation to endeavour, in areas inhabited by minorities traditionally or in substantial numbers and in keeping with the respective demand, to ensure adequate opportunities for learning the minority language)

B.14.2.1 Government level required to fulfil the obligation to endeavour, in areas inhabited by minorities traditionally or in substantial numbers and in keeping with the respective demand, to ensure adequate opportunities for learning the minority language

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

B.14.2.2 Legal bases of the right to learn a minority language

710. The Constitutions of five *Länder* of the Federal Republic of Germany contain provisions referring to national minorities and ethnic groups or to national and ethnic minorities. In part, these provisions also relate directly to the language/languages

spoken by the latter. Such constitutional provisions form the basis for legislative measures or for administrative action taken for the benefit of these languages.

711. Under Article 25, para. 3, of the **Brandenburg Land** Constitution, the Sorbs have the right to the preservation and promotion of the Sorbian language and culture in public life and to having the language and culture imparted in schools and childrens' day-care centres. Section 8 of the Sorbs (Wends) Act [Act to regulate the substance of the Sorbs' (Wends') rights in the *Land* of Brandenburg] explicitly reiterates the stipulation that the Sorbian language, in particular Lower Sorbian, shall be protected and promoted. Provisions similar to the above provisions of Brandenburg *Land* are to be found in Article 6, para. 1, of the Constitution of the Free State of **Saxony** and in Section 8 of the Saxon Sorbs Act [*SächsSorbg*].

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

713. Article 5 of the **Schleswig-Holstein Land** Constitution stipulates that the cultural autonomy and political participation of all national minorities and ethnic groups are afforded protection by the *Land*, local governments and local authority associations. It also contains the explicit provision that the national Danish minority and the Frisian ethnic group are entitled to protection and promotion. Under Article 8, para. 4, the parents/guardians shall decide whether their children should attend a school of a national minority.

B.14.2.3 Status as regards adequate opportunities for learning minority languages

714. According to the language proficiency of school-children and youngsters, and in accordance with the parents' wishes, different school structures have been developed for the teaching of, and instruction in, the minority language. While the Danish private-school system and the Sorbian publicly maintained schools have a long tradition of such language teaching, the teaching of the Frisian languages is still in an initial stage and its integration into classroom instruction is based on different concepts. In this respect, the present Report can only provide information on the current state of affairs. Since the German Sinti, on the basis of their traditional stance in this matter and for other reasons already mentioned, usually wish neither a written form of their language nor the inclusion of the Romany language in the instruction offered at publicly maintained schools, pilot measures for the introduction of Romany in school education usually are confined to Roma children according to the parents' wish (see also the comments on Article 12, para. 2, in Nos. 668 *seqq.* above).

B.14.2.3.1 Status as regards opportunities for being taught the Danish language in school

715. As regards the school system in general, it should be noted that the Danish minority have the right, in all of Schleswig-Holstein *Land*, to instruction in the Danish language (Declaration by the Government of the Federal Republic of Germany of 29 March 1955 [Bonn Declaration]). Article 8 of the Schleswig-Holstein *Land* Constitution leaves it to the parents/guardians to decide whether their children should attend a school of a national minority. The pupils coming from the Danish minority are thus given the opportunity to learn and use the Danish language. The details are regulated by the Schools Act. (For details regarding the school system, cf. the comments on Article 13, para. 1, in Nos. 699 - 702 above.)

716. The providing body of the schools and nursery schools of the Danish minority, *Dansk Skoleforening for Sydslesvig* [Danish Schools Association for South Schleswig], at present operates 50 schools of varying levels, attended by 5778 pupils, and 57 children's day-care centres attended by 1.561 children (as of August 2004). The nursery schools prepare their children for the Danish elementary schools. The language of communication in these nursery schools is Danish. With a few exceptions, all of these children will then go on to a Danish school. These institutions have their own admission regulations.

717. The children's day-care centres of the Danish Schools Association are supported with funds provided by Schleswig-Holstein *Land*. The subsidies are allocated in accordance with the provisions of the Decree on "Promotion of children's day-care centres and day nursery places in the years 2004 and 2005". Under this Decree, the *Land*-provided funds, together with those provided by Flensburg Municipality, are allocated to the Danish Schools Association. Computation of the amount of the funds provided by the *Land* is based (as is the case for all *Kreise* and municipalities not belonging to a *Kreis*) on the accounting results for the operating years 2000 - 2003.

718. There are also some German nursery schools offering the Danish language. Since 1998, Danish has been offered, as part of a Language Encounter Concept, in seven nursery schools by *Arbeitsgemeinschaft Deutsches Schleswig* [Working Group "German Schleswig Region"], which is one of the four German Border Associations.

719. The schools are of the following types (see B.13.1.2.1): primary schools and secondary modern schools, comprising, at present three *Realschulen* [secondary technical schools] and two comprehensive schools, and one *Gymnasium* [grammar school], one boarding school, and one residential adult-education school. All of these schools, which all have Danish as the teaching language, are State-acknowledged schools and are provided by voluntary bodies. The boarding school allows pupils of 14 to 18

years of age to obtain a school leaving certificate for the secondary modern school or to do the (voluntary) 10th year. (For details regarding promotion of Danish schools by Schleswig-Holstein *Land*, cf. under B.13.1.2.1, No. 701 above.)

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

721. For most subjects, use is made primarily of textbooks published in Denmark. Also, textbooks published in Germany and educational materials developed by the minority or by teachers of these schools are used.

722. *Jarplund Højskole*, the Danish residential adult-education college in Jarplund/Jaruplund [near Flensburg] in South Schleswig [Germany], offers further education activities, ranging from events of several days' duration to courses extending over several months.

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

B.14.2.3.2 Status as regards opportunities for learning Sorbian

B.14.2.3.2.1 Present status as regards Sorbian language proficiency

724. It may be assumed that an estimated number of 20,000 to 35,000 Sorbs in the central settlement areas have such a perfect command of Sorbian that they can actively communicate in that language orally and in writing. In geographical terms, the two groups are distributed unevenly. Nearly all of those Sorbs having a very good knowledge of Upper Sorbian live in the area of the schooling district of the Sorbian schools, which have been in existence since the late 1940s, in the Bautzen-Kamenz-Hoyerswerda [Budyšin-Kamjenc-Wojerecy] region. In the other parts of Lusatia, only a small share of the Sorbs - mostly of older age - have a good knowledge of Sorbian. On the subject of language proficiency, cf. the comments under section B.10.1.2.2, Nos. 476 - 480 above.

725. As regards the nursery-school and school system, cf. the general comments above on Article 13, para. 1. The Saxon Act to Promote Children in Day-Care Institutions (or Act on Children's Day-Care Centres - *SächsKitaG*) of 27 November 2001 (last amended by the Act of 4 June 2003) and the Children's Day-Care Centres Act [*KitaG*] of Brandenburg *Land* of 10 June 1992, last amended by the third Act to amend the *KitaG* of 17 December 2003, form the legal basis for the teaching and cultivation of the Sorbian language and culture at Sorbian and bilingual day-care institutions in the German-Sorbian area. The Schools Act for the Free State of Saxony of 3 July 1991, last amended on 19 February 2004, guarantees the right of pupils to learn the Sorbian language and, at a number of schools, the right to instruction in selected subjects, for all grades, in the Sorbian language. Under the Schools Act of Brandenburg *Land* of 12 April 1996, as published on 2 August 2002, last amended by the Act of 10 July 2003 (Section 4, subsection 5, 2nd sentence), advancement of the knowledge and understanding of the Sorbian (Wendish) culture is a special task of schools. In the settlement area of the Sorbs (Wends), pupils have the right to learn Sorbian (Wendish) and, in specified subjects and for grades [age-groups] to be determined, the right to receiving instruction in the Sorbian language.

B.14.2.3.2.2 Status as regards opportunities for learning Sorbian in pre-school education

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

727. In the Free State of Saxony there are at present (as of June 2004) 11 day-care centres run under the *WITAJ* Project ["witaj": Sorbian for "welcome"] and Sorbian day-care centres, 20 bilingual (German-Sorbian) day-care centres with one or several *WITAJ* group/s, and about 35 children's day-care centres which keep up the Sorbian culture and the Sorbs' customs/folklore.

728. *Sorbischer Schulverein e.V.* [Sorbian Schools Association] became the voluntary providing body of the children's day-care centre of Sielow/Żyłow [Cottbus] in Brandenburg *Land* on 01 March 1998, of the children's day-care centres in Dörghenhausen/Nimcy and in Rohne/Rowne on 01 April 1999 and on 01 July 1999, respectively, of the children's day-care centre in Malschwitz/Malešecy [Bautzen *Landkreis*] on 15 October 2000, the Crostwitz children's day-care centre on 01 January 2001, and the children's

day-care centre in Ralbitz/Ralbicy [Kamenz *Landkreis*] on 1 January 2004 (all in the Free State of Saxony).

729. *Christliches Soziales Bildungswerk Sachsen e.V.* [Christian Social Educational Association for Saxony, reg'd] is the providing body for seven Sorbian and bilingual (German-Sorbian) children's day-care centres. These are attended by a total number of 485 children; of these, 316 form 21 Sorbian groups.

730. The foundation *Stiftung für das sorbische Volk* supports the *Witaj* projects for bilingual education in children's day-care institutions so as to ensure that pre-schoolers already will start learning the languages. There is an increasingly urgent requirement for such early language learning in view of the fact that - at least in Brandenburg - the Sorbian language has over the past decades been used and passed on in private/family life to an ever decreasing extent.

731. In **Brandenburg Land**, pre-school education is the responsibility of local authorities. Under the Local Authorities Financing Act, local governments are allocated funds to support, *inter alia*, institutions and activities promoting pre-school education, e.g. children's homes or day nurseries. Under the pertinent laws, parents are granted extensive participatory rights. Such rights are exercised, in particular, within the Children's Day-Care Centres Committee (Section 7 of the Children's Day-Care Centres Act, *KitaG*) which "decides on educational and organisational matters of the given day-care centre, especially on the pædagogical concept". This Committee provides a forum which grants substantial rights regarding the conceptual design and pædagogical orientation of children's day-care centres also to Sorbian (Wendish) parents, with a view to focusing educational work also on the cultivation and imparting of the Sorbian (Wendish) language and culture.

732. In Cottbus-Sielow/Žylow the first pre-school institution to have *Sorbischer Schulverein e.V.* [Sorbian Schools Association, reg'd] as its providing body was established. This institution previously had been provided by the respective local authority. The institution was transferred to *Sorbischer Schulverein*; the latter also receives regular subsidies for the maintenance of the establishment and for its staffing. Also, *Sorbischer Schulverein* has been offered additional support for separate activities for further and advanced training of the educators concerned.

733. In twelve children's day-care centres of Brandenburg *Land*, of which nine have *Witaj* groups, one of the priority activities is the imparting of the Sorbian (Wendish) language and culture. In many other children's day-care centres operated in the *Spree-wald/B³ota* area (Lübbenau/Lubnjow *Amt*, Vetschau/Wetosow), use of the Sorbian (Wendish) language is offered as part of activities to maintain customs/folklore following the yearly cycle of seasons and festivals. The tutoresses introduce children to dances,

songs and stories and to picture books covering the same subjects in German and Sorbian (Wendish). Also, these children get a first-hand experience of customs/folklore being kept up by their parents, grandparents and relatives in the clubs and associations dedicated to these activities.

734. The Youth Welfare and Youth Service Office of Oberspreewald-Lausitz/B³ota-Lužyca *Landkreis* plans to take up cultivation of the Sorbian (Wendish) language and culture as an introductory approach to the subject of "Inter-Cultural Education in Children's Day-Care Centres".

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

736. *Domowina* points out that the Sorbian-language intensive courses - offered by *Domowina* or its *WITAJ-Sprachzentrum* [*Witaj* Language Centre] for educators [nursery school teachers] in the Free State of Saxony - have so far not been recognised by the Bautzen Labour Office as a qualifying measure eligible for continuing-education grants. In *Domowina's* view, this meant in the last analysis that unemployed kindergarten teachers were denied the qualification for employment also with Sorbian-language day-care centres although there was a demand for bilingual nursery-school teachers.

737. Schools, too, are engaged in imparting knowledge of the Sorbian language. In the course of the 1990s, the number of Sorbian pupils increased steadily and now comprises five times as many as at the time of the founding of Brandenburg *Land*. Classroom instruction is provided mainly by primary and secondary schools, but also by *Gymnasien*. In this respect *Niedersorbisches Gymnasium* in Cottbus deserves particular mention; this Lower Sorbian grammar school not only offers Sorbian language lessons, but also aims at including Sorbian as the teaching language for various other classroom subjects.

B.14.2.3.2.3 Status as regards opportunities for learning Sorbian in school

738. As regards **primary schools**, Sorbian is taught as the native language, as a secondary language and as a foreign language (*secondary language*: mainly for pupils from bilingual families or from a bilingual setting; *foreign language*: mainly for pupils from German-speaking families or from a German-speaking setting in the Sorbian settlement area).

739. Under the project "bilingual Sorbian-German schools in **Saxony**" [an overarching concept for all types of schools], Sorbian is taught - as the mother tongue and as a secondary language - at six Sorbian elementary schools, of which two are in Bautzen *Landkreis*, and four in Kamenz *Landkreis*.

740. Another four German primary schools within the jurisdiction of the Bautzen Regional Schools Office offer Sorbian as a secondary language on the basis of the aforementioned concept. The 6-years' project evaluation phase started in the 2002/2003 school year; the Saxon State Ministry of Education and Cultural Affairs assigned scientific monitoring of the evaluation to the *Comenius-Institut (CI) - Saxon Staatsinstitut für Bildung und Schulentwicklung* [State Institute for Education and School Development]. Important criteria used in this evaluation are: analyses of the achieved levels of proficiency in the Sorbian and German languages; assessment of teaching methods; and the individual conditions existing at the primary schools taking part in the project.

741. Another 16 elementary schools in the area covered by the Bautzen Regional Education Office offer Sorbian as a foreign language. A survey conducted during the 1995/1996 school year on the pædagogic profiles of primary schools showed that the Sorbian schools - but other primary schools as well - pay particular attention to the cultivation of the Sorbian language and culture. Also in many other primary schools in the German-Sorbian region, the Sorbs' customs and folklore are integrated into school life.

742. In the 2002/2003 school year, the *Landkreise* [county-type administrative districts] of Kamenz and Bautzen had six Sorbian secondary technical schools. As of the end of the 2002/2003 school year, the Saxon State Ministry of Education and Cultural Affairs cancelled its co-funding for the Sorbian *Mittelschule* [secondary technical school] in Crostwitz [Chrósæucy, Kamenz *Landkreis*] because for the 2003/2004 school year pupils were enrolled for only three classes. These remaining three classes were transferred to the Sorbian *Mittelschule* in Ralbitz/Ralbicy. Thus, five Sorbian secondary technical schools were retained in the 2003/2004 school year. Four of these schools have classes with Sorbian as a mother tongue as well as classes with Sorbian as a secondary language. In addition, Sorbian is offered as a secondary language at two other secondary technical schools within the area of the Bautzen Regional Education Office. Instruction is based on the current curricula for Saxon secondary technical schools. For the 2004/2005 school year, a new "breakdown of approved subject hours" and new curricula were introduced for grades 5 to 7.

743. During the testing of the overarching concept for all types of schools entitled "Bilingual Sorbian-German Schools", a number of secondary technical schools [*Mit-*

telschulen] offer bilingual subject-specific instruction (outside language instruction) and/or bilingual modules for subject-specific instruction.

744. For pupils for whom Sorbian is the native tongue, instruction is given in the Sorbian language, with the exception of the following subjects: German, mathematics, physics, chemistry and biology (from the 7th grade onwards). All other pupils are taught in German. The rules laid down by the Saxon State Ministry of Education and Cultural Affairs with regard to instruction at Sorbian and other schools in the German-Sorbian region, and the specifications regarding the respective approved subject hours have resulted in an increased demand for teachers covering these subject hours at the Sorbian secondary technical schools.

745. As regards the **concern expressed by the Advisory Committee** (in no. 59 of their "Opinion on Germany" [CM(2002)43]) regarding the decision to **close the Sorbian-language secondary school in Crostwitz**, the following information has already been provided:

746. It is correct to say that in the past few decades schools providing instruction in the Sorbian language have been developed in six different locations in what now is the Free State of Saxony. With the introduction of the Schools Act (*Schulgesetz*) and the restructuring of the uniform school-type system of the German Democratic Republic (GDR), resulting in its replacement with a differentiated school system, the previously existing six "polytechnic secondary schools" [*Polytechnische Oberschulen* - GDR equivalent of the *Mittelschule*, covering grades 1 to 10] and one "upper secondary school" [*Erweiterte Oberschule* - type of GDR school for the upper classes, *i.e.* grades 11 and 12 of the GDR secondary education stage II] were transformed into six primary schools, six intermediate secondary schools [*Mittelschulen* - *i.e.* secondary education stage I] and one grammar school [*Gymnasium*, *i.e.* secondary education stages I and II). These schools have great importance not only as regards the Sorbian language but also in terms of the respective type of school.

In order to perform these tasks, minimum numbers of pupils are required. All Sorbian primary schools are maintained even if they have far fewer than the minimum number of 15 pupils. Out of 29 classes, four do not meet this requirement at present; two of these have 13 pupils each, and one class is attended by 11 pupils.

747. Saxony *Land* further points out that, in the course of the past few school years, the number of pupils enrolled for the 5th grade of Crostwitz *Mittelschule* dropped drastically (in the 2001/2002 school year: 17 pupils; 2002/2003: 8 pupils). Consequently, for the 5th grade in the school years 2001/02 and 2002/03, the pedagogical mandate of *Mittelschulen* - *i.e.* to ensure the level of education provided by both *Realschulen* [secondary technical schools] and *Hauptschulen* [secondary modern schools] - was in danger of not being fulfilled. The municipality, despite having been requested

several times to do so, did not make the required structural changes. Comparable education is offered by Sorbian *Mittelschulen* in the immediate vicinity. Therefore, the Ministry of Culture of the Free State of Saxony found that there was no public need for the 5th-grade class of the Sorbian secondary technical school in Crostwitz for the school years 2001/02 and 2002/03 and revoked the participation of the Free State of Saxony in the maintenance of this class. By its decision of 30 July 2001 (file no. 5K 912/01), the Dresden Administrative Court refused the temporary injunction, for which Crostwitz Municipality had applied in 2001; the Saxon *Oberverwaltungsgericht* (OVG - Higher Administrative Court) refused leave to appeal against this decision (OVG Decision of 22 August 2001 - file no. 2BS 183/01). For the 2003/04 school year, only a total of seven pupils were enrolled for the 5th-grade class. As already mentioned under No. 381 above, the Free State of Saxony, after balancing of all interests involved, then decided to cancel its co-funding for the entire school.

748. In response to the Advisory Committee's comment in no. 87 [of their "Opinion on Germany" - CM(2002)43] that the authorities should urgently review the possibility of keeping the 5th class of Crostwitz's secondary school open, the following information is provided:

Mittelschulen [intermediate secondary schools with lower secondary grades, *i.e.* secondary education stage I] in the Free State of Saxony can ensure differentiated offers of courses of instruction for various final qualifications if there are at least 40 pupils in a year-group comprising two classes. In order to make up a year-group at intermediate secondary schools in Saxony, there would have to be a minimum of 40 pupils. The declining birth rate of the early 1990s in Eastern Germany has also been experienced in the German-Sorbian settlement area, meaning that adjustments have to be made to the new situation. The number of applicants for the 2001/2002 school year at the Crostwitz Sorbian intermediate secondary school - only 17 pupils applied - did not even reach the minimum number of 20 pupils needed to set up a class. Eight applications were submitted for the 2002/2003 school year, and it was anticipated that there would only be a maximum of seven applications for the school year 2003/2004. Sorbian intermediate secondary schools are within a reasonable distance. At the Sorbian intermediate secondary school in Ralbitz all lessons are conducted in Sorbian.

749. In order to ensure that lessons in the Sorbian language are available within a reasonable distance from pupils' homes even if there are only a few pupils, very small classes with fewer than ten pupils are actually set up, especially at primary schools. At secondary schools that are intended to prepare pupils for vocational training or tertiary education, pupils can be expected to travel five to ten kilometres, and pupils attending grammar schools (*Gymnasium*) can be expected to travel even further to school.

The "sufficient demand" mentioned in Article 14, para. 2, of the Framework Convention for the Protection of National Minorities obviously no longer exists for the intermediate secondary school in Crostwitz, due to the demographic developments in this town. The Dresden Administrative Court and the Saxon Higher Administrative Court in Bautzen have reaffirmed this view. These discussions have nothing to do with the [Sorbian] *primary* school in Crostwitz.

750. In conclusion, reference is made to the Overarching Concept for All Types of Schools, entitled "Bilingual Sorbian-German Schools", that is intended to stabilise the network of schools in the Sorbian settlement area, also by including German pupils.

751. Attention is drawn in this context to the fact that, for Sorbian primary schools, a lower minimum number of pupils required to maintain a class was already laid down in the Ordinance of the Saxon State Ministry of Education and Cultural Affairs of 22 June 1993 on the Work of Sorbian and Other Schools in the German-Sorbian Region.

