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

**OPINION ON POLAND  
(adopted on 27 November 2003)**

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## **EXECUTIVE SUMMARY**

Following the receipt of the initial State Report of Poland on 10 July 2002 (due on 1 April 2002), the Advisory Committee commenced the examination of the State Report at its 15th meeting, on 9-13 September 2002. In the context of this examination, a delegation of the Advisory Committee visited Poland, on 14 to 17 April 2003, in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee adopted its opinion on Poland at its 18th meeting on 27 November 2003.

Poland has in many respects made valuable efforts to support national minorities and their cultures, including through certain sectoral legislative provisions in such fields as the educational and electoral systems and through the recent adoption of the Programme for the Roma community in Poland.

Although the legal and institutional framework protecting persons belonging to national minorities is fairly well developed in some areas, it lacks overall coherence and contains important shortcomings. This is particularly the case for the use of minority languages in relations with administrative authorities, as well as the display of traditional local names and other topographical indications in minority languages. In these areas, legislative guarantees are needed as a matter of priority. The adoption of a comprehensive law on national minorities could ensure legal coherence and address the issue of limited state support for national minorities in practice.

Poland should pursue the efforts made to solve the issues linked to monuments and cemeteries affecting many national minorities including Germans, Ukrainians, Jews, Lemks and Karaites. These efforts should be made in a spirit of tolerance and intercultural dialogue and in consultation with those concerned. The same applies to demands by many national minorities, including the Ukrainians, Slovaks, Armenians, Russians and Belarusians with regard to the setting up of and support for cultural centres, museums and libraries.

Despite regular radio and television broadcasts in a number of minority languages, the Advisory Committee finds that there is scope for improvement in the media sector, especially concerning additional radio programmes and geographical cover of broadcasting for dispersed national minorities. Greater attention should also be paid to involving more consistently persons belonging to national minorities in the preparation of programmes intended for them.

Notwithstanding the existing legal guarantees and the many opportunities available to persons belonging to national minorities for receiving instruction of/in their languages as part of the public education system, there is reason for concern about the threats of closure of a number of Lithuanian schools. It is thus important that all means of maintaining these schools be explored in consultation with those concerned.

Despite efforts by the Government, there remain problems in the implementation of the Framework Convention as concerns Roma. Consultation with the Roma is crucial for the successful implementation of the newly adopted Programme together with further action to address acts of discrimination and ensure equal opportunities for access to education.

While participation in public affairs at local and regional level is satisfactory, there is a clear need to reinforce participation of persons belonging to national minorities at national level.

## **I. PREPARATION OF THE CURRENT OPINION**

1. The initial State Report of Poland (hereinafter: the State Report), due on 1 April 2002, was received on 10 July 2002. The Advisory Committee commenced the examination of the State Report at its 15<sup>th</sup> meeting, on 9 - 13 September 2002.
2. In the context of this examination, the Advisory Committee identified a number of points on which it wished to obtain fuller information. A questionnaire was therefore sent to the Polish authorities on 30 October 2002. The Polish Government replied to this questionnaire on 12 February 2003.
3. Further to an invitation from the Polish Government, and in accordance with Rule 32 of the Committee of Ministers' Resolution (97)10, a delegation of the Advisory Committee visited Poland from 14 to 17 April 2003 in order to obtain supplementary information from representatives of the Government, NGOs and other independent sources on the implementation of the Framework Convention. In preparing this opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations, NGOs and other independent sources.
4. The Advisory Committee subsequently adopted this opinion at its 18<sup>th</sup> meeting on 27 November 2003 and decided to transmit it to the Committee of Ministers<sup>1</sup>.
5. The present opinion is submitted pursuant to Article 26 (1) of the Framework Convention, according to which, in evaluating the adequacy of the measures taken by the Parties to give effect to the principles of the Framework Convention, "the Committee of Ministers shall be assisted by an advisory committee", as well as pursuant to Rule 23 of Resolution No. (97) 10 of the Committee of Ministers, according to which the "Advisory Committee shall consider the state reports and shall transmit its opinion to the Committee of Ministers".