752. The *Domowina* Federation of Lusatian Sorbs, however, argued that the above figures stated by the Saxon State Government did not justify the closure of the Crostwitz secondary school. The specified numbers of pupils did not provide any exact information about the current situation and lent themselves to misinterpretation. Contrary to the stated number of 8 pupils enrolled for the 2002/2003 school year, 17 pupils had enrolled for the 2001/2002 school year and, for the 2002/2003 school year, there were 15 pupils who would go to this school if it were continued. (For the detailed objections raised by *Domowina* against closure of the Crostwitz *Mittelschule*, cf. *Domowina's* Comments in Part D.)

753. Like all other grammar schools in the Free State of Saxony, the Bautzen *Sorbisches Gymnasium* provides general education which is the prerequisite for entry to higher education [entitlement to university entrance]. This is the only *Gymnasium* where pupils are offered in-depth linguistic and literary education in the Upper Sorbian language. The Saxon State Ministry of Education and Cultural Affairs generally allows Sorbian pupils to enrol in a special achievement course [advanced course] in their mother tongue and to take the written *Abitur* [grammar-school graduation] exams in this language. The approval granted for the introduction, from the 1996/1997 school year onwards, of the advanced-course subject combination Sorbian/natural sciences (biology or chemistry or physics) for pupils speaking Sorbian as their mother tongue offers pupils a significant widening of choices and, at the same time, may be seen as a contribution towards promoting the Sorbian language and culture. Bilingualism is a particularly decisive factor of school life at *Sorbisches Gymnasium*; all pupils study Sorbian either as their native language or as a secondary language. The special expenses entailed by bilingualism for this school are funded with *Land* grants. In this

respect, however, there are occasional problems regarding responsibility for budgetary matters because the providing body of *Sorbian Gymnasium* is Bautzen *Landkreis*.

754. In addition to *Sorbisches Gymnasium*, the grammar school *Lessing-Gymnasium* in Hoyerswerda/Wojerecy, also in Saxony, offers language instruction in Sorbian as a foreign language.

755. Overall, Sorbian instruction was given in the 2003/2004 school year at 33 schools in Saxony and was attended by some 2,400 pupils, of whom about 760 are native speakers of Sorbian. At Sorbian schools, Sorbian is a compulsory subject. Participation in Sorbian language lessons is a free decision to be made by the pupils' parents. The basis for this decision is provided in children's day-care centres or, at the latest, at the time of enrolment in a primary school. In this respect, it is important that nursery-school teachers, educators and teachers constantly underline the value of the Sorbian language and culture and encourage parents and pupils to commit themselves to these traditional values. This also is the basis for ensuring that in future the required number of trainee teachers [2nd phase of teacher training] and teachers on probation [preparatory service] will be available for qualified Sorbian language teaching to the pupils of *Sorbisches Gymnasium*.

756. In addition, adults can attend a Sorbian language course at one of the adult education centres in the towns of Kamenz/Kamjenc, Bautzen/Budyšin, Hoyerswerda/Wojerecy or Weißwasser/Bi³a Woda.

757. The *Domowina* Federation of Lusatian Sorbs points out that the Sorbian Educational and Family Centre *LIPA e.V.* in Schmerlitz/SmjerdŹaca [Kamenz *Landkreis*] offers a wide range of courses teaching the Sorbian language to all age groups.

758. In Brandenburg *Land*, the Ordinance on School Education Matters of the Sorbs (Wends) entered into force on 31 July 2000. Under this Ordinance, *Niedersorbisches Gymnasium* is recognised as a "Sorbian (Wendish) school having its own special character". So far, there have been three primary schools which, in accordance with this Ordinance, use Sorbian as the language of tuition for part of classroom instruction.

759. Overall, there are 31 schools in Brandenburg offering Sorbian (Wendish) instruction (status: 1st semester of the 2003/2004 school year). These are 25 primary schools, two comprehensive schools, one *Realschule* [secondary (technical) school, with lower secondary grades] and two grammar schools (*Gymnasien*). Participation in Sorbian (Wendish) classes has much increased over the past few years.

760. At the primary schools in the traditional settlement area of the Sorbs (Wends), Lower Sorbian [Wendish] is offered as a regular subject. The number of primary schools offering such instruction rose from 23 in the 2002/2003 school year to 25 in the 2003/2004 school year. In the 2003/2004 school year, some 1,000 pupils of primary schools availed themselves of this offer. Also, the number of participants in Sorbian (Wendish) classes, as a percentage of the total number of pupils, has increased substantially because, in the course of the past nine years, the number of participants in Sorbian (Wendish) classes has increased while the number of pupils attending primary schools has dropped.

761. At secondary schools, some 500 pupils received instruction in Lower Sorbian [Wendish] in the 2002/2003 school year, while this number rose to 675 in the school year 2003/2004. For the major part, this instruction takes the place of the second foreign language; in some cases, however, it is also offered in addition to the foreign languages forming part of the regular curriculum. Three schools offer these Lower Sorbian language classes also to pupils of other schools, whose parents wish their children to take part in such instruction.

762. At one school - *Niedersorbisches Gymnasium* [Lower Sorbian grammar school] in Cottbus - classroom instruction in Lower Sorbian [Wendish] is mandatory. Pupils not wishing to take part in Lower Sorbian classroom instruction have to leave this school and transfer to another secondary-education school.

763. The Education Offices of the *kreisfreie Stadt* [county borough type authority; non-district municipality] of Cottbus and the *Landkreise* of Dahme-Spreewald/Damna-B³ota, Oberspreewald-Lausitz/B³ota-Lužyca and Spree-Neisse/Sprjewja-Nysa have been repeatedly informed in recent years, last by the Circular of the Ministry of Education, Youth and Sports of 14 June 1996, that - in order to ensure exercise of the right to learn the Sorbian (Wendish) language - the choices existing in this respect must, in an appropriate form, be brought to the parents' knowledge at the time of their children's enrolment in a primary school or at the time of their transfer to another school. A survey carried out at the aforementioned Education Offices has shown that the requirements for exercising the right to take part in Sorbian (Wendish) classes are actually met. The increase in the number of pupils also shows that parents increasingly make use of this right.

764. A statutory ordinance [ordinance having the force of law] issued by the supreme supervisory school authority under Section 5, 3rd sentence, of the Brandenburg Schools Act entered into force on 31 July 2000; the ordinance regulates Sorbian instruction in various subjects, learning of the Sorbian language and classroom instruction in Sorbian history and culture.

B.14.2.3.3 Status as regards opportunities for learning the Frisian languages

765. In Schleswig-Holstein *Land*, the legal basis for providing the possibility to learn one's own language in the settlement area of the Frisian ethnic group is Article 5, para. 2, of the Schleswig-Holstein *Land* Constitution, under which, *inter alia*, also the Frisian ethnic group are entitled to protection and promotion. There is no comparable legal provision in Lower Saxony, but in this *Land*, too, opportunities are being developed for learning the Frisian language (Saterland Frisian/Seelterfräisk).

766. **Frisian is taught at many publicly maintained schools in the North Frisian speech area and at a number of schools of the Danish minority.** Frisian is taught at the *Gymnasien* in Wyk auf Föhr [on the island of Föhr/Feer] and Niebüll/Naibel, at the combined *Realschulen* of Wyk, Neukirchen, Amrum/Oomram and Heligoland, at the elementary and secondary modern schools of Niebüll, Föhr-Ost, Föhr-West, Keitum/Morsum [on the island of Sylt], List [on the island of Sylt], Hörnum, St. Nicolai/Westerland, Westerland-Nord, Fahretoft, Husum/Hüsem, Emmelsbüll, and at the Westerland *Förderschule* [special school: school providing special tuition for children with learning difficulties]. The following dialectal variations of North Frisian are taught: *Mooring (Frasch, Freesk)*, *Fering* [dialect spoken on the island of Föhr/Feer], *Sölring* [dialect spoken on the island of Sylt/Söl], *Öömrang* [dialect spoken on the island of Amrum/Oomram] and *Halunder* [dialect spoken on the island of Heligoland]. In the 2002/2003 school year, 29 teachers offered Frisian instruction to a total of 1,473 pupils at 25 schools of all types. Since 1987/88, the number of pupils participating in such classes has almost doubled. These activities are offered mainly by primary schools. As a rule, this instruction is offered [by primary schools] as a voluntary optional-subject course for the 3rd and 4th grades - *i.e.* the parents decide on whether or not their child will attend such classes. Schools of the Danish minority that offer Frisian instruction are those in Keitum/Kairem (on the island of Sylt), Bredstedt/Bräist and Risum/Risem.

767. At many nursery schools in Nordfriesland - from the island of Sylt to Friedrichstadt in the south - children can learn the Frisian language. In some cases, Frisian language learning has been included in the pedagogical programme of these nursery schools. The bilingual nursery schools thus form the basis for subsequent bilingualism at school.

768. Under the **Lower Saxony Schools Act**, pupils shall be enabled to develop their faculties of perception and sensitivity and their capacity for expressing themselves, with the inclusion of the relevant regional variety of Frisian. Implementation of this mandate in classroom instruction can be supported by its inclusion in all school subjects. This calls for a differentiated support system.

769. The **Sater Frisian language** is a classroom subject at all Saterland elementary schools and at the *Schulzentrum Saterland* [Saterland School Campus]. This instruction is offered in the form of **activity groups**. At each of these schools, Saterland Frisian is taught by qualified teachers; in addition, voluntary 'instructors' are employed for the first two grades.

770. In the **2003/2004** school year, a total of 329 pupils attended Sater Frisian classes. Of these, **315** were **pupils of the four primary schools** which were attended by a total of 701 children. Only 14 pupils taking such Frisian classes came from lower secondary schools [offering secondary education stage I]. No figures are available for the current school year 2004/2005.

771. Starting in the **2004/2005** school year, grades 5 and 6 are transferred to schools of the post-elementary type. For the Saterland School Campus, these are the *Hauptschule* [secondary modern school] and the *Realschule* [secondary technical school]. In the context of whole-day schooling, it was planned to establish an after-noon **activity group** for Sater Frisian. **For lack of demand**, this plan was ultimately **not implemented**.

772. For instruction in the Saterland Frisian language, a total of 10 class hours per week are included in the timetable for the 2004/2005 school year. Another two activity groups (one class hour each) are taught by voluntary instructors, bringing the total up to 12 one-hour activity groups.

773. Following the "**Model Test: Bilingualism in Nursery School**" (1997/98), [the public-law corporation (regional - cultural - association of local communities)] **Ostfriesische Landschaft** was, for seven European speech communities, the overall project manager of the EU Project "Multilingualism in Pre-School and Elementary Education" which also involved Saterland Frisians. This was documented in a publication by Nath, Cornelia / Brückmann, Elke: *Mehrsprachigkeit in der Vor- und Grundschulperiode, Schwerpunkt Bilingualer Unterricht in der Grundschule* [Multilingualism in the Pre-School and Elementary Education, Key Activity: Bilingual Classroom Instruction at Elementary School], Aurich 2003.

The project was carried out in the period 1 April 2001 - 31 March 2003. The subjects studied under this project and the relevant findings can be looked up on the Internet: www.kinder-mehrsprachigkeit.de. For Ostfriesland, the main subjects were training of educators and bilingual instruction at elementary schools. Regarding the first subject, a training course on early multilingualism, including the regional language Low German, was tested. The second subject focused on continuation of bilingual education after the children's enrolment in an elementary school. The aim of bilingual instruction in this case was language learning at school.

774. Continuation of minority language instruction at primary schools is considered good policy since it is a means for promoting children's language skills. Also, primary-school age is particularly well suited for extending language skills to multilingualism through early learning of foreign languages (English, French, Dutch/Flemish).

775. In the **Saterland**, Sater Frisian [*Seelterfräisk*] is taught not only by fully trained teachers but also by other persons provided that these have the appropriate qualification and that there is a demand for such instruction.

776. In the area of the Government of Weser-Ems *Bezirk* [District] applicants are informed, under the **procedure for inviting applications for a position** at the respective schools, that knowledge of Saterland Frisian is desirable or even required. Recruitment advertising for a position to be filled as of the start of the 2003/2004 school year at Sedelsberg primary school included the item 'knowledge of Sater Frisian'.

777. The **educational materials** developed by the **Sater Frisian** teachers themselves are used mainly in elementary education. They are based on materials for English lessons in primary school, materials developed, as part of the teaching and learning system, in the context of the pilot project "*Plattdeutsch in der Schule*" ["Low German in School"], and materials from the Nordfriesland and West-Friesland language areas. For use in teacher follow-up training, it is planned to develop a concept for learning Saterland Frisian in the primary education stage.

778. As part of the **EU Project "Early Multilingualism in Pre-School and Elementary Education"**, another two **further training events** of two-days' duration were organised in October 2002 and February 2003 on the following subjects:

- Developmental stages of children - Starting points for successful language education (Saterland Frisian)
- Multilingual education - features of Frisian language education in Dokkum, Fryslân (Netherlands)

Each of the two courses, which were attended by 18 participants each, was held by the Specialist Adviser for Sater Frisian at the town hall of Saterland *Gemeinde*.

Under the target agreements made with the Specialist Adviser for Sater Frisian, she is responsible for planning and implementing such further education activities. These further training activities are to be continued on a yearly basis.

779. The [Lower Saxony] Ministry of Education and Cultural Affairs, in its contacts with the Federal Government Commissioner for Culture and the Media, vigorously supports filing of applications for promotional funding of the development of a teaching and learning system for Sater Frisian in grades 1 - 6. In November 2000, a "**Special-**

ist Adviser for Sater Frisian in Classroom Instruction" was appointed to serve with the Weser-Ems *Bezirk* Government.

780. At the **schools** level, this Specialist Adviser set up a "**Sater Frisian Working Panel**" to **develop a teaching and learning system for Sater Frisian** for grades 1 - 6. The essential objective is to create awareness of the cultural values of the Sater Frisian language; to initiate, and consolidate, communicative learning processes in language education; and to document the history of the Saterland culture. In the course of various projects, combined readers/painting books with a focus on various specific subjects were developed for primary school grades 1 - 4 and for nursery schools, and books entitled "*Seelterlound*" ["Saterland"], for use by pupils and teachers, were developed for grades 1 - 4. Educational materials for use in subject teaching on the "history, culture and language of the Saterland" are under preparation. Also, half-year plans for grades 2, 3 and 4 are available by now. In addition, an anthology of songs and poems was produced. The Specialist Adviser also co-ordinates Sater Frisian teaching at schools by professional teachers and volunteers. For such co-ordination, conferences are held every three months. Volunteers are, to the extent possible, assisted by the full-time teachers and/or the headmasters of the schools concerned, and learning units on a wide range of subjects are made available to them. The learning units contain methodological suggestions and are geared to the seasons of the year and to life at school. The next step will be to develop guidance/support material for classroom instruction. The Ministry of Education and Cultural Affairs invites the teachers of the 'Sater Frisian Working Panel' to attend the specialist conferences organised every three years on the subject "Our region in classroom instruction" and gives them the opportunity to present the results of their work.

781. As of 1 August 2004, three teachers from this region will, for the duration of two school years, be assigned to the following additional tasks:

- to revise and, in part, re-edit the **teaching materials** available in the Sater Frisian language for grades 1 - 6; and
- to develop **concepts for Sater Frisian instruction as a required part** [compulsory subjects] **of primary school curricula**.

A total of six teaching hours will be credited for this work. Thus, together with the pedagogical advisory services, a total of 10 hours are credited for the promotion of the Sater Frisian language.

782. In November 1997, a **Working Group** was **established, with representatives from the *Landschaften* and *Landschaftsverbände*** [regional local authorities], ***Niedersächsischer Heimatbund* (NHB)** [Lower Saxony Union for Local and Regional Traditions] **and the schools offices**. On account of its membership (departmental heads of *Bezirk* [district] governments, representatives of *Landschaften/Landschaftsverbände*, of the Lower

Saxony Ministry of Education and Cultural Affairs, and *Niedersächsischer Heimatbund*), the existing Working Group is qualified to implement the decree on "The Region in Classroom Instruction", covering also the knowledge of the regional language and the related linguistic skills.

The task of this Working Group is to verify proper implementation of those obligations under the European Charter for Regional or Minority Languages that have been accepted by the *Land*. Responsibility for the preparation and regular publication of the report regarding the provisions on education lies with the Ministry of Education and Cultural Affairs. Moreover, the appointment of the Specialist Adviser for Saterland Frisian and the target agreement made with her provide for monitoring of the measures aimed at greater inclusion of Sater Frisian.

783. As regards the **Advisory Committee's view** (as stated in no. 88 of their "Opinion on Germany" - CM(2002)43, referring to Germany's first State Report) that the - small - number of hours of Frisian classroom instruction was mainly owed to the initiative of volunteers and **that the authorities should examine**, in consultation with representatives, **ways of developing and financing more teaching hours of the Frisian language, also at levels beyond primary school**, reference is made to Nos. 769 - 771 above, regarding the *Land* of Lower Saxony (Sater Frisian instruction given, if there is a sufficient demand, in the form of activity groups by full-time teachers).

784. Also, it is not correct to say that Schleswig-Holstein owes Frisian lessons mainly to the initiative of persons volunteering to teach Frisian. Frisian lessons are given by teachers - especially, for instance, in all cases where parents enrol their children for Frisian classes at primary schools. As of 1 October 2004, 143 teaching hours are scheduled for 1362 pupils at 26 schools. Continuing such lessons at secondary schools is proving to be a problem in a large region with **many** non-local pupils (having to travel to school over some distance). Furthermore, acceptance of Frisian lessons as an optional subject is dwindling among young people. Since Schleswig-Holstein was, and still is, aware of these facts, it has committed itself to providing for the inclusion of Frisian as an integral part of the curriculum for secondary schools [secondary education stages I and II]; this does not, however, imply that schools are under the obligation to provide Frisian instruction.

B.14.2.3.4 Status as regards opportunities for learning the Romany language

785. The children of the German Sinti and Roma grow up bilingually with Romany and German and usually have a good command of both languages. None of the School Acts of the *Länder* provides for instruction in the Romany language within the State-run school system since such instruction is not wanted by the parents within the German Sinti group. As regards the view taken by the Central Council of German

Sinti and Roma, the *Sinti Allianz Deutschland* and other Sinti organisations on non-inclusion of Romany in general classroom instruction, cf. the comments under section B.12.2.2.4, Nos. 668 *seqq.* above.

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

787. In the *Land* of **Hamburg**, the Senate Authority for Education and Sports offers in-school activities in the form of Romany instruction at Laeiszstrasse Primary School, at Billbrookdeich Primary and Secondary Modern School, at Friedrichstrasse Primary, Secondary Modern and Secondary Technical School, and at Ochsenwerder Primary, Secondary Modern and Secondary Technical School, thereby taking account of the fact that larger groups of this minority live in these schooling districts.

In addition, the following are available [in Hamburg]: an offer for parent-specific activities, employment as interpreters for the Romany language, and support for [ethnic] German teachers at primary and secondary modern school as regards instruction for members of the minority. Also, the [Senate] Authority for Education and Sports, Division 'Technical and Vocational Education; Continuing Education', offers adult education activities in the form of Romany courses at the Adult Education Centre whenever there is a demand for such courses. So far, no demand for such a course has been notified to the agencies concerned. In addition, a course is offered (in the German language) on the situation of Roma and Sinti. The 'Adult Literacy' and 'German as a Foreign Language' courses offered by the Adult Education Centre are also attended by Roma and Sinti.

788. In **North-Rhine/Westphalia**, various possibilities have opened up for promoting the schooling progress of children from Roma families, with the inclusion of their cultural traditions and their language, within the framework of a number of location-specific projects in Hamm and Cologne. On the basis of the requirements and wishes stated by the representatives of the families concerned, these activities are confined to imparting historical and cultural information about this minority. This is in keeping with the position taken by the local groups who do not wish that public institutions provide instruction in the Romany language which is only spoken within the minority community.

789. In **Bavaria**, children are offered Romany-language homework assistance and catch-up tuition by a Nuremberg primary school. This project was introduced at the

initiative of the *Verband Deutscher Sinti and Roma* [Union of German Sinti and Roma], Bavaria *Land* Association. The project is attended to and monitored by a representative of this Union. The Bavarian State Ministry of Education and Cultural Affairs is looking into the possibility of subsidies for the tutoring, and promoting the schooling progress, of these pupils in connection with in-school midday care.

790. Recruitment of members of the minority, who did not take the state examination for teachers, for teaching Romany to Sinti and Roma is made possible and facilitated by the opening of schools [to such instructors], as stipulated in the **Hessian Schools Act**, and by the extension of schools offering whole-day classes.

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

B.14.3 Article 14, para. 3

(Acquisition of the official language is not adversely affected by learning a minority language)

792. At the schools of general education maintained by, and for, the minorities - *i.e.* at the Danish private schools as well as the publicly maintained Sorbian schools and publicly maintained schools offering Frisian instruction - German instruction meeting mother-tongue standards is ensured in addition to the teaching of, and/or in, the minority language. This also includes teaching of the required German technical terms, especially those pertaining to natural science and social sciences.

B.15 Article 15

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

B.15.1 General bases regarding effective participation of persons belonging to national minorities

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

B.15.2 Participation of persons belonging to national minorities in the policy formation process

794. **Participation in the policy formation process** is ensured first by the **right freely to establish political parties**. This is laid down in Article 21 of the Basic Law. The State may neither impose restrictions on the number of political parties established nor make the establishment of political parties subject to authorisation. The members of national minorities and ethnic groups, like the majority population, have the unrestricted right to establish a political party. Also, as German nationals, they come under the scope of the legal provisions on the right to vote in elections, and the right to stand for election, to the German *Bundestag*, to the *Land* Parliaments * and to local councils. As regards elections to the German *Bundestag* and to the *Landtage* of Brandenburg and Schleswig-Holstein, political parties of national minorities are exempted from the five per cent proportional representation clause provided under the Electoral Act.

B.15.2.1 Participation of members of the Danish minority in the policy formation process by election to parliaments and local councils

795. Through *Sydslesvigsk Vælgerforening* (SSV - *Südschleswigscher Wählerverband* (SSW); South Schleswig Voters' Association), the Danish minority participates in the political, economic, cultural, social and societal responsibilities of the *Land*. The SSV, with its headquarters in Flensburg, was established already in 1948 as a political party of the Danish minority of the Schleswig region of this *Land* and of the national Frisians in Nordfriesland.

* *i.e.* *Landtage* of the 'territorial *Länder*'; the Parliaments of the City-States are called *Abgeordnetenhaus* (Chamber of Deputies) in Berlin, and *Bürgerschaft* (City-State Parliament) in Hamburg and Bremen [translator's note]

796. There are no other political parties that would specifically represent the interests of minorities. However, with the exception of some individual elected representatives of political parties at the extremes of the political spectrum, there is a political consensus among all political parties represented in the German *Bundestag* and in the *Land* Parliaments to give political support to the protection and promotion of minorities. This consensus is also reflected, for instance, by the nearly unanimous consent (with few abstentions) to the ratification of the Framework Convention for the Protection of National Minorities and by the unanimous consent to the ratification of the European Charter for Regional or Minority Languages within the *Bundestag* and the *Bundesrat* ["Upper House" of Parliament, representing the *Land* Governments].

797. *Sydslesvigsk Vælgerforening* won three seats in the Schleswig-Holstein *Landtag* in the elections of 27 February 2000. Irrespective of the number of their mandates, the SSV deputies have parliamentary group status. At present, the SSV is represented, by 157 deputies, in *Kreis* Councils and in municipal and parish councils in Schleswig-Holstein *Land* (municipal elections: 2 March 2003).

798. The *Land* Electoral Act facilitates political participation of the Danish minority by exempting the SSV from the five per cent proportional representation clause for elections to the Schleswig-Holstein *Landtag*. However, in order to win a seat on the basis of its list of party candidates, the SSV must obtain at least as many votes as those required for the last mandate to be allocated under the calculation of proportional adjustments according to the d'Hondt highest average rule.

799. Under the previous one-vote system, the SSV could win votes only in those constituencies where nominated SSV members ran for *direct* election to the *Landtag*. With the introduction of the two-vote system for elections to the *Landtag*, *i.e.* starting with the elections of 27 February 2000, the SSV - like any other political party - can win second votes for candidates included on its *Land*-wide list of party candidates; these votes will then serve as the basis for calculating proportional adjustments. In the 2000 *Landtag* elections, the SSV won three seats.

800. In the *Land* Government's view, introduction of the two-vote system does not present any legal problems as regards the SSV's exemption from the 5% threshold. Geographic limitations as regards nomination of candidates by this political party are not required either for legal or factual reasons. A legal opinion prepared, under a commission by the *Landtag*, by Professor Pieroth, Münster, confirmed the *Land* Government's view.

801. In the context of three proceedings instituted for scrutiny of elections with reference to the results of the 2000 *Landtag* elections, the Schleswig *Oberverwaltungsgericht* [Higher Administrative Court], on 25 September 2002, took a decision recom-

mending that the Federal Constitutional Court verify the compatibility of the exemption from the five per cent proportional representation barrier with the "equal elections" principle as stipulated under constitutional law [Article 38, para. 1, of the Basic Law]. This decision was submitted to the Federal Constitutional Court (*BVerfG*).

B.15.2.2 Participation of members of the Sorbian people in the policy formation process by election to parliaments and local councils

802. Effective representation of the Sorbian people in **Brandenburg** especially in **parliamentary** matters is seen as particularly important since this is the area where many decisions are taken that affect the Sorbian people. Given that only some 20,000 Sorbs are estimated to live in Brandenburg, it has not been possible - despite the exemption, for ethnicity-based lists of candidates [political parties representing national minorities], from the 5 per cent qualifying hurdle - to achieve direct parliamentary representation. However, the *Landtag* set up a Council for Sorbian Affairs (*Rat für sorbische Angelegenheiten*) as a deliberative body dealing with all matters affecting Sorbian interests. This Council has the rights and the function of a [parliamentary] committee and thus is involved in all proposed rulemaking.

803. In view of the right freely to identify oneself with a minority, as stipulated and guaranteed by Section 1 of the Saxon Sorbs Act (*SächsSorbg*), it is difficult to give information on the extent to which members of the Sorbian People **participate** in the policy formation process in **local/municipal councils** in the Free State of **Saxony**. For local elections, the *Land* Statistical Office records the election results only by parties nominating candidates for election, so that no information on individual persons is available to the Office. Nor is it possible to provide - definitive - information on the Sorbian voters' associations that nominated candidates for elections because it is not mandatory for such associations to present themselves under a Sorbian name. The information that Sorbian voters' associations in the 2004 municipal elections won a total of 36 seats is given subject to the above reservations.

804. At the *Kreis* and local government levels in **Brandenburg Land**, some 40 local councillors, who consider themselves members of the Sorbian people, sit on municipal/parish councils (municipal elections: 27 September 1998).

805. In response to **the Advisory Committee's comment** (in no. 89 of their "Opinion on Germany" - CM(2002)43, referring to Germany's first State Report) that **only 6 of the 15 members of the Foundation's governing board** are representatives of the Sorbian minority, without any veto right, and to the Committee's recommendation that the authorities should examine ways of strengthening the representation of the Sorbian minority in the functioning of the Foundation and in other fora, the following information has already been provided:

806. It would not be expedient to grant the Sorbian members of the Foundation's Governing Board a veto right on policy matters since the margin of practicability is narrow due to the lack of clarity in defining the term "policy matters". Also, there would be no point in allowing Sorbian representatives to have the majority on the Foundation's Governing Board, given that the parties providing funds to the Foundation (Federal Government, Brandenburg, Saxony) would have to claim a veto right in all financial matters and since, due to the financial implications of many decisions taken by the Foundation's Governing Board, the majority vote would, on a large number of issues, not be fully operative, which in turn might be perceived as a *de facto* weakening of the principle of majority rule. Nor does it appear necessary to make any changes as the providers of funds so far have not intervened in the Sorbs' policy formation process and since important decisions must be taken by mutual agreement with the majority of the Sorbian representatives.

The composition of the Foundation's Governing Board is regulated in Article 7 of the Inter-State Agreement on the Establishment of the Foundation for the Sorbian People (*Staatsvertrag über die Errichtung der "Stiftung für das sorbische Volk"*). Changes regarding the composition of the Foundation's Governing Board could only be made if this Inter-State Agreement were to be amended.

All the members of the Foundation's Governing Board jointly pursue the same objectives (see Article 2 of the Inter-State Agreement).

The respective Association of Municipal Corporations and Local Authorities [*i.e.* Saxon *Städte- und Gemeindetag*; Brandenburg *Städte- und Gemeindebund*] and the respective *Landkreistag* [Association of *Landkreise*] of Brandenburg *Land* and of the Free State of Saxony by mutual agreement, and in co-ordination with the local authorities of the Sorbian settlement areas in these two *Länder*, appoint the representatives as listed in Article 7 (1), nos. 5 and 6, of the Inter-State Agreement. They represent municipalities and other local authorities as well as *Landkreise* [administrative districts; "counties"] in the Sorbian settlement area.

The aforementioned Article 7 of the Inter-State Agreement does not state that the "representatives of the Sorbian people" are also obliged to acknowledge that they belong to this ethnic group (cf. "free declaration of one's affiliation with a minority"). They represent the Sorbian people. Nor does the wording of Article 7 rule out the possibility that representatives as defined in Article 7 (1), nos. 2 - 6, may represent the interests of the Sorbian people.

B.15.2.3 Participation of members of the Frisian ethnic group in the policy formation process by election to parliaments and local councils

807. A major number of members of the Frisian ethnic group are represented on *Kreis* Councils and municipal/parish councils in Nordfriesland and Ostfriesland and of

Saterland *Gemeinde*, but the exact numbers are not known. In some island communities of Nordfriesland, Frisians represent the majority.

808. Those Schleswig-Holstein Frisians who are members of the Frisian Association (*Friisk Foriining*) are politically represented by *Sööds-laswiksche Wääl-erferbånd* (SSW - South Schleswig Voters' Association). Frisian SSW members are represented both on local councils and *Kreis* councils. One of the three SSW deputies to the Schleswig-Holstein *Landtag* is a North Frisian who is proficient in the Frisian language. Also, a number of Nordfriesland *Kreistag* representatives - who are members of different political parties - have a full command of the Frisian language.

B.15.2.4 Only limited participation of persons belonging to the national minority of German Sinti and Roma in the policy formation process

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

810. In response to the view taken by the **Advisory Committee** in no. 90 [of their "Opinion on Germany, doc. CM(2002)43] - that **the German authorities should review the scope for the effective participation of the Roma/Sinti minority and consider how to set up much more appropriate structures** - the relevant activities in this field are once more brought into prominence in the following:

811. The Federal Republic of Germany considers the participation of the German Sinti and Roma in economic, social and cultural life to be an important element of effective and practical protection of minorities. The Federal Republic of Germany therefore began in recent years to hold regular conferences on matters relating to the implementation of the Framework Convention for the Protection of National Minorities and of the European Charter for Regional or Minority Languages. Apart from the Federal and *Land* agencies, the relevant organisations of national minorities and language groups - including, in particular, the relevant umbrella organisations of the German Sinti and Roma - are also represented at these conferences.

These conferences have proven to be a useful and effective instrument in practical minority-policy implementation because the minorities and language groups are given the opportunity directly to discuss problems with the decision-makers, thus fostering mutual understanding and transparency of administrative action. In view of

the positive experience gained so far, the Federal Republic of Germany will continue to hold Implementation Conferences also in future.

812. At the federal level, the umbrella organisations of the German Sinti and Roma in particular make use of the opportunity to have direct talks with the various government agencies and to voice their concerns, for instance at meetings with the Federal Chancellor and the Federal Minister of the Interior.

813. In addition, a wide range of contacts between government agencies and regional organisations of Sinti and Roma have been established at the level of the *Länder* and local authorities. The Advice Centre for Sinti and Roma in Lower Saxony *Land* is a perfect example of these activities. The *Land* of Lower Saxony has, since 1983, continually appropriated funds for the *Niedersächsische Beratungsstelle für Sinti und Roma e.V.* [Lower Saxon Advice Centre for Sinti and Roma]. The personnel costs for three full-time staff and two part-time staff positions and the relevant material expenses [non-personnel costs] have been financed within the framework of institutional funding set up in the 2001 financial year. Also, three advisers from three different towns in Lower Saxony work for the Advice Centre in an honorary capacity. The Lower Saxon Advice Centre for Sinti and Roma operates throughout the *Land*, offering personal support and advice to Sinti and Roma with the objective of helping them integrate into social, cultural and economic life. Such support or advice is given both locally at the places of residence of the Sinti and Roma concerned and at the Advice Centre's office as well as over the telephone and in correspondence; it deals with virtually all areas of everyday life where Sinti and Roma meet with special social difficulties, and includes areas relating to compensation for wrongs suffered under the Nazi regime, provision of housing, schooling and employment, setting up their own business and protection of livelihoods, asylum law, counselling and support in the general social area and the corresponding public relations work. An important current area of activity for the Advice Centre is to advance the social and economic integration of Sinti and Roma by helping them find suitable gainful employment, for instance, by setting up their own business in the trades traditionally carried on by Sinti and Roma. In this context, enhancing the possibilities for young Sinti to obtain educational qualifications at the completion of their schooling and vocational training is another focal point of the Advice Centre. Also, the Advice Centre has been working on a project for school education providing additional lessons with the aim of promoting the bilingual and social skills of Sinti youngsters. In addition, the Advice Centre provides specialised information and special advice to associations, public authorities and institutions, to schools and social workers and to local clubs representing the Sinti's and Roma's interests.

The provision of advisory services throughout the *Land* also has the additional effect of complying with the wish expressed by the Advisory Committee that the national

minority of Sinti and Roma be involved in matters that affect them in relation to social, cultural and economic integration.

B.15.3 Participation of persons belonging to national minorities in cultural, social and economic life and in public affairs at the local government level

814. Under the Basic Law (*i.e.* the Constitution of Germany), local governments in the Federal Republic of Germany have the right to regulate, on their own responsibility, all the affairs of the local community subject to the provisions of the pertinent laws. The constitutionally guaranteed autonomy comprises an entire set of sovereign powers, ranging from own responsibility for staffing matters and organisational jurisdiction to fiscal jurisdiction, the right of the *Gemeinden* to pass bye-laws [or ordinances], and the power to levy taxes. This local self-government system, with its extensive binding - autonomous - powers, also provides those national minorities which live in grouped settlements with a wide scope for self-management. The scope provided by local self-government for autonomous self-organisation of the local life of minorities is realised, in particular, in those Sorbian and Frisian communities that are predominantly or nearly exclusively inhabited by members of those minorities, but also in other communities which have a significant proportion of Danes, Frisians or Sorbs among their population (German Sinti and Roma are nowhere known to form a significant part of the local population).

815. The Sorbs' *Domowina* organisation, however, takes the view that even this wide scope for the Sorbs' participation is not sufficient; cf. the Comments by *Domowina* in Part D.

**B.15.4 Special bodies
for the promotion of the participation of persons belonging to national minorities in cultural, social and economic life and in public affairs**

816. Effective participation of the groups protected under the Framework Convention will only be ensured if the groups maintain continuous contacts with public authorities. For the infrastructure required to make such exchanges possible, cf. the comments regarding Article 5, para. 1, Nos. 163 - 181 above, with reference to the promotional policies of the Federal Republic of Germany. In particular, this opportunity is provided by bodies in which participation of members of national minorities and ethnic groups in matters affecting them is ensured. In addition, mention must be made of the following bodies:

817. The Committees on Internal Affairs and on Legal Affairs of the German *Bundestag* have lead responsibility for matters concerning national minorities. Aspects of the protection of minorities which come within specific areas of activity are also dealt

with by other Committees of the German *Bundestag*. Within the *Bundesrat* [Chamber of the *Länder*], a similar approach is taken to the division of responsibilities. Within the *Land* Parliaments, lead responsibility for minority issues lies with the committees responsible for the functional area of the Ministry which is in overall charge of minority matters within the respective *Land* Government. A special parliamentary body for matters concerning the Sorbs exists in the *Land* of Brandenburg and in the Free State of Saxony (in this respect, cf. the comments in No. 180 above regarding Article 5, para. 1).

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

B.15.5 Promoting participation of persons belonging to national minorities in cultural life through cultural self-management

819. However, greater significance for the minorities and ethnic groups in Germany attaches to cultural autonomy of minorities, which - mainly supported by state-provided funding - ensures autonomous organisation of cultural life in the broadest sense, on the basis of private associations, foundations and other institutions, without any government intervention. As regards the structure of such cultural self-management, the organisations set up by the groups protected under the Framework Convention and the activities of these organisations, cf. the comments above referring to Articles 5 and 7.

B.16 Article 16

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

B.16.1 Population changes entailed by demographic developments, free internal migration, and incoming migration

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

B.16.2 Changes entailed by territorial reorganisation of local government

821. The changes regarding the borders and areas of local-government administrative districts entailed by the **general territorial reorganisation** of local government in the Free State of **Saxony** and in **Brandenburg Land**, have also reduced the Sorbian inhabitants' portion of the population in some *Kreise* and *Gemeinden*. In the context of the territorial reorganisation, it was not possible to take account of all of the concerns and interests of the affected communities, associations and Sorbian minority organisations. In some cases, the local self-administration units have designated Commissioners (cf. the comments in Nos. 174 - 177 above referring to Article 5, para. 1).

B.16.2.1 Territorial changes entailed by resettlement to allow for open-cast lignite quarrying

822. In connection with alterations of the population structure, one of the subjects of public discussion was the legally regulated dissolution of **Horno/Rogow Gemeinde** and, as a corollary, the resettlement of the German-Sorbian population of this com-

munity in Lower Lusatia in Brandenburg, which **must yield its place to brown coal mining** [Horno started being pulled down in July 2004].

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

824. The main lignite quarries in Brandenburg *Land* are in Lower Lusatia. This is the traditional settlement area of the Sorbian (Wendish) people. Due to the one-sided focus of the power-supply industry of the former GDR on the use of brown coal, many people living in the then GDR [German Democratic Republic] had to leave their home villages since these were claimed for purposes of open-cast lignite mining. This also affected many Sorbs. Without any regard for their ethnic origin and identity, the inhabitants of these places were resettled - often even dispersed - in other places, mainly in the city of Cottbus and its suburbs. In these places, it was quite difficult to preserve the traditional identity. Society's pressure for assimilation set in, or was substantially increased.

825. Opting for a deliberate departure from this policy, **Brandenburg *Land*** pursues the **aim of avoiding any further losses of Sorbian (Wendish) identity**. The legal basis for resettlement in connection with brown coal open-cast mining is the Brandenburg *Braunkohlengrundlagengesetz* [Act on Lignite Mining Policy] of 07 July 1997.

826. The principle originally enshrined in Section 3, subsection 2, no. 8, of the Brandenburg *Landesplanungsgesetz* [Town and Country Planning Act], which requires that the Sorbian people's identity and the right to cultivate their language, religion, culture and customs shall be ensured and promoted, has been included in the *Landesentwicklungsprogramm (LEPro - Regional Policy Plan)*. This principle is implemented in town and country planning without any restrictions. This ensures, also in conformity with the Act to regulate the substance of the Sorbs' (Wends') rights in the Land of Brandenburg [SWG - Sorbs (Wends) Act], that all plans and measures will have to take account of the concerns of the Sorbian (Wendish) population in Lusatia. In Schleswig-Holstein, the Minister-President ordered that the Border Region Commissioner shall be involved in all minority matters and that in all laws and ordinances a reference shall be included concerning any minority rights that might be affected.

827. In addition, the Brandenburg Act on Lignite Mining Policy contains a number of general provisions on brown coal mining and, in particular, on the social sustainability of unavoidable resettlements. In this respect, however, resettlement is not a measure that exclusively affects the affairs and interests of the Sorbian (Wendish) minority but also has the same impact on the majority population, for instance the inhabitants of Kau-

sche, a community outside the Sorbs' settlement area. But if such use of a Sorbian or German-Sorbian settlement cannot be avoided, special account must be taken of the requirements of minority protection, as stipulated in pertinent legal provisions. Therefore, if a Sorbian or German-Sorbian settlement must be used for mining purposes, the aim is to resettle the affected inhabitants, as a body, in the traditional settlement area and thus to maintain the life environment in which the persons concerned can preserve their folklore and ethnic traditions and can, to the greatest extent possible, avoid the assimilation pressure exerted by an unfamiliar environment. In each individual case, an attempt is made to find solutions by mutual agreement.

828. In order to ensure consideration of the Sorbs' (Wends') interests also in practice within the framework of lignite-mining and rehabilitation/renewal planning, Section 1, subsection 3, no. 6, of the Ordinance on the Establishment of the Brown Coal Committee of Brandenburg *Land* of 5 April 1992 provides that one representative of *Domowina* [Federation of Lusatian Sorbs] shall be delegated, as a voting member, to the Brown Coal Committee of Brandenburg *Land* and shall participate actively in all decisions of this Committee. Moreover, the Sorbian (Wendish) associations/unions are involved in the development of lignite-mining and rehabilitation/renewal plans. Also, the Sorbs (Wends) take part in all decision-making by the institution responsible for regional planning. Representatives of *Domowina* are advisory members of the Regional Assembly of the Lusatia-Spreewald Regional Planning Association.

829. The resettlement issue became a matter of topical interest especially in connection with open-cast mining in Jänschwalde/Janšojcy [Spree-Neisse *Kreis*]. Continuation of these open pit mines requires use of the area of Horno *Gemeinde*. Under the Act on Lignite Mining Policy and the relevant Lignite-Mining Plan, German and Sorbian inhabitants - who object(ed) to relocation - were offered possibilities of being jointly resettled within the traditional Sorbian settlement area.