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<sup>1</sup> The Advisory Committee decided, at its 12<sup>th</sup> meeting on 30 November 2001, to introduce certain changes to the structure of its opinions. It decided to discontinue the practice of submitting a "Proposal for conclusions and recommendations by the Committee of Ministers" (Section V of the earlier opinions) and to introduce a new Section IV, entitled "Main findings and comments of the Advisory Committee". The Advisory Committee also decided to submit its "Concluding remarks" in Section V instead of Section IV. These changes are effective as from 30 November 2001 and they apply to all subsequent opinions adopted in the first monitoring cycle. These changes have been made in the light of the first country-specific decisions on the implementation of the Framework Convention adopted by the Committee of Ministers in October 2001.

## II. GENERAL REMARKS

6. The Advisory Committee welcomes that the Polish authorities consulted representatives of national minorities<sup>2</sup> during the preparation of the State Report. It also warmly welcomes that the authorities included in an appendix to the State Report the remarks of representatives of national minorities which were not incorporated in the State Report and provided reasons for adopting this approach. The Advisory Committee observes that the State Report is detailed as to existing legislation, but gives little information about state policy and relevant practice.

7. The Advisory Committee notes that additional information and useful clarifications were obtained from the Polish authorities' written reply to its questionnaire and the meetings during the visit, which took place in Cracow and Bialystok as well as Warsaw. The Advisory Committee considers that the visit organised at the Polish Government's invitation provided an excellent opportunity to have a direct dialogue with various sources. The information from the Government, the Ombudsman (Commissioner for Civil Rights Protection) and representatives of other sources, particularly national minorities, proved invaluable, notably with regard to implementation of the relevant provisions in practice. The Advisory Committee notes the spirit of co-operation shown by Poland throughout the process which led to the adoption of the current opinion.

8. Although persons belonging to national minorities seem generally to be familiar with the Framework Convention, the Advisory Committee nevertheless encourages the Polish authorities to take further measures to improve awareness of the Framework Convention, its explanatory report and the rules concerning its monitoring at international level, including through the publication and dissemination of the State Report and other relevant documents.

9. The Advisory Committee notes that the system for protection of national minorities in Poland appears to be closely linked to bilateral agreements with neighbouring countries. This approach is reflected, in particular, in the State Report and in the text of the declaration contained in Poland's ratification instrument (see related comments under Article 18 below).

10. The Advisory Committee notes with satisfaction that in recent times, the necessity to pass a comprehensive law protecting national minorities has gained ground and this option now seems to be the option preferred by the authorities. Such a law could be instrumental in filling existing gaps in the legal and institutional framework pertaining to national minorities and would be an important signal by the State of its commitment to national minorities in Poland.

11. An extensive process of decentralisation has taken place in Poland in recent years. In accordance with the subsidiarity principle, many functions are now performed by regional and local authorities, in particular the municipalities as regards matters - such as education - which are particularly relevant for persons belonging to national minorities. Hence the Advisory Committee considers it important that the central authorities provide the local authorities with the necessary assistance - financial, technical or other - so that they can properly perform their new functions as regards protection of national minorities.

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<sup>2</sup> It is pointed out that under Polish law, a distinction is made between "national" and "ethnic" minorities (see paragraph 20 below). In the current opinion the term "national minorities" covers these two categories.

12. In the following part of the opinion, it is stated in respect of a number of articles that, based on the information currently at its disposal, the Advisory Committee considers that implementation of the article at issue does not give rise to any specific observations. The Advisory Committee wishes to make clear that this statement is not to be understood as signalling that adequate measures have now been taken and that efforts in this respect may be diminished or even halted. Indeed, the Advisory Committee considers that the nature of the obligations of the Framework Convention requires a sustained and continued effort by the authorities to respect the principles and achieve the goals of the Framework Convention. Furthermore, a certain state of affairs may, in the light of the recent entry into force of the Framework Convention, be considered acceptable at this stage but that need not necessarily be so in further cycles of monitoring. Finally, it may be the case that issues that appear at this stage to be of relatively minor concern, prove over time to have been underestimated.

### III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1-19

#### Article 1

13. The Advisory Committee notes that Poland has ratified a wide range of relevant international instruments. On the basis of the information currently at its disposal, it considers that implementation of this article does not give rise to any further observations.