Pursuant to the relevant law, Horno/Rogow *Gemeinde* was dissolved and, under local government law, was incorporated in Jänschwalde *Gemeinde* on 27 September 1998. The legally prescribed hearing of the inhabitants on the prospective site of resettlement showed that the majority of the Horno citizens preferred the town of Forst/Baršæ (Lusatia) over Jänschwalde as a resettlement site. Forst is located within the traditional settlement area of the Sorbs (Wends).

830. Resettlement from Horno to Forst-Eulo is completed. There is still a married couple in Horno, who are not prepared to move away from there. The Brandenburg *Land* Mining Office at present conducts land separation proceedings under mining law in view of compulsory surrender [condemnation] of the estate. A total of 222 persons from Horno have resettled in Forst-Eulo.

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

832. In no. 77 of their Opinion on Germany's first State Report [doc. CM(2002)43], the **Advisory Committee** on the Framework Convention [ACFC], found that **the envisaged dissolution of a municipality (Horno) with Sorbian character aimed at allowing lignite quarrying to continue** was likely to make maintaining the Sorbian culture and preserving the Sorbian minority identity more difficult and that therefore the obligation under Article 5, *i.e.* to promote such conditions, was not sufficiently fulfilled.

833. On this point, the Federal Republic of Germany made a clarifying statement to the effect that - for the following reasons - this nevertheless did not constitute a case of abuse of discretion or of contravening Article 5:

Lignite quarrying in the area of Horno is absolutely vital for compelling public-policy reasons. The *Land* Government and the *Landtag* [*Land* Parliament] recognise the high rank of minority law as reflected, *inter alia*, in Article 5 of the Framework Convention, and carefully weighed this legal priority against the facts underlying the need for excavation.

Article 1 (3) of the Brandenburg Act on Lignite Mining Policy (*Brandenburgisches Braunkohlengrundlagengesetz - BbgBkGG*) ensures that resettlement can only take place in the traditional settlement area. This maintains the cohesion of the Sorbian infrastructure and facilitates incorporation into the network of Sorbian facilities. The mining company is under the obligation to take measures for the preservation and enhancement of the Sorbian infrastructure or to cover the costs of such measures. By resettling the inhabitants in Forst/Baršæ/Łużyca, the general terms and conditions

have been created that will enable the inhabitants of Horno to maintain their cultural identity. This will not negatively affect the legal status of the population of Horno.

834. After 2000, no other Brandenburg villages (apart from Horno) with a Sorbian population or a share of Sorbian inhabitants have been resettled. Nor is such resettlement envisaged for the time being. (The concerns expressed in *Domowina's* Comments in Part D refer to open-cast lignite mining in Saxony.)

B.17 Article 17

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

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

B.17.1 Article 17, para. 1

(The state's obligation not to interfere with cross-frontier contacts of persons belonging to national minorities with groups sharing their identity or heritage)

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

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

837. Contacts established and maintained across frontiers are not restrained by any legislative or administrative measures. The Sorbs' traditional settlement area nowadays is located exclusively on German territory; this implies that there are no Sorbian ethnic groups living in grouped settlements outside the German territory, with whom contacts might be established. However, large numbers of Sorbs who, after having emigrated to all parts of the world, especially in the 19th century, founded new settlements overseas, and these communities continue to maintain contacts with

their old home country. These contacts are intensively maintained by the Sorbs' associations as well.

838. As regards the **desire, on the part of the Danish minority, for administrative formalities to be simplified** - as notified by the **Advisory Committee** in no. 68 of their "Opinion on Germany" (doc. CM(2002)43, referring to Germany's first State Report), the will has been expressed to deal with this matter within the Consultative Committee on Issues concerning the Danish Minority at the Federal Ministry of the Interior.

839. With reference to the practical **taxation difficulties encountered by artists resident in Denmark**, cf. no. 69 of the Advisory Committee's "Opinion on Germany", the information was provided that the Federal Ministry of Finance was conducting consultation talks with representatives of the Danish minority.

B.17.2 Article 17, para. 2

(The state's obligation not to interfere with the right to participate in the activities of non-governmental organisations, also at the international level)

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

841. The members of the groups protected in Germany under the Framework Convention are united in various organisations and actively participate in the work of many non-governmental organisations (cf. the comments above on Article 7).

842. The **organisations of the German minorities and ethnic groups** co-operate on a non-committal basis, and all of them are **members of the Federal Union of European Nationalities (FUEN)**, an umbrella organisation of national minorities and traditional (autochthonous) ethnic groups in Europe. Like the Danish minority's South Schleswig Association [*Sydslesvigsk Forening - SSF*], FUEN has its seat in Flensburg. FUEN is supported with institution-based funding by Schleswig-Holstein *Land* and also by a number of regional governments in other countries where national minorities have their settlement areas. Like other governments of Central and North European countries, the German Federal Government subsidises individual FUEN projects.

843. The **youth associations of minorities in Germany are members of the umbrella organisation Youth of European Nationalities (YEN)** which is granted subsidies by the Federal Government, and also by Schleswig-Holstein *Land*, for individual projects - the most recent case was the 2004 Easter Seminar.

844. The national minorities and ethnic groups in Germany are also members of the European Bureau for Lesser Used Languages (EBLUL). Their EBLUL member organisations are united in a Committee for the Federal Republic of Germany, whose activities relating to individual projects are supported by the Federal Government and Schleswig-Holstein *Land*.

845. In February 2004, the EBLUL Partnership for Diversity (PfD) forum in Flensburg held a Language Congress which was attended by international speakers and participants. Under the motto "2 nations / 4 minorities / 6 languages", the German-Danish border region, with its extensive and trend-setting linguistic competence regarding minority and regional languages, presented itself to an international expert audience. The PfD Congress was held under the joint auspices of the Schleswig-Holstein Minister-President and the Mayor of Sønderjylland *Amt*. The *Land* (and also the Federation) allocated considerable funds for the organisation of this congress.

846. With reference to the current economic problems of EBLUL, Brussels (cf. the Comments by the Danish minority in Part D), the President of *EBLUL Deutschland*, Karl-Peter Schramm, provided the following information:

"EBLUL continues its work

Despite the existing financial difficulties, the work of the European Bureau (EBLUL) will be continued at the European level.

At the Stockholm meeting in late September, President Bojan Brezigar was re-elected for another year. He is supported by an interim board of seven members who also were elected for a one-year term of office.

This new Board is expected to help with solving the Bureau's financial problems.

A thorough review is to be made of the future scope for co-operation with other minority organisations, such as FUEN and JEFF [? = JEV (Engl. YEN)?].

Payments by the EU Commission for the 2004 working programme are still expected.

It is planned to embark at once on the 2005 working programme.

Regrettably, the various National EBLUL Committees can no longer count on receiving financial support for their work unless they take part in projects, of which 50 % must be financed from own resources.

The German Committee is about to set up a registered association for EBLUL Germany and must still deliberate on the financial possibilities."

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

B.18 Article 18

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

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

B.18.1 Article 18, para. 1

(Agreements concluded with other States to ensure protection of national minorities)

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

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

849. As regards inter-state agreements, reference is made, in particular, to the [1998] **Inter-State Treaty** concluded between **Brandenburg Land** and the Free State of **Saxony on the establishment of a Foundation for the Sorbian People**, and the pertinent Financing Agreement concluded by Brandenburg, Saxony and the Federation.

850. Also, it is ensured that the work of the Foundation for the Sorbian People takes due account of transborder co-operation, especially with the Slavic neighbours. Under Article 2, para. 2, no. 5, of the Inter-State Treaty establishing an autonomous foundation for the Sorbian people, promotion of projects serving to enhance international understanding and co-operation with other ethnic groups and minorities in Europe and to cultivate the historically evolved relations of the Sorbs with their Slavic neighbours is considered part of fulfilling the Foundation's objectives.

In addition, project-specific co-operation, especially with the Free State of Saxony, can be pursued at any time. A specific example is the organisation, with the participation of Brandenburg, of the *"Tage sorbischer Kultur"* ["Days of Sorbian Culture"] at the Representation of the Free State of Saxony to the Federation, in Berlin in 2000. There are plans to organise, in the very near future, a similar event at the Representation of Brandenburg *Land* to the Federation.

**B.18.2 Article 18, paragraph 2:
(Measures to encourage transfrontier co-operation)**

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

Transfrontier co-operation involving the minorities takes places in a number of areas, **for example:**

Regarding the Frisians

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

In both countries, state-sponsored support in the Netherlands and in Germany has in both countries helped to establish structures fostering contacts between the users of the same language - *i.e.* Frisian, in a wider sense - in the aforementioned fields.

853. In 1999, the former working group *Interfrasche Rädj* [*Interfriesischer Rat* - Inter-Frisian Council], which since 1925 had been the joint organisation of West, East and North Friesland, was transformed into a registered association to act as the umbrella organisation of the West, East and North Frisians. It is composed of members from all three Friesland regions, and organises the *Friesenkongress* [Frisians' Congress] in a three-year sequence. The North Frisian organisations work together within the *Frasche Rädj, Sektion Nord e.V.* [Frisian Council - Section North (Nordfriesland)] which is supported with funds provided by Schleswig-Holstein *Land*.

854. *Friesenrat Sektion Nord e.V.* and the Schleswig-Holstein *Land* Government are engaged in on-going talks about the conclusion of a cultural agreement between Schleswig-Holstein *Land* and the Netherlands. However, these negotiations are in their initial stages, and their eventual outcome is still open.

Transfrontier co-operation - regarding the Danes

855. The Federal Republic of Germany and the Kingdom of Denmark, as well as Schleswig-Holstein *Land*, fund activities for the benefit of the Danish minority, thus promoting matters of culture, education, information, vocational training and permanent education and increasing the scope for transborder contacts.

856. The *Verband landwirtschaftlicher Vereine in Südschleswig e.V. (Fælleslandboforeningen for Sydslesvig* - Union of Agricultural Associations in South Schleswig, reg'd) in Harslee is an institution of the Danish minority in the Schleswig region of the *Land*. The Agricultural Union receives a subsidy for personnel costs from the Ministry for the Environment, Nature Conservation and Agriculture. The Union is formed by five local associations in various parts of the Schleswig region, whose members are supported by advisers of the Union. Thus, the Danish consultants serve as a link between farmers of the Danish minority in Schleswig-Holstein and farmers in Denmark.

857. In 2000, the *Schleswig-Holstein Nord* Police Directorate, in conjunction with Denmark, initiated a Further Training Project stretched out over several years. The project is subsidised with funds of the *INTERREG II* Programme. Promotion extends, *inter alia*, to language courses and joint seminars on the culture and history of the two countries.

858. Also, Flensburg City and the *Kreise* of Schleswig-Flensburg and Nordfriesland, on the German side, and *Sønderjylland Amt* [North Slesvig local authority union], on the Danish side, are partners of the German-Danish Border Region Schleswig/Sønderjylland which was established on 16 September 1997 by an agreement concluded between these territorial authorities. The aim of that Agreement is to provide the basis for long-term and intensive co-operation for enhancing the development of this overall region in a European context. The priority activities also include education (training and permanent education, as well as language instruction). In this field, the objective is to disseminate knowledge of the culture of the respective neighbours, so as to overcome cultural barriers.

859. On the German side, transborder cultural projects and events are promoted jointly by the *Kreise* of Nordfriesland and Schleswig-Flensburg, and Flensburg City. Co-operation across borders involves the national minorities, especially the Danish minority in Germany and the German minority in Denmark. Membership of the Regional Council, *i.e.* the body established by the organisation [*i.e.* German-Danish Border Region Schleswig/Sønderjylland] with both consultative and co-ordinating functions, includes - on the German side - three representatives of *Sydslesvigsk Vælgerforening* (SSV - South Schleswig Association of Voters).

860. As a complement to this direct co-operation in the German-Danish border region, Schleswig-Holstein *Land* and the Danish *Sønderjyllands Amtskommune* on 15 June 2001 signed a "Joint Declaration on Regional Co-operation". The Declaration's objective is to develop joint projects for intensifying this co-operation - to be pursued independently of the existing neighbourly co-operation among many bodies, institutions and organisations on both sides of the German-Danish border. Among the fields covered by such co-operation are economic development, inter-university co-operation, ecology, regional planning, transport, and logistics. It should be noted that this Joint Declaration is not a formal agreement but only provides a framework for project-oriented contacts between institutions of the two neighbouring regions; accordingly, no joint bodies were set up to implement the Joint Declaration. Matters relating to the German and Danish minorities are dealt with in the context of neighbourly activities and discussions on shared subjects and joint representation of interests, e.g. in the North Sea/Baltic Sea area or in Brussels.

Transfrontier co-operation - regarding the Sorbs

861. On the one hand, the Brandenburg Sorbian (Wendish) culture is included in the *Land's* cultural policy abroad and, on the other hand, is presented and represented in external relations by the Foundation for the Sorbian People.

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

Adequate account is taken of the Sorbian (Wendish) element also in the context of other jointly organised cultural events ("Poets' Steamer", transfrontier seminars, colloquies, etc.).

Transfrontier co-operation - regarding the Sinti and Roma

863. Co-operation between the Documentation and Cultural Centre of German Sinti and Roma and the *Kulturverein Österreichischer Roma* [Cultural Association of Austrian Roma], which is also state-subsidised, has developed for a number of years already. Both sides keep up continuous exchanges of information and share each other's publications. This co-operation also extends to the fields of culture, education, vocational training and permanent education.

864. In co-operation with Roma organisations from a number of European countries (Austria, Poland, Hungary, Slovakia, Czech Republic, Netherlands, Yugoslavia, and others), the Documentation and Cultural Centre of German Sinti and Roma organised the Permanent Exhibition on the Genocide of Sinti and Roma in Nazi-Occupied Europe, which is located at the Auschwitz Memorial Site and was opened on 02 August 2001. The exhibition is housed in "Block 13" of the so-called *Stammlager* ["principal camp"] of the former concentration and extermination camp Auschwitz. At a number of meetings held during the design and build-up phase of this exhibition, the participation of Roma representatives from the various countries resulted in an international cultural exchange, e.g. music presented in the Rromany language of the Ukrainian minority. On the occasion of the international memorial day of the Roma and Sinti, which for many years already has been held every 2nd August at Auschwitz-Birkenau, the Polish Roma Association regularly presents an accompanying cultural programme. Every year, delegations comprised of 25 to 30 persons of the Documentation Centre and of the Central Council of German Sinti and Roma take part in the Memorial Day ceremonies and attend the performances of the accompanying programme and in this context participate in a transfrontier cultural exchange. For the travel of delegations comprising 150 members to commemoration ceremonies on particular anniversaries in Auschwitz, the Federal Foreign Office grants supplementary funds.

B.19 Article 19

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

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

B.20 Article 20

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

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

B.21 Article 21

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

867. Activities or acts by members of national minorities and ethnic groups in Germany, which would be contrary to the fundamental principles of international law, especially to the sovereign equality, territorial integrity and political independence of States, have never become known. Confirmation of the importance of, and respect for, these principles is emphasised in various Declarations by the groups protected under the Framework Convention and especially of their international umbrella organisation, the Federal Union of European Nationalities (FUEN). Political claims for the alteration of national borders - as put forward by the Danish minority in the years after World War II - no longer are among the aims pursued by the organisations of this minority.

B.22 Article 22

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

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

B.23 Article 23

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

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

B.30 Article 30

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

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

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

Paragraphs 1 to 3

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

**Part C Answers to the detailed questions asked by the
Advisory Committee on the Framework Convention for the Protection
of National Minorities [ACFC] in their "Opinion on Germany"
[CM(2002)43]**

**I. Questionnaire of the Advisory Committee
for the state report to be submitted by Germany in the second monitoring
cycle of the Framework Convention for the Protection of National Minorities**

1. Please comment on recent trends including financial support provided by public authorities – in relation to tertiary education in Frisian, in particular as regards the North Frisian Language Institute and the number of Frisian studies research posts within Schleswig-Holstein Universities.
2. Please provide information on reported difficulties that have recently arisen in the reception of the Danish Radio DR1 programmes broadcast via cable in Schleswig-Holstein.
3. Please indicate whether there are any plans to close down the whole Sorbian intermediate secondary school in Crostwitz as from the school year 2003/2004 and, more generally, what are the future prospects for the maintenance of the historic network of schools providing a full education in Sorbian.
4. Please provide information on the role and function of the Federal Commissioner for Immigration issues and National Minorities and the results of his work pertaining to the protection of national minorities.
5. What are the developments as regards the envisaged creation of a committee dealing specifically with minority issues within the Federal Parliament?
6. Is there any public discussion about the application of the provision exempting political parties of national minorities from the 5%-threshold imposed under the Electoral Act in Schleswig-Holstein and is there any related legal dispute following the recent ruling on this matter by the Regional Administrative Court of Appeal in Schleswig-Holstein?

II. Answers

Question 1:

For information on financial support provided by public authorities in relation to tertiary education in Frisian in Schleswig-Holstein, cf. Nos. 620 - 630, section B.12.1.3.3 (Research activities with regard to the Frisians).

Question 2:

No. 431, section B.9.3.3.1 (Broadcasting media for the Danish minority in Schleswig-Holstein), describes the conditions as regards the reception of the Danish Radio *DR1* programmes broadcast via cable in Schleswig-Holstein.

Question 3:

The present and future situation of the network of Sorbian schools, especially as regards *Mittelschulen* [intermediate secondary schools] and also with reference to the closure of Crostwitz *Mittelschule* is described in Nos. 742 - 752 in section B.14.2.3.2.3 [Status as regards opportunities for learning Sorbian in school] of the present report.

Question 4:

Information on the role and function of the Federal Government Commissioner for Matters Related to Repatriates and National Minorities and on the results of his work pertaining specifically to the protection of national minorities is given in Nos. 166 - 168 in section B.5.1.6.2.1 [Government agencies and Commissioners - Federal level].

Question 5:

For information on the "Round Table on National Minorities established by the German *Bundestag*", cf. No. 179, penultimate indent, in section B.5.1.6.3 [... round tables at the federal level].

Question 6:

As regards the exemption of *Sydslesvigsk Vælgerforening* (SSV) from the five per cent proportional representation clause for elections to the Schleswig-Holstein *Landtag*, cf. Nos. 798 - 801 in section B.15.2.1 (Participation of members of the Danish minority in the policy formation process by election to parliaments and local councils).

Part D Comments by the organisations of national minorities and ethnic groups traditionally resident in Germany, to which the Framework Convention applies pursuant to the Declaration notified by the Federal Republic at the time of signature

(The Comments by these organisations are included in the present State Report irrespective of the views held by the Federal Ministry of the Interior which has editorial responsibility for the report.)

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|--|--------|
| 1. Danish minority | p. 248 |
| 2. <i>Domowina</i> [Sorbs] | p. 257 |
| 3. <i>Friesenrat Nord</i> [Frisians] | p. 260 |
| 4. Saterland Frisians [<i>Seelter Buund</i>] | p. 265 |
| 5. Central Council of German Sinti and Roma | |
| a) Comments on the Second State Report | p. 266 |
| b) Press release | p. 276 |
| 6. <i>Sinti Allianz Deutschland</i> | p. 277 |

Comments by the Danish minority

on the Second State Report of the Federal Republic of Germany on the implementation of the Framework Convention for the Protection of National Minorities

1. Introductory statement

Sydslesvigsk Forening (SSF) / Südschleswigscher Verein [South Schleswig Association], *Sydslesvigsk Vælgerforening / Südschleswigscher Wählerverband (SSW)* [South Schleswig Voters' Association] and *Dansk Skoleforening for Sydslesvig / Dänischer Schulverein für Südschleswig* [Danish Schools Association for South Schleswig] express their thanks for the transmission of the draft copy of the Second State Report of the Federal Republic of Germany on the implementation of the Framework Convention for the Protection of National Minorities.

SSF, *SSW* and *Dansk Skoleforening for Sydslesvig* agreed to submit their joint comments on behalf of the Danish minority. At the same time, we point out that we confined our comments to what we viewed as particularly important observations regarding the situation of the Danish minority.

We nevertheless, of course, studied the Report in its entirety and generally note that, as a result of the adoption of the Framework Convention for the Protection of National Minorities by the Federal Republic of Germany, a valuable basis has now been provided for addressing the existing problems in an outright fashion and that, at the same time, the importance of minorities policy at the federal level and the responsibility, also of the Federal Government, for pro-active minority-related policies have attained a high status in terms of the attention and priority given to them.

Part A

2. The term 'national minority' and its application in the Framework Convention

The Danish minority finds it regrettable that no common [uniform] definition of the term 'national minority' has yet been arrived at by the Council of Europe Member States. Thus, the Danish minority, the Sorbian people, the [ethnic group of] Frisians in Germany, and the German Sinti and Roma are designated in the Report as national minorities although these minorities designate themselves differently on the basis of their own perception of their identity. While the [identical] designation used for these four minorities gives a clear idea of the [scope of] application of the Framework Convention, it nevertheless leads, time and again, to additional explanations and enquiries or uncertainty in the given minority's daily life. Therefore, a more precise and generally accepted definition of the term 'minority' continues to be the desired objective.

Part B: Article 1**3. ECMI, OSCE and EBLUL**

For the Danish minority, ECMI (European Centre for Minority Issues) is an important institution which, through research and conflict management, contributes towards positive developments in the field of minorities policy.

As regards the Danish-German border area, however, we would wish for greater inclusion of the competence of regional minorities in the Centre's work. Against the background of the 1955 Copenhagen and Bonn Declarations and in view of the Danish-German border area presenting a positive example of dynamic development in the field of minority/majority policies, ECMI should rely to a greater extent on regional experience.

The Danish minority is prepared to engage in closer co-operation which, in their view, opens up a number of interesting perspectives, such as ECMI's involvement in inter-university co-operation between *Syddansk Universitet* and Flensburg University as regards the establishment of a professorial chair for the minority and minorities policy.

We therefore call upon the Federal Government to consider the aforementioned perspectives and to help to induce ECMI to be more responsive to matters concerning this region and the minorities living there.

As regards OSCE, the Danish minority calls upon the Federal Government to involve the four recognised minorities to a greater extent in OSCE-related activities. The four minorities should - with financial compensation - be allowed to designate up to two representatives as members of the official German delegation. The Danish delegation, for instance, includes one representative of the German minority on a permanent basis.

The financial crisis of EBLUL Brussels and the resultant imponderables causes the Danish minority great concern.

Promotion of minority and regional languages is an important EU commitment, and the Union's enlargement lends ever increasing importance to this task. We also share the view, expressed repeatedly and by various parties, that in future a greater share of the funds available should go directly to on-site linguistic projects rather than being used for central administrative overheads.

However, it is also indisputable that a competent political dialogue at the EU level and effective organisational management of promotional funds are contingent on a professional administrative management system for which, in contrast to the current situation, reliable funding must be provided.

Also, it is obvious that, for optimum implementation and co-ordination of language projects in the affected regions of Member States, use should be made of existing networks of minority organisations.

With the foregoing in mind, we suggest that a EBLUL successor organisation be set up along the following lines:

1. EBLUL would continue as an organisation to prepare, fund and manage EU-sponsored programmes for the promotion of minority and regional languages. However, EBLUL would not deal with minority-related policy issues. A small professional bureau would be funded under a fixed annual EU budget while applications for project funding would, as before, be made on a case-by-case basis (for specific projects).
2. Promotional programmes would be implemented in co-operation with the relevant NGOs of the national minorities and ethnic groups. These are, in particular, FUEN and YEN, but other associations such as the *Gesellschaft für bedrohte Völker* [GfbV - Society for Threatened Peoples] might be involved as well.
3. In order to ensure optimum co-ordination, membership of the future board of EBLUL would comprise equal numbers of representatives of the EU Commission, on the one hand, and of the NGOs concerned, on the other hand.

An excellent opportunity for testing the above concept - initially on a limited scale - is offered, in particular, by the Baltic Sea region which has a well-developed structure of clubs and associations and, at the same time, several language groups coming within the scope of such activities. After a successful test phase of a tentative "EBLUL North" concept, similar structures might be developed in other parts of the European Union.

Part B: Article 4

4. The implications, for the Danish minority, of the existing structural weakness of the Schleswig region of the Land

It is with great concern that the Danish minority observes that increasing numbers of public institutions are withdrawn from the Schleswig region of the *Land* (among others, closure of Federal Armed Forces garrisons), and the exodus of firms which use siting eligible for public subsidising for their own cost saving purposes. Overall, this trend adds to the region's structural weakness. For the Danish minority, an additional effect entailed by this trend is a decline in the number of persons with close ties with this minority:

In many cases, members of the minority who are employed with establishments moving away from the region are compelled to leave their home region in this *Land*, and this in turn results in the loss of their linguistic and cultural identity. Moreover, these persons are then no longer available for volunteer work with and for the minority.

The Danish minority therefore welcomes the observations in section B.4.2.4 of the Report referring to Article 4 and expresses the wish that, in each and every case of withdrawal of an establishment, the implications for the economic structure be considered and that members of the minorities be offered transfer to other establishments located in this region.

Part B: Article 5**5. Financial support system**

German financial support for the Danish minority is provided primarily by Schleswig-Holstein *Land*, and - to a lesser extent - by local authorities and the Federation (*Bund*). It is gratifying to note that the Federation, since 2001, has approved specific projects as eligible for federal cultural promotion. The Danish minority, for example, received a subsidy amounting to 350,000 *deutschmark* from the Federal Government (Federal Government Commissioner for Culture and the Media - *BKM*, Cultural Promotion Directorate) for alterations to the Danevirkegården Museum. For the years 2003, 2004 and 2005, the *BKM* granted an amount of 466,000 € for all-out modernisation of the Flensburg *Theater- und Konzertsaal*. It is a positive factor that the Federal Government is ready to assume - through its *BKM* - co-responsibility for the financial support of our minority. It must be noted, however, that the present arrangements are entirely dependent on whether any appropriations go to the so-called *Feuerwehrtopf* ["stop-gap (contingency) fund"]. Accordingly, what we have got here is not continuous, but random project promotion since the latter depends on the respective amounts allotted to this "stop-gap fund".

The Danish minority hopes that a fixed budgetary item for annual promotion of cultural projects within the minority will be included in the estimates. A decision to this effect would, at the same time, simplify the procedure for filing pertinent applications.

During a visit to Kiel on 29 March 2004, Ms. Weiss, Minister of State for Cultural Affairs (*BKM*), promised to have a fixed budget item included in the estimates as of 2005. At a meeting of the Contact Committee on 5 April 2004, however, we were told that a follow-up to this plan might be out of the question for reasons of administrative structure and on financial grounds.

The Danish minority understands that the Government is obliged to pursue very restrictive financial policies. For this reason, we only asked for some visible recognition of the Danish minority in the form of a budgetary item, and asserted that we quite understood the confinement of eligibility for subsidising to specific projects. Regrettably, however, there seems to be a lack of favourable disposition at the administrative level towards the requesting party. Requests for the introduction of a fixed budgetary item did not meet with the required responsiveness on the part of the administration. We are well aware of the fact that allotment of a specific budgetary item does not imply automatically granted subsidies, but [that subsidising] will depend on the nature of the given project and on the general financial/budgetary situation.

With regard to cultural promotion, the Danish minority wishes to point out that the present criteria for authorisation of appropriations in support of cultural activities are very narrowly defined because the notion/conception of 'culture' as defined in the context of those criteria does not tally with the cultural activities pursued within the Danish minority.

Unlike the German conception, the Danish notion of culture is based on a broader definition because culture, sports and church activities all interlock and overlap. Sport is not just sport, but also is a person's or group's cultural opening up; church not only means divine service, but also a wide range of cultural and club-based activities.

These examples apply to other areas as well. Thus, the minority's cultural activities go far beyond the conception of culture as defined by [the Federal Government in] Berlin.

We call upon the German Federal Government to design promotional measures for minorities in such a way that the prerequisites for the authorisation of promotional funds will be formulated in consideration of the organisational structure of the given minority and its cultural "worldview".

The efforts undertaken by the Danish minority in the cultural policy field are aimed at organising the activities within the minority with greater flexibility and more effectively. Our aim is to co-ordinate and assign the various fields of activity within the minority to the greatest extent possible. This, of course, will also have an influence on the way in which the joint financial support system will develop within the minority in the years to come. Therefore, it would be gratifying if this objective, *i.e.* internal flexibility, will not be impeded by a rigid definition of culture and by a cumbersome administrative structure.

Sydslesvigsk Forening, Sydslesvigsk Vælgerforening und Dansk Skoleforening for Sydslesvig in this respect support the Advisory Committee's suggestion that the German authorities should seek, in co-operation with the national minorities concerned, to simplify and clarify the financial support system for minority languages and cultures.

Part B: Article 5

6. Dialogue/contacts of the four recognised minorities of the Federal Republic of Germany with the German Bundestag

The Sorbian, Frisian and Danish minorities as well as the ethnic group of the Sinti and Roma have, since the spring of 2002, made focused efforts to ensure more intensive contacts of the four recognised autochthonous minorities of the Federal Republic of Germany with the German *Bundestag* and Members of Parliament. The ultimate aim is the establishment of a - more or less institutionalised - forum for dialogue for the four minorities, including contacts and exchanges with the Parliament and its Presidency. Also, the minorities strive to establish some regular presence at the *Bundestag* for maintaining contacts in the form of a Secretariat for Minorities.

In response to a letter addressed jointly by the representatives of the minorities to the President of the *Bundestag*, Mr. Wolfgang Thierse, these representatives were invited to talks with the *Bundestag* Committee on Internal Affairs in Berlin on 24 April 2002. In the course of these talks, the minorities expressed the following wishes with regard to more intensive contacts with the *Bundestag*:

- continued efforts to formulate an Article on minorities for inclusion in the German Basic Law;
- hearings with regard to legislative initiatives on minority-policy subjects;
- information exchanges between minorities and Parliamentarians; and

- negotiations on, and monitoring of, the implementation of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

In co-operation with the Chairperson of the Committee on Internal Affairs, Dr. Cornelia Sonntag-Wolgast, the four recognised minorities set up a Parliamentary Working Panel which meets once or twice every year. In connection with one of the first of these meetings, the four minorities - with great success - organised a 'parliamentary evening' gathering.

On 24 September 2003, the four recognised minorities also met with the President of the *Bundestag* (*BT*). However, the *BT* President only referred to closer co-operation between the political parties represented in the *Bundestag* and the Committee on Internal Affairs where the basic dialogue should primarily take place. He said he would follow the developments in this field, and suggested a yearly meeting. The next meeting was scheduled for autumn 2004.

The *Bundestag* Committee on Internal Affairs generally takes a positive stance in the matter. It is fully accepted that the [Government of the] Federal Republic has primary responsibility for the four autochthonous minorities. It is considered very important that minority-related issues should be seen as a matter to be addressed, above party lines, jointly by Parliament and the Government, and that therefore provision must be made for a more intensive involvement of the minorities in the work of the *Bundestag*.

The four recognised autochthonous minorities continue to pursue the aim of establishing, at the *Bundestag*, a Secretariat for the National Minorities of the Federal Republic of Germany and establishing an Inter-Parliamentary Conference on Minority Issues to discuss relevant minority-policy matters.

The last meeting of the Parliamentary Working Panel was held in June 2004. The main subjects discussed were the respective financial promotion systems of the Federation and the *Länder*. The next meeting is scheduled for November 2004.

The Danish minority hopes that the wishes of the minorities will continue to meet with a positive response with the aim of ensuring an unabatedly positive development of the Federal Republic's policy regarding minorities - both within the country and at the international level.

Part B: Article 9

7. The Danish minority and its relationship with the media

As before, the Danish minority wishes to ensure its increased presence in the media in general and in the public service media in particular. The description given in the Report of the problems involved is correct, and the Advisory Committee's request will be supported by us.

Especially after the ratification of the European Charter for Regional or Minority Languages, and given that the Federal Government has assumed responsibility for proactive minority-related policies also with regard to languages, the Danish minority uphold their request for continuous and adequate consideration being given to the

Danish language and for comprehensive presentation of the Danish minority in the media.

Since the Regional/Minority Language Charter deals with language promotion as an obligation *per se*, it is not acceptable that a questionable assessment of the importance and size of the Danish minority as a relevant group of society should be given as the rationale for such neglect of the Danish language in the media.

Similarly, the prominence given to the criterion of mandatory governmental non-intervention in the media does not carry conviction since, in the last analysis, it is the respective Parliaments which adopt the Inter-State Treaties. The obligation imposed by the Regional/Minority Language Charter on the political actors must be anchored in such instruments.

The Danish minority continues to press for negotiations with the [supervisory] broadcasting institutions (*Medienanstalten*) in order to achieve that the media will, in a practicable and adequate way, take account of the Danish language. At the same time, we expect the political actors to support these negotiations. Although any socially relevant organisation is entitled to make nominations for the election (carried out by the Schleswig-Holstein *Landtag*) of the Media Council of the *Unabhängige Landesanstalt für Rundfunk und neue Medien (ULR)*, it has once more become evident that it is very difficult for the minority to obtain a seat on the Media Council. Therefore, our minority suggests that a special status be introduced in terms of minority-related policy to ensure that the Danish minority will have a regular seat on this Council.

As regards reception of Danish TV programmes, the fact that *DR2* is not fed into the cable network continues to give cause for discontent. This is a *Land-wide* Danish TV programmes, mainly dedicated to cultural affairs, which many viewers in South Schleswig would like to watch. Therefore, the Danish minority supports the suggestion that a comprehensive expert report should be commissioned in order to find out what services are available to the speakers of minority languages in the media (radio, television, Open Channels, print media, the Internet), what deficits exist, what level of acceptance has been reached and what the prospects are for the future.

Part B: Article 10

8. Multilingualism

The obligation to promote use of the Danish language in the public sphere is generally recognised. In many areas of public life, an increasing number of initiatives promote the Danish language. Notwithstanding these achievements - which indeed are acknowledged and appreciated - it is important, time and again, to point out the obligation to promote use of the Danish language and to develop new initiatives. This, of course, also applies to the Danish minority. One of the relevant activities to achieve this objective was an initiative introduced by the *SSW* in the Schleswig-Holstein *Landtag* which decided to recognise proficiency in the Danish language as an important qualifying criterium for recruitment of staff for specific functions.

It would be desirable to give members of the Danish minority a realistic chance to use the Danish language, orally and in writing, in relations with public authorities in South Schleswig (e.g. the Revenue Office and customs authorities in the border region). We got the impression that, in the view of the public authorities concerned, the fact that most persons belonging to the minority speak German as well would obviate the need for compliance with the obligation to ensure language-related equal status.

The Danish minority requests that the Danish language be promoted also in the private social and nursing care fields and establishments. While it is correct to state that the majority of these care facilities are not provided by public-law institutions (cf. No. 471), an attempt should be made to provide incentives for developing promotion of the use of the Danish language also in these fields. The obligation to promote the Danish language throughout society in this region is a moral category at least. The Danish minority is ready to co-operate in the development of pertinent initiatives.

As stated on p. 146 [p. 139 of the translation], No. 491, also the Danish minority is interested in learning what measures have been initiated by the Federal Government in this field.

Part B: Article 13

9. Financial support for the schools of the Danish minority

As the providing body for Danish nursery schools and schools in the Schleswig region of the *Land*, *Dansk Skoleforening for Sydslesvig* fulfils public tasks deriving from both the Schleswig-Holstein *Land* Constitution and various international instruments, e.g. the Bonn-Copenhagen Declarations, the Framework Convention for the Protection of National Minorities, and the European Charter for Regional or Minority Languages. On the basis of the provisions of the Schleswig-Holstein *Land* Constitution alone, the public sector would be obliged to provide a school system for the Danish minority if such a system were not provided otherwise - as it actually is, however, by *Dansk Skoleforening for Sydslesvig*. Yet, only around 47 % of the activities of *Dansk Skoleforening for Sydslesvig* are subsidised by the *Land*. For the transport of non-local pupils, in particular, the *Land* only pays for just under 7 % of the related costs.

The principle of according equal status with publicly maintained schools - which since the mid-1980s had been the basis for subsidising - was abandoned in 1997 as a result of Budget Support Acts and changes to the Schleswig-Holstein Schools Act.

In parallel to the intensive negotiations conducted in the period May 2002 - December 2003, the provisions of the Schools Act referring to financial support for Danish schools were amended - by Budget Support Acts and last by changes to the wording of the Act - in a way that gives the impression that the Danish schools would still be granted subsidies covering 100 per cent of the costs. In reality, however, the schools of the Danish minority - on account of the linkage of subsidies to fixed reference amounts - continue to fall behind the development of publicly maintained schools. The political reasons given for these savings measures to the expense of the Danish minority can be briefly summarised as follows: "If the state and publicly maintained

schools have to make economies, the minority's schools must do the same.". While this argument is not without logic, it is based on a false conclusion: in the last analysis, rigid fixing of the respective subsidies and changes to the computational formula, etc., are asymmetric savings measures resulting, for the Danish Schools Association, in an annual shortfall in income to the tune of about ½ million euro. In the view of the Danish Schools Association, a consistent and logical approach can only be ensured by a 100 per cent formula which would - come good or bad - be linked to the costs per pupil of a publicly maintained school. In this way, the Danish Schools Association is affected, to the same extent, by both economies and increases in expenditure.

So far, the negotiations within the Working Group have not yielded any concrete results. However, the Danish Schools Association welcomes the achievement of a basic consensus on a return to the original subsidising arrangement so that there will be reasonable cause to hope for equal treatment within the meaning of the Schools Act. Expenses which, as before, are *not* compensated are costs not defined in the Schools Act, such as costs for school inspection, school psychological care and other services which - for publicly maintained schools - are provided by the *Land*, *Kreise* or local authorities.

The Schools Association faces particular problems as regards the costs incurred for transportation of non-local pupils. Under the pertinent subsidising provisions of the Schools Act, the Danish Schools Association pays for more than two thirds - instead of one third in the case of the providing bodies for publicly maintained schools - of the costs related to a [minority schools] system that is particularly cost-intensive on account of the greater distances to be covered by non-local pupils. In this respect, there is no solution in sight. And what is more, the arrangements applied so far and which are based on voluntary subsidies granted by *Kreise* and local authorities are in jeopardy. If these voluntary subsidies are discontinued for fiscal restraint reasons, the asymmetric proportion of subsidies from Germany and Denmark will increase further.

Comments by Domowina - Bund Lausitzer Sorben e.V. [Federation of Lusatian Sorbs]

on the Second State Report submitted by the Federal Republic of Germany in accordance with Article 25, para. 2, of the Framework Convention for the Protection of National Minorities

Preliminary remarks:

The draft Report by the Federal Republic of Germany on the Council of Europe Framework Convention, which was previously submitted for comment to the representatives of the minorities concerned, was discussed in detail at the Implementation Conference held at the Federal Ministry of the Interior in Bonn on 20 and 21 September 2004. Most of *Domowina's* proposals for amendment and additions were included in the Report so that a consensus of opinion was reached on these particular points. Therefore, our following comments only address items on which *Domowina's* views diverge from those expressed by the Federal Government and *Land* representatives. Notwithstanding those divergences of opinion that still exist, we express our particular thanks to all those who were involved in the preparation of the Report and contributed to the constructive talks in the context of the Implementation Conference. Overall, we view the form and process of the related dialogue [on the Charta - *sic!*] as very positive, and consequently think that it should be continued in future.

The following are *Domowina's* comments on the articles of the Convention and the corresponding sections of the Report

Part B: Article 10 - Nos. 498, 499

The subparagraph starting with "However, in view of the fact that Sorbian is spoken as a foreign language by a very small part of the non-Sorbian population, this approach ..." is in contradiction to the efforts made by the Saxon State Government to promote measures allowing for use of the Sorbian language by, and in relations with, public authorities. The letter of 21 January 2003 of the Saxon State Ministry of the Interior stated that "... while the constitutional provisions of Articles 33, para. 2, and 3, para. 3, of the Basic Law preclude general inclusion of knowledge of the Sorbian language as a qualification criterion for employment, exceptions can be made if the post to be filled so requires, *i.e.* if such qualification is part of the core competence of the prospective staff member". Further, the Ministry considers it admissible "... in appropriate cases, to include command of the Sorbian language as a desirable additional qualification in job advertisements for a post where its holder will have contact with personal callers ... provided that such inclusion is compatible with the performance principle and the right to equal eligibility for public office".

In *Domowina's* view, too little use is made of this possibility and, in most cases, citizens do not have unrestricted access [to public office].

Part B: Article 12 - section B.12.2.2.2, No. 659

The supervisory body designed to monitor the measures taken in developing education in Upper Sorbian and to draw up periodic reports on its findings - as called for by

the Advisory Committee in their "Opinion on Germany" - does not exist in this form. The required and necessary in-depth monitoring, control and reporting tasks by far exceed the work capacities available at the Bautzen Regional Schools Office. We recommend and request that expert [technical] supervision both with regard to bilingual Sorbian-German schools and concerning bilingual Sorbian-German and Sorbian instruction at other schools should be transferred by the supreme supervisory school authority to a division of the Bautzen Regional Educational Office staffed with Sorbian specialised personnel and reporting directly to the Ministry of Education and Cultural Affairs. Given the Sorbs' right to be heard (in decision-making), this division should independently regulate Sorbian school matters in consultation with the legitimate representative groups of the Sorbs and in co-ordination with the Ministry of Education and Cultural Affairs. In this way it can be ensured that Sorbian, as a regular classroom subject among the overall set of subjects covered by the breakdown of approved teaching periods, and the subjects taught in Sorbian will receive specific and practice-oriented scholarly attention and support. All documents concerning Sorbian schools and Sorbian instruction must be published in bilingual Sorbian-German versions.

Part B: Article 13 - section B.13.2, No. 706

"*Brandenburg Land* grants general subsidies which are used by the minority's institutions for specific projects."

This statement refers to the *Stiftung für das sorbische Volk* [Foundation for the Sorbian People] which provides its affiliated cultural institutions with institution-based and project-specific financial support. Children's care institutions provided by *Sorbischer Schulverein* [Sorbian Schools Association] are granted a subsidy by this Association. What the Sorbs wish, however, is that the same legal entitlement to, and the established additional expenditure for, "bilingualism" - as already included in regular practice in the Free State of Saxony - will be recognised in *Brandenburg Land* as well. It is only on this condition that the *Witaj* Project can be carried out successfully with the aim of revitalising the Sorbian/Wendish language in Lower Lusatia.