#### Article 2

14. Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

#### Article 3

15. The Advisory Committee notes that Poland made two declarations when it deposited its instrument of ratification of the Framework Convention. The first one reads as follows: "Taking into consideration the fact, that the Framework Convention for the Protection of National Minorities contains no definition of the national minorities notion, the Republic of Poland declares, that it understands this term as national minorities residing within the territory of the Republic of Poland at the same time whose members are Polish citizens". The second declaration pertains specifically to Article 18 and states the following: "The Republic of Poland shall also implement the Framework Convention under Article 18 of the Convention by conclusion of international agreements mentioned in this Article, the aim of which is to protect national minorities in Poland and minorities or groups of Poles in other States".

16. The Advisory Committee underlines that, in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Polish Government is therefore deemed to be the outcome of this examination.

17. Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

18. For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

19. In the State Report, the Polish authorities indicated that 13 national minorities<sup>3</sup> resided in Poland, totalling around 1 million people and accounting for between 2% and 3% of the total population. The authorities added that the Kaszubs constituted neither a national nor an ethnic minority, but a group of speakers using a regional language. Nevertheless, the authorities take the view that the Framework Convention's provisions on language rights can be applied to the Kaszubs *mutatis mutandis*. The Advisory Committee welcomes this approach since it seems in

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<sup>3</sup> Armenians, Belarusians, Czechs, Germans, Jews, Karaites, Lemks, Lithuanians, Roma, Russians, Slovaks, Tatars and Ukrainians.

line with the wish of the persons concerned and considers it important that the authorities take into account not only the Kaszub language but also Kaszub culture as a whole in developing its policies and measures for this group.

20. Both the terms “national” and “ethnic” minorities are used in the Polish legal order. The Draft Law on National and Ethnic Minorities<sup>4</sup> contains a list of national and ethnic minorities specifying the 13 groups mentioned in footnote 3 above, as well as the Kaszubs. While the Advisory Committee notes with satisfaction that both “national” and “ethnic” minorities under Polish law can benefit from the protection offered by the Framework Convention, it firmly believes that there should be no unjustified differences of treatment between them.

21. In reply to the Advisory Committee’s questionnaire, the authorities stated that the legislation did not provide any specific procedure for recognising a group as a national minority. The Advisory Committee notes, however, that some Polish authorities seem to use the registration procedure of the Law on Associations as a means to determine whether or not a group can be considered a national minority<sup>5</sup> and encourage the Polish Government to examine whether this practice is the most appropriate.

22. As regards the Lemks, the Advisory Committee notes with satisfaction that, for some years now, the authorities have taken care to respect their identity better, in particular by designating them as Lemks. In the past Lemks were systematically assimilated to Ukrainians and it is therefore particularly important to pay proper attention to the calls from many of their representatives for the distinctive elements of the Lemk identity to be recognised.

23. The representatives of the Russian minority located in the province (*voivodship*) of Podlaskie indicated that, contrary to their wishes, they were sometimes designated collectively as “Orthodox Poles” or “Old-Rite Poles”. Members of some local authorities of this province seem themselves to use these terms occasionally in referring to persons belonging to the Russian minority. In view of the strong objections to these terms by a number of those concerned, the Advisory Committee urges the authorities to refrain from using them in the future to designate persons belonging to the Russian minority.

24. For the first time for several decades, the 2002 census contained a question about the ethnic origin (“nationality”) of the respondent and another about the language used at home. Under section 8 paragraph 1 of the General Census of Population and Households Act, replies to these two questions were compulsory. While recognising the need for quality data in this area, the Advisory Committee considers that the right not to be treated as a person belonging to a minority also extends to a census and that a compulsory answer to a question on ethnic origin or a question on language used is not compatible with that principle.

25. The Advisory Committee finds it essential that the resulting census data is protected in an appropriate manner and that the ethnicity data is processed, as a rule, in such a manner that data subjects are not identifiable, bearing in mind the principles contained in the Committee of Minister’s Recommendation 97(18) concerning the protection of personal data collected and processed for statistical purposes. In this respect the Advisory Committee welcomes the Government’s assurances that all individual and personal data collected are treated as

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<sup>4</sup> The Draft Law presented by the Speaker of the *Sejm* on 11 January 2002 has since been significantly amended by the special *Sejm* sub-commission examining it. The current Advisory Committee opinion is based on the latest version of this Draft Law, sent to it on 4 April 2003 by the Ministry of Internal Affairs and Administration.