Part B: Article 14 - section B.14.2.3.2.3, Nos. 748 - 752 (749)

Comments by the Federal Republic of Germany on the Advisory Committee's "Opinion on Germany", no. 87.

The last paragraph on this page [first paragraph on p. 207 of the translation] starting with "The 'sufficient demand' mentioned in Article 14, para. 2, of the Framework Convention ..." calls for the following addition:

As regards classroom instruction available within a reasonable distance from pupils' homes, it must also be pointed out that, after the closure of the Crostwitz Sorbian *Mittelschule*, all of the pupils chose to go to the Ralbitz [Ralbicy] *Mittelschule*, which is more than 10 km away, rather than go to the nearest *Mittelschule* which is in Räckelwitz [Worklecy] at a distance of 4 km. The reasons for this can be easily explained. Apart from the Ralbitz *Mittelschule*, the Crostwitz secondary school was the only Sorbian secondary school with an exclusively Sorbian/native speaker profile. These offers - combining classroom instruction, extracurricular projects, and a Sorbian-language classroom atmosphere - do not exist at the other two Sorbian secondary schools in Räckelwitz and Panschwitz-Kuckau [Paněicy-Kukow]. We draw attention to

the fact that a number of parents and pupils brought an action against the closure of Crostwitz secondary school. They intend to go through all appellate instances up to the *Land* Constitutional Court.

Part B: Article 15 - section B.15.3, No. 814

The statement "This local self-government system ... provides ... with a wide scope for self-management" is not correct as far as the Sorbs are concerned. Also in those communities where Sorbian citizens constitute the majority population, they are not given scope for self-management and do not have a share in decision-making, for example as regards the education system. This is eloquently documented by decisions made by the respective *Landkreise* on the School Network Plan. Although local governments, *Domowina* and parents' representatives at last *did* reach a compromise at the "Round Table on Sorbian Schools", this compromise was disregarded by the *Landkreis*, and the Sorbian secondary school in Crostwitz was closed against the Sorbs' will. The local authorities themselves only have responsibility as providing bodies as regards provision of premises. Even in this respect, these authorities are subject, in their decision-making, to economic restraints, and are not free to base their decisions on minority-specific and pedagogic criteria. Similarly, the scope for promoting cultural activities is limited on account of the present tight budget situation of local authorities so that club-based activities are scarcely supported any more. The representatives of the Federal Ministry of the Interior are well aware of the on-going discussion within *Domowina* on other models of self-management of cultural and school affairs. This discussion will hot up even more in connection with the increasing fiscal restraints and the cutbacks in the funds allocated by the *Bund* to the Foundation's budget.

Part B: Article 16 - section B.16.2.1, No. 834

The impact of lignite mining in Lusatia continues to be of topical interest even after the completed resettlement of the Horno community in the bilingual settlement area. Even though no such resettlement is envisaged in Brandenburg *Land*, this problem will, before long, have to be tackled in the Free State of Saxony.

On the basis of the agreed 1993 Lignite Quarrying Plan, additional German-Sorbian communities of *Niederschlesischer Oberlausitzkreis* [Lower Silesian Upper Lusatia *Kreis*] are excavated for quarrying purposes. This is the case for the Hinterberg area in Trebendorf, the sheep-farm and development areas of Rohne and Mulkwitz. In addition, binding decisions were already made by the specification of the priority [mining] area in this *Landkreis* so that - also under the following planning procedure, starting in 2010 - a decision will be made concerning mechanical excavation [quarrying] in the communities of Rohne and Mulkwitz. This means that additional Sorbian settlement districts will be subject to resettlement. No proof has yet been furnished that appropriate promotional measures by the mining company could fully offset the negative implications of resettlement. [? (*tentative translation*) - "*Ob durch geeignete Fördermaßnahmen des Bergbautreibenden die Kompensation der negativ wirkenden Faktoren einer Umsiedlung gänzlich behoben werden können, ist nicht nachgewiesen.*"] It is a fact, though, that only about 70 - 75 per cent of the affected population take part in [grouped] resettlement and that thus approximately one quarter will leave their ethnic environment. Such losses of the ethnic community result in accelerated assimilation and thus in a significant loss of Sorbian language substance. It is for these reasons that this issue continues to be a matter of topical interest to *Domowina*.

Comments by Friesenrat Nord (Frasche Rädj) [Frisian Council]

on the Second State Report submitted by the Federal Republic of Germany in accordance with Article 25, paragraph 2, of the Framework Convention for the Protection of National Minorities

Preliminary remarks:

The *Friesenrat* [Frisian Council] welcomes the efforts undertaken by the Federal Republic of Germany in respect of the implementation of the Framework Convention for the Protection of National Minorities, and the appointment of a Commissioner for National Minorities.

The *Friesenrat* in particular welcomes the fact that the national minorities in the Federal Republic of Germany were afforded the opportunity to state their point of view regarding the aforementioned Report. The *Friesenrat* sees this as an important step towards mutual communication between the national minorities and the Federal Government.

Further, the Frisian Council refers to its "*Modell Nordfriesland*" which describes the Frisians' suggestions, requests and wishes regarding most of the subjects that are also addressed in the Framework Convention, and which also lists specific options for action.

Article 3

The Frisian Council sees the Frisians as an autochthonous ethnic group in the Federal Republic of Germany. Therefore, the Frisian Council welcomes the application of the Framework Convention for the Protection of National Minorities to the Frisians. The Frisian Council in particular welcomes the fact that the Government of the Federal Republic of Germany explicitly recognises and reaffirms this status in the Report. The Frisian Council welcomes the fact that the Federal Government laid down five objective criteria for classing population groups as national minorities, and like the Federal Government, it notes that the Frisians meet these criteria.

The Frisian Council considers that the status of the Frisian ethnic group as a national minority in Germany forms the basis for the protection and promotion of this group.

The national minority status in Germany has resulted in decisive improvements of the bases for the protection and promotion of the Frisian ethnic group since 1998 (entry into force of the Framework Convention), and this has been very noticeably reflected by the promotional measures on the part of both the *Bund* [Federation] and Schleswig-Holstein *Land*.

The Frisian Council shares the view that in Germany the national minority status, within the meaning of the Framework Convention for the Protection of National Minorities, applies to the Danes, Sorbs, Frisians, and the Sinti and Roma of German nationality.

With reference to the term "Frisian ethnic group", the Frisians suggest that it should be made quite clear that in all German legal texts in which the term "national minority" is used, this term automatically and fully includes the "Frisian ethnic group". In our view, this is necessary in order to avoid confusion of concepts.

Article 4

As regards according equal status to the majority and the minority populations in economic and social terms, the Frisian Council points out that any measures taken to promote the economy in the Nordfriesland area benefit both the majority population and the Frisian ethnic group and that, in view of Nordfriesland's structural weakness, it is necessary to step up measures aimed at promoting the economy.

Article 5

The Frisian Council welcomes the fact that the *Bund* since 2000 has provided financial support for the Frisian ethnic group. The funds provided so far are nevertheless not considered sufficient for sustained promotion of the Frisian language and Frisian culture. Also, there is constant uncertainty as regards the amount of promotional funds and the period for which such funds are granted. For these reasons, the Frisian Council recommends that in the short term a specific budget item be allocated in the Federal Budget for the promotion of the Frisian ethnic group and that no time limit be set with regard to that item. Support provided by the *Bund* for Frisian activities must, by all means, be continued also after 2006.

Also, it is noted that the Frisian ethnic group - jointly with Schleswig-Holstein *Land* (for this purpose, the *Land* allocated 1,000,000 *deutschmark* as endowment funds) - already in the early 1990s suggested that a "Foundation for the Frisian People" be set up on the analogy of the "Foundation for the Sorbian People". Both the *Bund* and Schleswig-Holstein *Land* should assume an adequate share in this project. Within the Frisian body set up at the Schleswig-Holstein *Landtag*, the Frisians took this idea up again and once more expressed their wish for a Frisian foundation.

Other important measures for promoting the Frisian ethnic group would include: extension of Frisian-language classroom instruction; bilingual signposting; or increased presence of the Frisian language in the media (on this point, cf. also the Advisory Committee's comments in their "Opinion on Germany" referring to the first State Report). As long as such basic requirements are not met, the Frisian ethnic group is not accorded equal status with the German majority population, and this would be in contradiction with the spirit of Article 5. Therefore, further considerable efforts must be made to ensure even more extensive promotion of the Frisian language.

The formally granted rights of minorities are yet another basis for according equal status to the Frisian ethnic group with the German majority population - and thus for maintaining their culture, preserving their identity and language. Apart from the Framework Convention and the European Regional/Minority Language Charter, mention of the Frisians is only included in the Schleswig-Holstein Constitution. No mention has yet been included in the Basic Law. Other legislation on this subject matter is scarcely in existence. In January 2004, a bill on Promoting Frisian in the Public Sphere (Frisian Act) was introduced in the Schleswig-Holstein *Landtag*. It may be expected that a law to this effect will be adopted by autumn 2004. The draft Act covers provisions on language use by public authorities; bilingual signs to indicate buildings and bilingual place-name signs; bilingual seals and letterheads; knowledge of the Frisian language as a recruitment criterium; and using the Frisian coat of arms and the Frisian flag [colours]. The Frisian Council emphatically welcomes the bill because the latter will help to grant more rights to the Frisians and to remove uncertainties regarding the legal situation (on this point, cf. also the Advisory Committee's

comments in their "Opinion on Germany" referring to the first State Report). The Frisian Council would like to see persistent follow-up action in this direction.

Article 9

The Frisian Council notes that Frisian language articles are only published about once per month on half a page in the Nordfriesland newspapers. The editing costs of these Frisian articles are borne by the minority itself. This situation is absolutely unsatisfactory.

The Frisian Council welcomes the efforts made by *NDR* to report on events and activities organised by the Frisian ethnic group, but notes that provision of the Frisians with Frisian-language broadcasts by public-service broadcasting stations is absolutely inadequate. Furthermore, the Frisian Council points out that a weekly radio programme of only three minutes' duration aired by the *NDR* at an unattractive broadcasting time does not suffice for fulfilling the right to media services under the provisions of Article 9. It is noted that the Open Channel in Hüsem/Husum is not an equivalent alternative, either, since - on account of its small reach - its broadcasts cannot be received in the Frisian speech area, and that the State in this way shirks its responsibilities as regards the Frisian ethnic group. The Frisian Council points out that the fact alone that Frisian exists as a minority language implies that those German nationals who belong to the Frisian ethnic group are entitled to adequate state-provided media services.

With regard to television programmes, it is noted that no television programmes are aired in the Frisian language, and this also is considered as absolutely inadequate. The Frisian Council suggests that the pertinent legal bases be created for the provision of media services to the Frisian ethnic group.

In the Frisian Council's view, the Federal Government's invocation of the rule of governmental non-intervention in broadcasting is not convincing. Minorities are *not* public institutions or parties but, instead, are groups of society whose interest (language) is not adequately attended to by the media and/or bodies which are dominated by the majority population. Therefore, this is not a matter of any direct influence on individual programmes; rather, we must ask ourselves the fundamental question as to whether the cultural plurality of public-service broadcasting is still guaranteed in this respect. Against this background, the Frisian Council suggests that the pertinent legal bases be reviewed with a view to ensuring that, in future, considerably more Frisian will be heard in programmes of the *NDR*, *Deutschlandradio* and *DLF* stations. Exemplary in this respect is the provision of media services to the Sorbian population.

Article 10

The Frisian Council suggests that all public administrations in Nordfriesland put up office doorplates showing the minority language/s spoken by the respective staff members. The experience gained with such measures so far are invariably positive.

The Frisian Council welcomes the "Frisian Act" initiative introduced in the Schleswig-Holstein *Landtag*. In January 2004, a bill on Promoting Frisian in the Public Sphere (Frisian Act) was introduced in the Schleswig-Holstein *Landtag*. It may be expected that a law to this effect will be adopted by autumn 2004. The bill covers provisions on language use by public authorities; bilingual signs to indicate buildings and bilingual

place-name signs; bilingual seals and letterheads; and knowledge of the Frisian language as a recruitment criterium. This legislation will strengthen the motivation to use the Frisian language within public administrations. Moreover, this will also contribute greatly to the minority's sense of identity.

The Frisian Council suggests that, along the lines of pertinent provisions applying to the Sorbian people, the *Bundesanstalt [Bundesagentur] für Arbeit* [Federal Employment Agency] should also include knowledge of the Frisian language as an additional qualification in the job placement process.

Article 11

The Frisian Council notes that the aforementioned draft Frisian Act also covers provisions on place-name signs and signs indicating public buildings, as well as the use of [Frisian] place-names on the headed paper of public authorities. Thus, the bill includes provisions responding to suggestions put forward by the Frisian Council with reference to the first State Report. The Frisian Council expressly welcomes and supports these visible efforts to introduce changes for the benefit of the Frisians.

During the hearing on the bill, various suggestions were put forward to the effect that bilingual topographic indications in German and Frisian should be allowed in Nordfriesland *Kreis* and on the island of Helgoland. This suggestion, too, is expressly welcomed and supported by the Frisian Council.

Article 12

The Frisian Council notes that knowledge of the Frisian language, history and culture has so far been imparted by schools only to a very limited extent. This state of affairs was confirmed two years ago when the *Nordfriisk Instituut* carried out a survey on this subject among pupils in Nordfriesland. The Frisian Council suggests that curricula must take still greater account of the Frisian language, history and culture.

Also, teaching materials should include the Frisian language. One example would be the inclusion of North Frisian place names, in addition to the German names, in the maps in school atlases. An initiative introduced to this effect now seems to meet with a positive response. The Frisian Council welcomes this development.

Article 14

The Frisian Council notes that there are no Frisian publicly maintained schools. In some publicly maintained schools, Frisian is offered as a subject and is taught on a voluntary basis for a number of year-groups [grades]. Despite some successes over the past few years, practical experience has shown that efforts to expand Frisian instruction meet with considerable difficulties. In this context, the Frisian Council welcomes the talks opened recently with the Ministry of Education, Science, Research and Cultural Affairs with the aim of providing a general framework which would allow inclusion of Frisian as a regular subject and thus would help to ensure unbroken Frisian instruction from the first until the last grade of publicly maintained schools in the North Frisian speech area. The basis for this would be that the introduction of Master's and Bachelor's courses of study for the teaching profession ensures teacher training in qualitative and quantitative terms at Kiel and Flensburg Universities, that adequate planning of classroom subjects is carried out, and that the legal bases for this are created.

The Frisian Council does not see the issue of non-local pupils as the core problem in connection with Frisian instruction at secondary schools. Much bigger problems arise from the fact that Frisian is offered as a voluntary subject, for which - unlike required subjects - no credits are earned, and that consequently participation in Frisian lessons is perceived as an additional burden.

With regard to nursery schools, the Frisian Council notes that it has been possible to achieve a positive effect thanks to the impulse given by the two previous pilot projects "Frisian in nursery school" in Söleraanj/Süderende and Risem-Lonham/Risum-Lindholm. In accordance with the related suggestion put forward in the comments on Germany's first State Report on the implementation of the Regional/Minority Language Charter, the subject 'Frisian' is now included in the syllabus of the vocational schools in Naibel/Niebüll for the training of nursery-school staff. This is the first time that qualified staff is trained in the Frisian language. In this context, the Frisian Council requests that Frisian language education offered by nursery schools must have a positive effect on the funding of children's day-care centres. This would be good policy not only from a minority-policy point of view, but also in pedagogical terms.

Article 15

The Frisian Council notes that the *Gremium für Fragen der friesischen Bevölkerungsgruppe beim Schleswig-Holsteinischen Landtag* ["body established at the Schleswig-Holstein *Landtag* to deal with matters related to the Frisian population group"] has had a significant share in bringing about that the Frisian ethnic group can submit its problems and questions directly to the *Land* Parliament and the *Land* Government. The Frisian Council welcomes the plans to set up a similar body dealing with Frisian matters also at the federal level.

Article 16

The Frisian Council notes that an in-depth discussion is taking place as regards the future structure of local authorities in Schleswig-Holstein. If, as a result, local authority associations should be formed by virtue of a law or on a voluntary basis, the Frisian Council requests that this should only be done with due regard to the interests of the Frisian citizens.

Comments by the Sater Frisian minority

on the Second State Report of the Federal Republic of Germany on the implementation of the Framework Convention for the Protection of National Minorities

The comments by *Seelter Buund* on the above State Report are as follows:

Part B

The Sater Frisian minority supports the efforts made by the Sorbian, North Frisian and Danish minorities and by the ethnic group of Sinti and Roma to establish closer contacts between the four autochthonous minorities and the German *Bundestag*.

We support the requests put forward by these minorities:

1. formulation of an Article on minorities for inclusion in the German Basic Law;
2. hearings with regard to legislative initiatives on minority-policy subjects;
3. information exchanges between minorities and Parliamentarians; and
4. negotiations on, and monitoring of, the implementation of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

Article 5: section B.5.1.7.3.2, No. 232:

"The study of the Saterland Frisian language lay primarily in the hands of a ..."

The position became vacant in October 2003 when its holder, Dr. Marron Ford, went into retirement. All efforts made by the *Seelter Buund* to retain this academic position and to fill the vacancy met with a negative response on the part of the competent Ministry.

Therefore, it is doubtful whether the considerably enlarged second edition, mentioned in the draft Report, of the Sater Frisian Dictionary can be completed.

In view of future teacher training and linguistic research, There is an urgent need for appointing a Germanist specialising in Saterland Frisian and Low German to a post at Oldenburg/Osnabrück University.

Comments by Zentralrat Deutscher Sinti and Roma [Central Council of German Sinti and Roma]

on the Second State Report submitted by the Federal Republic of Germany in accordance with Article 25, paragraph 2, of the Framework Convention for the Protection of National Minorities

Part A: section A.1

Contrary to the clear decision adopted by the Heads of State and Government at the Vienna summit in 1993, the Committee of Experts DH-MIN set up by the Council of Europe to deal with minority-related issues has failed, until this day, to submit a draft convention covering actionable rights in the cultural field for members of the national minorities. For such a convention, also a hearing of the representatives of the affected minorities before the DH-MIN committee would be required.

Part A: section A.2.1

The definition of "national minority" given in the draft State Report does not tally with the German legal definition. Under the Resolution adopted on 1 July 1993 by all parliamentary groups (with the exception of the *PDS*) of the German *Bundestag* (*Bundestag* printed paper 12/5227), a "national minority" is defined as:

"a group of persons in a State who

- reside on the territory of that state and are citizens thereof;
- maintain longstanding, firm and lasting ties with that state;
- display distinctive ethnic, cultural, religious or linguistic characteristics;
- are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; and
- are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language".

This definition was first laid down in the Council of Europe Parliamentary Assembly Recommendation 1201 (1993); recognition of this Recommendation, with regard to the protection of national minorities, is required by the European Union of all Member States (EU Agenda 2000). The Council of Europe's definition of "national minorities" does not include the criterium of "traditional/ancestral settlement area". As can be seen from the Acts ratifying the Framework Convention and the Regional/Minority Language Charter, the German Sinti and Roma have their "traditional settlement area" in most parts of the territory of the Federal Republic of Germany. The criterium of the Sinti's and Roma's "own specific settlement areas", as additionally listed in the second State Report, was deliberately *not* included by the Council of Europe in the instruments for the protection of minorities. The underlying reason was the civil-war strife in the Former Yugoslavia.

Part B: Article 3 - section B.3.1.3

The Central Council of German Sinti and Roma criticises that, even after pertinent measures had been taken in Bavaria, specific cases of inadmissible registration, by police authorities in various federal *Länder*, of the ethnicity of Sinti and Roma (are said to) have become known.

Regarding specific registration of Sinti and Roma in public-authority and police files:

Incidents after the closure of the proceedings at the Bavarian Constitutional Court show that use is being made of the abbreviation "MEM" to designate an allegedly "mobile ethnic minority" which was introduced as a substitute term to conceal the continued registration and retention of special files regarding the Sinti and Roma. Recently, the press also publishes police reports about members of a "usually vagrant [travelling] clan". The Central Council of German Sinti and Roma has asked the Federal Data Protection Commissioner to make an in-depth investigation of these and other incidents. In the following, we give some of the most serious examples:

In mid-March 2004, around 20 adult members of Sinti families from Essen (North-Rhine Westphalia) were summoned by the Essen Police Headquarters [*Polizeipräsidium*] to "appear for questioning, taking of saliva samples, and identification and registration of individual features [ID'ing]". As stated by Police Headquarters, this summons was issued on the basis of a judicial order. During the subsequent identification and registration of individual features and taking of saliva samples at the police station, the persons concerned were asked whether they were "Sinti". In some cases, it was reported that police officers had offered their view that the persons concerned "belonged to the Sinti". As stated by the Essen *Polizeipräsidium*, "written assurance was given to all of these persons concerned that the obtained molecular genetic material was analysed solely for comparative testing for the purposes of the present preliminary investigation". These data would not be passed on or recorded. This assurance obviously was not honoured: on 20 May 2004, one of the individuals concerned was stopped for a routine vehicle spot-check carried out by the Bavarian police in quite another part of Germany (in Bad Mergentheim/Bavaria). After he had handed over his driving licence and vehicle registration documents to the police officers, the latter asked him, after a brief inspection, whether he "had any problems with the police of his home town". When he said that he did not, the officers pointed out to him that he "had been ID'ed by his home town police and that a saliva sample had been taken". The officers obviously had retrieved this information from the nationwide information system.