<sup>5</sup> See, in this connection, the European Court of Human Rights judgment of 20 December 2001 in the case of *Goździejewicz v. Poland* (the Grand Chamber agreed to the referral request on 10 July 2002), where the Court found no violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights (see in particular paragraph 63 of the judgment).



confidential and are given special protection for the purposes of the Public Statistics Act, with its provisions on data protection.

26. Information from representatives of several minorities as well as from various other sources point to irregularities in the conduct of the latest census. Some enumerators allegedly omitted to ask the questions about national affiliation and language used, replied *ex officio* in some cases with “Polish”, questioned the replies which some people gave, or entered the replies to these questions in pencil. The Government acknowledges that there were isolated occurrences of this kind but states that the enumerators involved were immediately reprimanded and the errors identified were rectified. The Ombudsman twice made representations to the General Commissioner of the census, the first time to report minorities’ fears that the census results would not reflect their actual numbers, and a second time to draw attention to certain irregularities committed by enumerators that might affect the credibility of the census.

27. In view of these elements, which raise some doubt on the reliability of the latest census results as to the numbers of persons having declared their belonging to a national minority and those having stated that they spoke Kaszub<sup>6</sup>, the Advisory Committee believes that the authorities should interpret these results with caution, particularly for purposes of developing policies and measures and allocating subsidies to national minorities. Caution is all the more required as the results of the latest general census, published after submission of the State Report, indicate a drastic fall in the number of persons belonging to national minorities and that a large percentage of respondents did not declare any ethnic belonging despite the compulsory nature of this question. The drop is evident not only from the estimates put forward by minorities’ representatives but also from those which the authorities gave in the State Report, in many cases three to four times larger than the figures produced by the census. The Advisory Committee is concerned that such large discrepancies can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. It is therefore important that the authorities bear such discrepancies in mind when discussing policies and other measures with representatives of national minorities.

28. The results of the latest census also show that large numbers of people stated “Silesian” in reply to the question on national affiliation – more, indeed, than stated belonging to any of the 13 national minorities, and more than the number of Kaszubs. The Polish authorities consider that Silesians cannot be treated as a national minority nor be protected by the Framework Convention. Whatever the approach ultimately adopted, the Advisory Committee urges the Polish authorities to continue their dialogue with the Silesians on this matter and to take care that persons claiming to belong to the Silesian group are able to express their identity (see also related comments below under Article 7).

29. In addition to the Silesian group, the Advisory Committee notes the existence in Poland of other ethnic or linguistic groups which the Government does not at this stage consider to be covered by the Framework Convention. The Advisory Committee is of the opinion that it should be possible to consider the inclusion of persons belonging to these groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-

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<sup>6</sup> According to the official results of the 2002 census, the number of Polish citizens having declared a “nationality” other than Polish would be as follows: 147,094 declared German nationality, 47,640 Belarusian nationality, 27,172 Ukrainian nationality, 12,731 Roma nationality, 5,850 Lemk nationality, 5,639 Lithuanian nationality, 3,244 Russian nationality, 1,710 Slovak nationality, 1,055 Jewish nationality, 447 Tatar nationality, 386 Czech nationality, 262 Armenian nationality and 43 Karaite nationality. Moreover, 52,490 people stated that they spoke Kaszub at home.

article basis, and takes the view that the Polish authorities should consider this issue in consultation with those concerned.

#### **Article 4**

30. The Advisory Committee notes that Article 32 of the Constitution guarantees the principle of equality and non-discrimination and that Article 11 paragraph 3 of the Labour Code prohibits any form of ethnic discrimination in employment. However it is difficult to assess the scope and effectiveness of Article 11 paragraph 3 as the authorities do not collect any statistics on proceedings concerning alleged contraventions of that legal provision. The Advisory Committee therefore strongly urges the authorities to develop new methods of data collection in this field.