On 21 July 2004, a square [place] in München-Neubrück was surrounded by a large deployment of police officers. All adults (25 persons) of the Sinti families assembled there for going on a joint vacation trip with caravans were taken to the police station/police headquarters for ID'ing. On the site, the officers established the identity of a 81 year-old woman who also belongs to this minority, and photos were taken of her on the spot. The woman concerned is a survivor of the Ravensbrück concentration camp while all of her family were murdered by the National-Socialists [Nazis] in extermination camps. In response to an urgent complaint by the Central Council, the München I District public prosecutor's office declared that, as stated by Police Head-

quarters, these measures had not been taken in connection with a specific preliminary investigation but had been carried out by the police authority as "preventive measures under the Bavarian Act on the Responsibilities and Powers of the Bavarian State Police". One of the persons concerned reported that he had, together with some 25 other men and women, been taken to the Munich *Polizeiinspektion* where they had to wait in a large cell. Subsequently they had been assigned to various police stations. Some of the detainees had been ill-treated by police officers. He had been locked up in a cell at another station, and his shoestrings and belt had been taken away from him. He had been locked up for about half an hour before he was taken to the ID unit. The Central Council demands that the Bavarian Minister of the Interior order immediate deletion of the ID data and photos obtained through this police action.

The registration practices are evidenced by stigmatising public reporting. To give two topical examples:

On the basis of information deliberately provided by the Investigation Group of the Offenbach Police, the daily OFFENBACH-POST on 25 May 2004 published an article entitled "*6.000 Euro gegen Fluch*" ["6,000 euro against a curse"]. The article stated that one accused woman, according to information released by the police, "obviously was a member of a usually vagrant group of persons".

An article published by MÜNCHENER MERKUR on 17/18 July 2004 and entitled "*Krimineller Familienclan*" ["Criminal family clan"] stressed that the accused persons were "Germans belonging to a 'mobile ethnic minority', as it is called in police jargon". The newly introduced abbreviation used for police registration of Sinti and Roma is "MEM", as described above.

Part B: Article 4 - section B.4.2.2.1

In the middle of this paragraph [No. 114], the term "mother tongue" should be replaced by "minority language". The minority language Romany is, besides German, the second mother tongue of the German Sinti and Roma.

Part B: Article 4 - section B.4.2.2.2

The reference, under the heading "Measures to promote equality in Bavaria", merely to Nuremberg Municipality and to the subsidies granted by it for a qualified youth worker is an incomplete account of the actual situation: The Bavarian *Land* Association of German Sinti and Roma, which represents this minority in Bavaria and is, together with its Secretariat and Counselling Bureau in Nuremberg, subsidised by the *Land* Government, gives it particular support to the members of the minority in the economic, social, political and cultural spheres of life (Art. 4, para. 2, of the FCNM). However, its current budget appropriations were reduced by 22 per cent in 2004, and as a result, its scope for activities is substantially narrowed.

Part B: Article 6 - section B.6.1.2

The Central Council calls for inclusion of a legal ban on discrimination in civil service law and media law in order to interdict designation of accused persons as members of minorities in reports by public authorities. The Central Council's proposal for this legal ban on discrimination must be addressed, in terms of civil service law, by the Federal Ministry of the Interior and, in terms of media law, by the Federal Government Commissioner for Culture and the Media (*BKM* - State Minister for Cultural Affairs).

Germany has, by more than one year, exceeded the timeline fixed by the European Union, *i.e.* 19 June 2003, for national implementation of the "EU Anti-Racism Directive" (Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin). Just as unacceptable is the fact that the draft Anti-Discrimination Act implementing the EU Directive has been kept secret so far. One of the reasons for keeping the bill secret obviously is the failure to take account, in the draft Anti-Discrimination Act, of the ban on discrimination, which the Central Council of German Sinti and Roma has requested for years in order to prevent designation of accused persons as members of a minority and which now is called for, under the EU Directive, for the public authority sector.

Also, the non-involvement of the Central Council and the organisations of other minorities in the drafting of the Anti-Discrimination Act contravenes the Council of Europe Framework Convention for the Protection of National Minorities. Article 15 calls for the "effective participation" [of national minorities] in such legislative procedures.

On 24 September 2003, the umbrella organisations of the four national minorities in Germany (*SSF, Domowina, Friesenrat, and Zentralrat*) requested the members of the *Bundestag* Committee on Internal Affairs to support the request for inclusion of a specific ban on discrimination in civil service law and media law so as to prevent, in public authority reporting, designation of accused persons as members of a minority - a practice which is likely to foment prejudices.

The Central Council now addresses this request also to the Federal Minister of the Interior, Mr. Schily, with reference to the forthcoming consultations and hearing on the legislative proposal for the implementation of the EU Anti-Discrimination Directive with a view to including the wording referring to the ban on discrimination as proposed by the Central Council.

In 1993, Dr. Simon, a former Judge of the Federal Constitutional Court, delivered the following Opinion which already at that time was supported by the Directors-General of *Deutsche Welle* and *Saarländischer Rundfunk* and by the then director of the *Bonn Katholisches Büro*:

"In accordance with Article 3, para. 3, and Article 1 of the Basic Law, reports/press releases must be worded in such a way that they will not give the impression of being discriminating and fomenting prejudices. In particular, reports on persons accused of an offence must not contain any mention that the individual concerned might belong to an ethnic, religious or sexual minority, or any reference to his/her skin colour unless there is a reasonable need for such mention or reference in view of properly un-

derstanding the reported incident. Whoever contravenes this stipulation, can be compelled to refrain from such practice and can be sued for damages."

The umbrella organisations of the four national minorities in Germany had called for such a legal ban on discrimination already in their declaration pronounced at the press conference held at the [Rhineland-Palatinate] *Landtag* in Mainz. They referred to a promise made by Minister-President Beck, *qua* Chairman of the *Länder's* Broadcasting Commission, that a meeting of the Minister-Presidents dealing with matters regarding the Broadcasting Inter-State Treaty [concluded between the *Länder*] would discuss this particular issue and then meet with the Central Council and Judge (ret'd) Dr. Simon. At the Mainz conference, the minorities' umbrella organisations recalled the historical precedent that on 7 December 1937 *Reich* Home Affairs Minister Frick issued the order to German public authorities that "in all press releases concerning offences committed by Jews, prominent mention should be made of these persons' race", which at that time had already been the regular practice of public authorities with regard to Sinti and Roma.

In the subsequent talks held on 8 January 1997 between Mr. Beck, Dr. Simon and the Central Council, the Minister-President of Rhineland-Palatinate said that he saw no problems, in terms of constitutional law, with regard to the inclusion of a ban on discrimination in civil service law. He would discuss the matter with his *Land* Ministers of Justice and of the Interior and at the Conference of Minister-Presidents. Dr. Simon pointed out to Mr. Beck that, in view of the unchanged practice followed by public authorities and the media since the publication of his Opinion in April 1993, inclusion of the ban on discrimination both in civil service law and the *Land* Press Laws not only was admissible under constitutional law, but even was a legislative must. On this point, the Minister-President said that the international instruments, signed by Germany, for the protection of minorities would have to prompt the Federation and the *Länder* to provide for measures to suppress instances of discrimination. However, to the Central Council's knowledge, this has not been followed up by any further initiatives at the level of the *Länder*.

On 26 July 2003, the "Forum against Racism" set up at the Federal Ministry of the Interior decided to refer the request for inclusion of a legal ban on discrimination in civil service law and media law to the Federal Ministry of Justice so as to ensure that this request would be taken account of in the legislative procedure concerning the Anti-Discrimination Act on the basis of the [aforementioned] EU Directive. In response to this referral, the Federal Minister of Justice, Ms. Zypries, on 5 September 2003 informed the Central Council that the "Project Group for the Implementation of the EU Equal Treatment Directives" of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth was tasked "to look into the need for implementation in a public law context" and, in this context, would surely also "take account of" our request for a ban on discrimination. This, however, obviously has not yet taken place.

In the period 1995 - 2002 alone, the Central Council of German Sinti and Roma lodged complaints with the German Press Council about a total of 381 newspaper articles containing racist designations of accused persons as "Sinti, Roma, Gypsies" or other synonyms. On 7 December 2003, the Central Council filed complaints against an additional number of 51 newspaper articles published in 2003 and containing such ethnic references. In the past, the Press Council included only less than

half of these grievances in its complaint proceedings. Of the aforementioned 51 complaints, only 14 were referred by the Press Council to the [Press] Complaints Committee which met on 10 March 2004. Without any reasons given, all other complaints were dismissed - as had already been the case also in preceding years. In almost all of these cases (about 95 per cent), such designations originated with public authorities.

With regard to the 14 complaint proceedings referring to 2003, the Press Council on 20 April 2004 informed the Central Council that the designation of an accused person as a "Roma", as published in an article entitled *"Sozial-Schmarotzer mit Porsche-Fuhrpark"* ["Welfare moochers running a Porsche car pool"] by BILD (Munich edition), had originally been given by the Munich public prosecutor's office at a press conference. As stated by the editor-in-chief's office of MÄRKISCHE ALLGEMEINE, the designation of an accused person as "Sinti or Roma" in an article published by this newspaper under the heading *"Falsche Teppichhänder unterwegs"* ["Fake carpet dealers on the road"] was not based on the newspaper's "own investigations", but was taken from the pertinent "police report". The Press Council went on to say that, as stated by the editors of OFFENBACH-POST, the designation of suspects as "Sinti and Roma" in the newspaper's article entitled *"Kinder zum Diebstahl angeleitet"* ["Children instigated to commit thefts"] was taken from "police reports". Similarly, the designation of a suspect as "Roma or Sinti" in WESTDEUTSCHE ALLGEMEINE under the heading *"Nach Schüssen: Verdächtiger streitet Tat ab"* ["After a shoot-out: suspect denies having committed the offence"] was said by the newspaper to be "based on a police report". As stated by the Legal Office of Axel Springer Verlag, designation of an accused woman as a "traveller" ["vagrant"] in the daily newspaper BILD (Rhein-Neckar and Frankfurt edition) under the heading *"Trickdiebe nehmen 95-Jährige aus"* ["Tricksters fleece a 95 year-old woman"] was based on a "police report". As stated by the newspaper TZ München, the article entitled *"Landfahrer ergaunert 260.000 Euro"* ["Vagrant conned people out of 260,000 euro"] was taken from a "press release of the Munich police".

This list could be continued endlessly back to 1995 and also for the preceding years. The newspaper editorial staffs - some of whom had been criticised by the Press Council - often cannot see why they should not use the designation of accused persons as members of a minority as long as public authorities are allowed to indulge in racism and nothing is done by the political actors for such a ban.

The most recent [third] report on Germany [CRI(2004)23] by the European Commission against Racism and Intolerance (ECRI) of 8 June 2004 states that "some media reports have continued to reveal the ethnic origin of perpetrators of crimes and suspects without this information having an objective relevance to the facts reported". ECRI criticises that "the situation in this respect has not improved". The report refers to the Central Council's criticism of the way in which the Press Council deals with complaints submitted to it.

As of December 1971, the Press Council - out of consideration for the U.S.A. and in order to avoid prejudices against coloured U.S. Americans - demanded that journalists, in reports about incidents involving U.S. military personnel, must **refrain from mentioning the race of the persons concerned if there is no compelling need for such information as regards its relevance to the facts reported** (*zwingender*

sachbezogener Anlass)." The Press Council cancelled this "prohibitory directive" in September 1988 when the Central Council demanded that the same consideration should apply to the Sinti and Roma who were much more affected by prejudices and racist attitudes held by public authorities. Instead, the Press Council adopted its "re-requesting [exhortatory] directive" 12.1 under which the designation of accused persons as members of a minority should be mentioned in cases "of importance". The revised Directive 12.1 ["Directive on Protection from Discrimination"] which entered into force in 1994, but is equally ineffective, provides that mention of a person's belonging to a minority may be made in cases where "good cause can be shown".

The Central Council included the wording of the [Press-Council's] 1971 Directive - including the criterion of "compelling need for such information as regards its relevance to the facts reported" (*zwingender Sachbezug*) - in its proposal for a legal ban on discrimination. The Press Council refuses to amend its Directive 12.1 accordingly, and in this respect is supported by the Divisions responsible for national minorities and the media, respectively, of the Federal Ministry of the Interior and the Federal Government Commissioner for Culture and the Media (*BKM*).

Part B: Article 6 - section B.6.2.1

Act to protect KZ memorial sites and other memorials

Since 1994, the Central Council has, in view of the attacks committed by organised neo-Nazis, called for the protection of KZ memorial sites, the two Holocaust memorials in Berlin and other memorial sites by the adoption of explicit legal provisions in the form of what might be termed a "Protection Zone Act" [zones where open-air meetings and demonstrations are prohibited]. A comparable "protection zones" regulation was introduced, under an Act of 1999, in Poland for the former extermination camps in Auschwitz, Majdanek and Treblinka and the other former Nazi concentration camps.

In 2000, the Central Council prepared a documentation on 110 cases of right-wing extremist outrages against KZ memorial sites since 1991.

The urgent requirement for legislation in Germany regarding a "protection zones" regulation or an Act prohibiting open-air meetings and demonstrations at specified sites was shown once more by the findings of the Offices for the Protection of the Constitution in July 2003. According to these findings, the leading right-wing extremist Mahler planned to "organise a Holocaust denial demonstration" at one of the KZ memorial sites. The helplessness of public authorities and the ineffectiveness of the existing laws as regards suppression of ultra right-wing attacks and provocative acts and of actions such as those planned by Mahler are evidenced by the fact that the Ministries can, on account of the "lack of legal powers under police law", only invoke their "domiciliary right", as stated in the circulars of the Brandenburg Interior Ministry of 29 July 2003 and of the Baden-Wuerttemberg Interior Ministry of 31 July 2003.

On 17 January 2001, the Central Council and Federal Minister of the Interior Schily discussed the aforementioned document on 110 cases of right-wing extremist outrages against KZ memorial sites, and its implications regarding adoption of a "protection zones" Act. However, the efficacy of such an act was called in question during

this discussion. Surprisingly, the information that a bill drafted by the Federal Ministry of the Interior "to amend the Act concerning Assemblies and Processions (*Versammlungsgesetz*)" was already prepared on 25 September 2000, was provided as late as on 19 February 2001 when a meeting convened by Federal Interior Minister Schily brought together the Heads of the competent Directorates of the Federal Ministries of the Interior (MOI) and of Justice for follow-up talks at the expert level. However, in order to protect Germany's prestige abroad [international reputation], the primary objective of the draft prepared by the Federal MOI was to prohibit demonstrations by right-wing extremists going through [Berlin's] *Brandenburger Tor*. On 6 April 2001, the Central Council wrote detailed comments on this draft, including proposed amendments, to which the Federal MOI did not respond, however.

At the meeting on 19 February 2001 the Central Council was only informed that the Federal MOI would seek expert opinion on the constitutional law aspects of its draft act. To this day, it is not known what has become of this intention and whether the Federal MOI submitted the Central Council's comments of 6 April 2001 to the - unnamed - expert on constitutional law.

Part B: Article 6 - section B.6.2.2

Act against racially motivated acts of violence committed by individuals or groups

The Central Council has, since 1 March 1994, publicly called for an Act against racially motivated acts of violence. Violent outrages continue to be committed by right-wing extremists against Sinti and Roma and other minorities. *Süddeutsche Zeitung* gave an account of the fire-bomb attack on a Sinti family in the Bavarian town of Tirschenreuth on 24 July 2003: The perpetrators threw an incendiary device at the car of a family with four children. In the speech given in Auschwitz-Birkenau on 2 August 2004, *i.e.* the international Auschwitz memorial day of the Sinti and Roma, the Federal Minister for the Environment, Mr. Trittin, informed the audience of night-time attacks by "bawling adolescents" on Roma families in the town of Zittau.

For effective prevention of attacks on persons of different skin colour and/or belonging to a minority, the specific offence "racially motivated acts of violence committed by individuals and groups" must be included in the Criminal Code. On behalf of the Federal Government, Mr. Körper, State Secretary at the Federal MOI, declared on 22 October 2003 that the threat posed by right-wing extremist perpetrators of violence had currently much worsened. The Federal Government's declaration of 22 October 2003 stated that "The structures in the right-wing extremist scene and the threat potential of right-wing extremism call for a reassessment of the situation; we observe a considerable rise in the number of acts of violence involving bodily injury".

The European Commission against Racism and Intolerance (ECRI) and the Geneva-based UN Committee monitoring the "International Convention on the Elimination of all Forms of Racial Discrimination", in their reports on implementation in Germany (*i.e.* ECRI's Second Report on Germany, doc. ECRI/2001/36, and UN doc. CERD/C/304, ADD 24, respectively), urged governmental authorities to make "intensified efforts" to penalise, "explicitly by virtue of a law", any racist act of violence.

In 2000, Brandenburg *Land* submitted a motion in the *Bundesrat*, cf. *Bundesrat* printed paper 577/00, regarding a "Bill on improving the fight against right-wing extremist acts of violence and other extremist criminal offences".

The reasons given in support of the bill were that, in most cases, "the existing legal instruments" provided an "inadequate basis for convicting such offenders": these instruments "do not reveal that such crimes are motivated by contempt for human beings, often are committed with brute force, and nearly always are perpetrated by groups". (Cf. *Bundesrat* printed paper 577/00) The bill was referred to the *Bundesrat* Committee on Legal Affairs on 29 September 2000; by letter of 21 May 2002, the Committee's office informed the Central Committee that since 29 January 2001 "these deliberations had been deferred at the request of Brandenburg".

The talks held by the Central Council of German Sinti and Roma on 19 December 2003 and 12 March 2004 with the President of the *Bundesrat*, Mr. Althaus, and other *Land* representations so far have not resulted in any further steps taken by either the *Bundesrat* or its Committee on Legal Affairs. Talks held by the Central Council over the past two and a half years with representatives of the Federal Ministry of Justice and of the *Bundestag* parliamentary groups of the SPD and the FDP and, last on 17 June 2004, with the CDU/CSU parliamentary leader, Dr. Angela Merkel, have - to our knowledge - not yet resulted in any initiatives aimed at adopting such an act against right-wing violent offenders. It is not acceptable that the only response/follow-up should be the promise made by specialised divisions of the Federal Ministry of Justice on 9 April 2002 *vis-à-vis* the Central Council, *i.e.* that the matter would be "reviewed".

The number and the grave nature of such acts of violence urgently call for pertinent legislation. On 6 March 2003, under the heading "*Rechte Gewalttäter töteten 99 Menschen*" ["Right-wing violent criminals killed 99 victims"], the newspaper *Frankfurter Rundschau* reported that, since Germany's re-unification [in 1990], at least 99 persons - probably even more - had lost their lives through violence committed by right-wing extremists motivated by contempt for human beings. This had been established by joint investigations carried out by *Frankfurter Rundschau* and the Berlin newspaper *Tagesspiegel*.

The Central Council pointed out that, in most cases, racist violent offences committed by small groups or only two or three individuals cannot be classified as an offence defined as "breach of the public peace" because a constituent element of the latter is that an act of violence is perpetrated "in a *crowd*". Often, courts will consider alcohol consumption and a "troubled youth" as circumstances in favour of accused thugs charged with "(grievous) bodily injury" or "manslaughter [bodily harm with fatal outcome]" while - as the law stands - fellow-travellers and assistant agitators will even get off unpunished. By filling this gap in the legal provisions on criminal liability for such particularly dangerous acts of violence, the legislator would also set a public signal that the campaigns to bait and persecute minorities and acts of violence committed against them in the streets of Germany and elsewhere will no longer be tolerated.

Part B: Article 9 - section B.9.1.2.3

The Director of the Rhineland-Palatinate State Chancellery on 22 February 2004 informed the Union of German Sinti and Roma / Rhineland-Palatinate *Land* Association that the *Land* Government planned to improve the participation of the *Land* Association of German Sinti and Roma by giving it a seat on the Assembly of the future *Landeszentrale für Medien und Kommunikation* (the control body for private media). To this end the *Land* Government, in the context of the revision of the *Land* Media Act, included the provision "that the *Land* Government renounces its seat on the board and that the latter is allocated to the *Land* Association of Sinti and Roma". The *Land* Media Act was agreed by the Council of Ministers of Rhineland-Palatinate *Land* on 10 February 2004 and is now before the *Land* Parliament.

Upon request by the **Central Council of German Sinti and Roma**, this part of the State Report additionally includes the Central Council's **press release of 14 October 2004, issued to the press in Bavaria, current affairs and political desks**

President Rose calls upon Minister Beckstein to correct statements in the State Report

Today, in a letter addressed to the Bavarian Interior Minister, Mr. Günther Beckstein, the President of the Central Council of German Sinti and Roma, Mr. Romani Rose, called upon the Minister to delete an incorrect statement by Bavaria on registration of Sinti and Roma from the draft of Germany's new State Report to the Council of Europe on the implementation of the Framework Convention for the Protection of National Minorities. Since the Central Council criticises continued registration, under new synonyms, by the police authorities in Bavaria and other *Länder*, Mr. Beckstein's Ministry wishes to include the following two sentences in the State Report:

Use of the abbreviation "MEM", allegedly to designate a "mobile ethnic minority", which is said to have been introduced as a substitute term for "Sinti/Roma type", has not been introduced by the Bavarian State Ministry of the Interior, nor have any such cases become known. In connection with the discontinuation of the ethnic designation "Sinti" or "Roma", the police authorities in Bavaria were ordered not to use any substitute designations, either.

... Mr. Rose said that Mr. Beckstein had to delete this statement from the State Report, which is prepared by the Federal Ministry of the Interior, because it "is not the correct truth, but misleads the Council of Europe and the general public" because Mr. Beckstein, in a letter of 8 February 2002 to Mr. Rose, confirmed the substitute designation quoted by a Nuremberg newspaper by stating in his letter that "the police had used the designation 'mobile ethnic minority' ... at a press conference held at Mittelfranken police headquarters". Instead of ordering the police authorities to omit any substitute designations, as claimed in the sentences quoted above, Mr. Beckmann at that time wrote that he had "asked for utmost sensitivity in terminological usage". The Director of the State Chancellery, Mr. Walter Schön, on 2 May 2003 informed the Central Council's President, Mr. Rose, that Mr. Beckstein's Ministry had now "modified" - but not abolished - the minority-specific designation. On the basis of a police report, a Munich newspaper on 17 Juli 2004 reported that the accused persons were "Germans belonging to a 'mobile ethnic minority', as it is called in police jargon".

... The Council of Europe Committee of Experts [*sic!* - Advisory Committee] for the Framework Convention for the Protection of National Minorities already on 1 March 2002 criticised the Bavarian State Government for the continued practice of specific registration of Sinti and Roma. Germany, with Bavaria's consent, signed the Framework Convention in May 1995 with reference to the protection of the Sorbian, Frisian and Danish minorities and the German Sinti and Roma. Its Article 3 prohibits any state-ordered registration of citizens *qua* members of a minority.

Comments by Sinti Allianz Deutschland [SAD]

on the draft Second State Report submitted by the Federal Republic of Germany in accordance with Article 25, paragraph 2, of the Framework Convention for the Protection of National Minorities

A General comments

1. On behalf of the associations and groups of German Sinti represented by it, the registered association *Sinti Allianz Deutschland e.V.* (in the following referred to as **SAD**) welcomes the efforts made by the Federation and the *Länder* to provide favourable conditions for the preservation of the culture of the German gypsies by adopting protective provisions and promotional measures. SAD further welcomes the readiness shown by the Federal Government and many *Land* Governments to take note of the specific aspects of the Sinti's culture and the resultant inherent necessities and to include pertinent observations in the State Reports. Also, over the past years, the contacts between the Government and SAD have gradually been intensified. As a result, the positions of the respective other side are better understood. SAD thanks the Presidents of the German *Bundestag* and of the *Bundesrat*, those members of the German *Bundestag* and the *Bundesrat* who take an interest in this subject matter, and the Parliaments of various *Länder*, the Federal Government and the *Land* Governments for the widening co-operation.

2. SAD was *not* founded in order to establish, for personal or other reasons, a 'rival' organisation competing with the Central Council of German Sinti and Roma. Our umbrella organisation was founded by its constituent associations and representatives of clans/tribes only after a long period of watching and weighing the pros and cons until it emerged from the comments and activities of the Central Council of German Sinti and Roma that the Central Council did not take account of the basic positions regarding the Sinti culture of a large segment of the German gypsy population. This meant that this group of German gypsies did not have a mouthpiece for presenting its positions in public. The independent associations that were already in existence only managed to make themselves heard at the regional level. For this reason - especially during the phase of increased protection afforded to national minorities and ethnic groups and the discussion of the concept for implementing the Regional/Minority Language Charter - it became absolutely essential to ensure representation, at the federal level, of those associations which until then had not been given a hearing. However, it should also be pointed out that the majority of the German gypsy population are not organised in associations of this ethnic group but until this day discuss matters of their traditional culture, language and identity only within their family clans. Therefore, the involvement of tribal elders is of major practical importance to our umbrella organisation. Thus, SAD must not be seen as an organisational rival of the Central Council of German Sinti and Roma, but rather as a platform for presenting basic policy positions differing from those taken by the Central Council of German Sinti and Roma. In particular, we find it regrettable that the Central Council of German Sinti and Roma in public monopolises the mouthpiece function in all matters concerning the German gypsies.

Among the German people, this impairs public esteem of the German Sinti and Roma as an integral part of our overall community because it makes people doubtful

about our minority's democratic capacity. These observations by no means are intended to detract from the Central Council's achievements regarding its successful efforts pursued in the period after its founding with the aim of drawing the public's attention to the many problems encountered by the German gypsies in society. But the Central Council's biased association-oriented policies and its refusal to consider the views of those gypsies who have a traditional perception of their identity, and of other Sinti and Roma and to develop a common approach in terms of association-related policies finally led to the foundation of SAD.

3. The *Sinti Allianz* notes with satisfaction that now *all* of the organisations of German gypsies that are included in the State Report agree to the view - expressed by SAD over the past years in policy papers and comments and, in particular, at Implementation Conferences - that, under the millennia-old culture and legal system of our ethnic group, the language may be passed on only orally, and in the private sphere, by the families and other clan members to the next-born generations. However, this generally accepted principle is called in question when at the same time thought is given to using the Sinti's language outside the family sphere and the ethnic community. The majority of German gypsies do not want to have a written form developed and used in public, e.g. in relations with judicial authorities, in the education system or at the administrative level, because this would violate the cultural precepts of this ethnic group.

4. SAD regrets, however, that the reports published so far by the Federal Government consistently referred only to the comments of the Central Council of German Sinti and Roma while SAD's views in most cases were not included but were only reflected in the reports under references to "(and) other associations" or "other organisations". In our view this failure to adequately take account of our position is also evident as regards supraregional and regional fields of activities, about which we provided specific information to the Federal Government. However, we hope and expect that the final draft of this State Report will clearly state our organisation's basic position on the various subjects by explicit reference to the *Sinti Allianz Deutschland*.

5. In many instances, the Federal Government's Report refers to the institutions established by the minorities and ethnic groups in order to practise self-management and to provide the scope for designing their own activities for the preservation of their ancestral identity, their language, culture and own value system. In this respect, it must be emphasised that, from among those many and various structures set up throughout the country, only the Central Council of German Sinti and Roma and its *Land* associations have been granted financial support by the Federation and the *Länder*. In addition, a certain number of independent organisations working within one particular *Land* were granted funds by the respective *Land*. So far, the activities of SAD and its affiliated associations have not been supported by the Federation or the *Länder*. Applications for funding will be filed as of 2005 by SAD and its affiliated associations.

6. Among all state-sponsored promotional measures to support the German gypsies' self-management, the considerable funding for the Documentation and Cultural Centre of German Sinti and Roma in Heidelberg deserves particular mention. In this respect, it must be pointed out once again that only the associations, clubs and individuals affiliated with the Central Council of German Sinti and Roma can work and

co-operate with this important Centre. Associations affiliated to SAD have so far been denied involvement in the Centre's activities. Verbal attacks by officials of the Central Council and the Centre and written comments to this effect, which were released to the general public, have very clearly shown that the *Sinti Allianz* as an umbrella organisation is not welcome, either, to take part in the activities of this Centre. In our view, one of the most important tasks is that the entities funding this work - the Federal Government and Baden-Württemberg *Land* - ensure that every German gypsy who can make a useful contribution to this work - *i.e.* including SAD *Land* associations and their umbrella organisation - will be involved in, and contribute to, the Centre's activities. Thus, state-imposed conditions/requirements should give other gypsy unions and associations equal rights regarding participation in the shaping of, and decision-making on, policies and programmes. If it should not be possible, in view of the close linkup, in personnel terms, between the Central Council and the Centre, to include these rights in the present structure, consideration would have to be given to changing the legal form of the Documentation and Cultural Centre, e.g. transforming the Centre into an independent foundation.

B Policy-related comments on 'education and language'

1. As regards education, it is imperative that full account should be taken of the indisputable fact that the Sinti's culture and language are, on principle, centred on the community. In our view, therefore, the preservation of this culture and language can only be ensured in future if measures and projects in the field of education are oriented towards larger groups - such as a number of family clans or even tribes - rather than to individuals. Cases in point would be, first, to implement housing projects for Sinti families to avoid that individual families live in isolation and, second, to establish a larger number of encounter centres in towns and cities, where gypsies can jointly express and experience their culture and can have their cultural festivities and perform their ritual acts.

2. Irrespective of the fact that school-based measures referring to the language or culture would contravene the Sinti's cultural legal system, it is our experience that individual measures - such as in-school language courses in the Sinti's *Rommenes* language (*Sintetikes*) or supplemental Romany-language instruction for children and adolescents - are not practically feasible: For those children who grow up in families where Romany is no longer spoken, this language will, notwithstanding language instruction, always remain a foreign language. Also, it would seem unlikely that such pupils could get language practice for lack of opportunities to use the language. Since *Rommenes* (*Sintetikes*) is not spoken outside the family, youngster often do not have an incentive to learn this language. Our experience shows that in families where the parents do not speak *Rommenes*, even those children who learn the language by taking lessons cannot use it in practice since the members of the Sinti community refuse, for cultural reasons, to communicate with such 'taught' speakers of Romany in the native language because, as a rule, loss of the mother tongue also implies loss of the knowledge of the Sinti's taboo system, which is rooted in the Sinti culture, and of the related avoidance rules, precepts and prohibitions. These are intra-community, millennia-old (cultural) laws that govern the Sinti's social and physical life. Infringement or flouting of these cultural laws of the Sinti community are

severely punished within the family clans; such sanctions can even include expulsion from the Sinti community. In our view, therefore, it would be expedient to achieve enhancement of proficiency in the language of our ethnic group by improving the external conditions for the existence of these family structures. Promoting the shared life and cohesion of such families can also help to counter assimilation problems and loss of culture.

3. Moreover, implementation of the Central Council's proposal that external gypsy teachers should teach members of the minority in the *Rommenes* language would, as a first step, require scientific study and recording of the language as well as standardisation so that teaching materials could be provided and teachers be trained. The language of the Sinti (*Sintetikes*) has no written form, and consequently, no literature exists in this native language. An example [of the opposite approach] is provided by the Roma in [the Austrian federal state] Burgenland who, in co-operation with Graz University, carried out a project to develop a written form of the language. However, as is also stated in the draft Report, the Sinti do not want to have such a written form. Also, in the case of a language that is passed on orally, development of a written form would have the negative effect that the regional variations of *Rommenes*, which are influenced by the respective local dialect and which in most parts of Germany are a living language, would have to compete with an artificial language used by what we call "repatriates to the speech community" or with the family language. Which of the languages would be eliminated in the process has been brought home to everyone by the competition of the "standard German" language as used in classroom instruction and the dialectal variations of German. Since traditional *Rommenes* as a "second language" in the German national community does not - in practical respects - entail any disadvantages in society, we cannot see why the traditional variants should be sacrificed in favour of a not yet validated schooling concept.

4. There are still other reasons to object to the plans to have external teachers provide Romany-language classroom instruction: Since identification with a minority or ethnic group is free, declarations to this effect must not be verified so that interested non-Sinti would have to be allowed to take part in such language courses. This ultimately implies that any child or adolescent and any participant in adult education courses could have access to language instruction in Romany (*Sintetikes*). Finally, in times of poor employment perspectives, training of "Romany teachers" might - unknowingly - be offered to persons not belonging to our ethnic group. This, too, is undesirable in the view of all organisations of German gypsies, as can also be seen from the draft Report. Therefore, in SAD's view, imparting the mother tongue *Rommenes* is the exclusive responsibility of the families and family clans of the Sinti community, and SAD wishes to stress the fact that any form of instruction in the mother tongue would collide with the Sinti's cultural legal system.

C Comments on specific sections of the draft Report with regard to the respective articles of the Framework Convention

In order to keep its comments within manageable proportions and to avoid duplication to the greatest extent possible, *Sinti Allianz* only comments on selected passages of the draft of the German State Report.

Part A: **section A.3.5.4** - first paragraph [? No. 49]:

It must be said, though, that these associations - also in view of the weakening of the Sinti culture and language as a result of persecution - expect state support for developing private infrastructures to be used for joint activities within the ethnic group for the preservation of their culture and language.

Part B: Article 5 - **section B.5.1.6.3**, para. 9 [No. 179, penultimate indent]:

As regards the "Round Table on National Minorities" established at the German *Bundestag*, SAD regrettably had not been invited to a number of discussions of this forum; specifically, the *Sinti Allianz* had not been invited to attend, among others, the meeting with the President of the *Bundestag*, Mr. Thierse, in autumn 2003. We expect that this matter has been settled in the course of the contacts taking place in the meantime and that in future SAD will, just as the other umbrella organisations of all national minorities and autochthonous ethnic groups in Germany, be invited to the Round Table talks. SAD asks the Federal Government to bring its best influence to bear so that SAD will be able to bring the interests of those German Sinti as are represented by it to the attention also of this forum and that Members of Parliament will have a basis for forming their own opinion about the related problems and problem-solving proposals.

Part B: **section B.1.7.4.1** [? B.5.1.7.4.1, Nos. 233 *seqq.*]:

With reference to this section, it must be pointed out once more that SAD so far has not received any state-provided promotional funds and that the associations and groups affiliated to SAD do not have any possibilities, either, to take part in the activities of the Documentation and Cultural Centre.

Part B: **section B.5.1.7.4.2:g** [Nos. 244 *seqq.*]

In this context, the Central Council of German Sinti and Roma is in favour of employing teachers belonging to this minority for supplementary lessons in the mother tongue for children of the Sinti and Roma and offers to have the Documentation and Cultural Centre co-ordinate such initiatives regarding individual families. Irrespective of the fact that this task, too, is considered by SAD (cf. No. B.12.2.2.4 of the Report) to be the exclusive responsibility of the family and other clan members, we take the view that the Central Council of German Sinti and Roma and the Documentation and Cultural Centre must not be allowed to monopolise these issues, but that other organisations and individual family initiatives should be involved as well, if they so wish. Also questions as to who should teach such lesson in what way and how further details can be discussed and arranged with the locally responsible school administrations should be dealt with decentrally in the given place where such demand is notified.

In this respect, it should also be pointed out that, in the entire education system, German gypsies are entitled to qualified state-examined teachers in the same way as other citizens of our country and the nationals of other countries who are permanently resident in Germany. It would not be justifiable and acceptable to lower the qualification standard applying to teachers for Sinti in such a way that persons without

teacher training and teaching skills would be allowed to teach. Second-rate or even third-rate educational offers for gypsies would - also with regard to afternoon lessons - contravene the spirit of the Framework Convention and would tend to create a conflict for the participating Sinti and Roma children as regards the classroom atmosphere in the morning and in the afternoon, respectively.

In the interest of preserving the culture, we plead for setting up an all-*Länder* body of experts composed of different associations and representatives of the clans/tribes of German gypsies. This body should advise state and local authorities and agencies. On the one hand, it should provide information on whether applications for projects are filed by and for members of the ethnic group and whether teachers coming from the Sinti and Roma are to be employed for these projects, and on the other hand, it should give advice on whether the projects might involve problems relating to the preservation of the ancestral culture and language. Our practical experience at the local level shows that state and local authorities often are not up to handling these matters for lack of specialist knowledge and practical experience.

As regards the sub-section 'Specific promotional measures taken by the *Länder* for the Sinti and Roma', it should be noted that SAD's member associations and groups so far have not received any *Land* funding but finance their activities exclusively with private funds.

Part B: Article 6 - **section B.6.1.2.2**, para. 13 [No. 302]:

The *Sinti Allianz* shares the Federal Government's view and in addition points out that the problems of some socially disadvantaged families or children from problematic families must not be used as a gauge for judging the entire population of German gypsies. This is not a specific problem of gypsies but rather concerns individual members of socially disadvantaged classes mostly living in general problem areas and who are also found among the majority population.

Part B: Article 10 - **section B.10.1.3** [No. 487]:

In this respect, however, it must be emphasised that, while state-provided funding of the Documentation and Cultural Centre has indeed established an important platform where the *Rommenes* (*Sintetikes*) language can also be used within the ethnic group outside the family, the affiliated organisations and members of the SAD are excluded because so far they have not been given any access whatsoever or scope for participation. The terms of reference of the Documentation and Cultural Centre describe activities designed to benefit the entire national minority or ethnic group of German gypsies. Consequently, it must be assured that this Centre caters to the interests of all groups, and not exclusively to those of one particular group (association).

Part B: **section B.10.2.2.3** [Nos. 542 seq.]:

As regards use of the *Rommenes* language in relations with public authorities, cf. our policy-related comments in section B above. It should be added that SAD, from the point of view of the German Sinti, does not see any need for using Romany in relations with public authorities. All Sinti, being part of the German people, understand and speak German even though this might not always meet the academic level of standard German. Contacts, in the ancestral Romany language (*Sintetikes*), with a

staff member of a public authority or with a police officer who is an ethnic Sinto or Sintessa - if any Sinti are actually employed in public service - would, on the one hand, violate the Sinti rules if colleagues belonging to the majority population are present and, on the other hand, might make those not understanding the language suspicious of what is being said. This would not be in the interest of any Sinto or Romm, whether employed with, or a visitor to, the given public authority. In this respect, our situation is, on account of our culture, different from that of the Danes, Sorbs and Frisians. In our case, there is no need to weigh the factors that would be most useful to the community and its language.

SAD sees no need for German Sinti to turn to the counselling bureaus mentioned in the Report for help with linguistic problems in communicating with administrative authorities. Communication in German does not pose any problems to German Sinti who have, as part of the German people, grown up with this language.

Part B: Article 12 - **Section B.12.1.2.2.1**, para. 3 [? No. 583]:

As regards the problem of Sinti teachers who did not take the state examination for teachers, cf. our detailed comments under section B above.

Part B: Article 12 - **Section B.12.1.2.2.1**, para. 11 [? No. ...]:

The widening of the remit of the Documentation and Cultural Centre and the additional inclusion of educational matters impose the increasingly urgent need for ensuring that all relevant organisations of German gypsies can take part in the Centre's activities. If this is not ensured, there would be cause for deep concern that in this field a monopoly might develop which would be defined by one organisation only and its basic attitude and that work alternatives would be dismissed without prior consideration.

Part B: **section 12.3.2** [Nos. 632 *seqq.*]:

The position taken by German gypsies regarding state-sponsored or general research on the culture, language and identity of German Sinti was already correctly stated by the Federal Government in the first State Report on the Framework Convention and does not call for any additional comments on our part. However, SAD anticipates problems in the event that the Documentation and Cultural Centre would deal with related research activities. The majority of the Centre's academic staff, who would also be responsible for research, are not members of the ethnic group of Sinti. How will their research findings be handled once these scholars leave the Centre? Who decides on the publication of research findings regarding the Sinti culture and the *Rommenes* language, which would constitute a breach of cultural taboos?

Part B: **section 12.3.2** [No. 692]:

SAD and surely most German gypsies are aware of the importance of having a good school education and vocational training as a stepping stone to personal success in life and good future prospects for the next-born generation. In this respect, it is up to all organisations in the country, which are in contact with families and young people, to work towards ensuring regular school attendance and solid vocational training, and

this not only with regard to German gypsies. Our experience shows that, apart from problematic families from a socially troubled environment, the number of Sinti having completed secondary modern school or secondary technical school [*Realschule*] and an apprenticeship or graduated from a grammar school [*Gymnasium*] is not less than the respective figure for their neighbours in their residential area, *i.e.* ethnic Germans not related to Sinti. However, cultural conflicts are encountered in those cases where an apprenticeship place is offered outside the region of the family's residence because in Sinti families with a traditional lifestyle all family members live together and it is not the common practice to let youngsters live outside the family community. Also, it is feared that such adolescents might, under outside influence, withdraw from the ancestral cultural community. This also is the reason why only a very small number of Sinti living outside university towns take up higher education studies which would require them to leave their home for an unfamiliar town and an unfamiliar community-life environment. All unions and associations dealing with these issues are urged to help, through family clans and other community elements, with striking a balance between the wish to attend a university and the traditions of community life, without excluding young Sinti from better education.

Part B: Article 14 - **section 14.2.3.4** [Nos. 785 *seqq.*]:

On this point, it must be emphasised that the children of German Sinti *generally* - and not just "usually" - have a good command of the German language. While there surely are educational differences regarding language proficiency, there is no Sinto/Sintessa without a good command of German since he/she has grown up and lived for all his/her life in this speech community while retaining his/her Sinti identity.