31. Several institutions currently play an important role in combating discrimination. The Ombudsman, for instance, annually deals with dozens of cases concerning persons belonging to national minorities, including discrimination cases. The Advisory Committee welcomes the Ombudsman's work in this area, which seems highly appreciated by representatives of national minorities. It involves not only handling complaints from persons belonging to national minorities but also, and primarily, a large amount of mediation work during on-the-spot visits in which the Ombudsman meets representatives of national minorities and local authorities. Such mediation work has proved useful and constructive in a number of situations, including in the controversy on the possible erection of a watchtower in Puńsk, near the Lithuanian border.

32. The Advisory Committee also notes with interest that the Plenipotentiary for Equal Treatment Between Women and Men has had her terms of reference widened, by Government order of June 2002, to address all discrimination matters until a new anti-discrimination body is set up. Although the Plenipotentiary does not have the same status as the Ombudsman, being a governmental agency, her role is nonetheless crucial to development of Government anti-discrimination policy.

33. From the foregoing, it is clear that the authorities have recently paid closer attention to the legislative anti-discrimination framework, primarily with regard to its institutional aspect. Bearing in mind the need to transpose the European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and as other Council of Europe bodies have already done, the Advisory Committee can but encourage the Polish authorities to pursue their efforts to complete the legislative framework so as not only to prohibit discrimination in all areas of life, particularly housing, contractual relations between individuals, access to welfare benefits or access to public places, but also to ensure that effective remedies are available to victims of discrimination<sup>7</sup>. The same goes for their efforts to consolidate the institutional framework in that sphere.

34. The Advisory Committee notes however that the Draft Law on National and Ethnic Minorities provides for a new body that would develop and implement policy on national minorities, including elimination of discrimination, as well as take action to prevent discrimination of persons belonging to national minorities. In this connection the Advisory Committee considers that care should be taken, both in legislation enacted and terms of reference issued, that the various institutions are able to co-ordinate their anti-discrimination

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<sup>7</sup> See the second report on Poland of the European Commission against Racism and Intolerance (ECRI), December 1999, paragraphs 16 and 17. See also the report of the Council of Europe Commissioner for Human Rights on his visit to Poland from 18 to 22 November 2002, paragraph 21.

work properly. The Advisory Committee considers that it will also be necessary to clarify relations between new structures such as the body for implementing policy on national minorities and existing structures, notably the Ombudsman and the Plenipotentiary for Equal Treatment between Women and Men, because it is important that everyone concerned, including persons belonging to national minorities, has a clear idea of how responsibilities are divided in this field.

35. The Advisory Committee notes that it is difficult to measure full and effective equality between persons belonging to national minorities and the majority given the lack of statistical and qualitative data in this field. According to the authorities, for instance, the statistics do not cover employment among national minorities, though the results of the 2002 census should provide various demographic and socio-economic data on national minorities by the end of 2003. In addition to data resulting from the 2002 census, the Advisory Committee is of the opinion that the Government should endeavour to find additional means to collect reliable statistical data concerning national minorities. Without such data, it may be very difficult for the Polish authorities to operate effectively and for the international monitoring bodies to ascertain whether Poland meets its obligations under the Framework Convention.

36. The Advisory Committee notes that there continue to be great socio-economic differences between many Roma and the rest of the population. Such differences, together with persisting discriminatory practices against Roma which are still reported in various fields (see related comments under paragraphs 49 and 50 below), render the requirement for special measures in respect of this minority a matter of priority. However, the Roma minority is not a homogeneous community and the socio-economic situation of its component groups can vary considerably from one region to another. It seems that the Roma in the mountains of the Małopolskie province are particularly hard hit, sometimes suffering, *inter alia*, deplorable housing conditions, poor water supply and educational difficulties, including illiteracy and school drop-out.

37. The Government recognises the particular difficulties which the Roma face in this region. On 13 February 2001, the Council of Ministers adopted a Pilot Programme of support to the Roma community in Małopolskie for 2001-2003. This Programme, whose main emphasis is on education and which representatives of the Roma community and many NGOs helped draw up, also includes a range of measures to improve standards of living, access to employment and public health of the population concerned. Although there will not be a final evaluation of the Programme until 2004, the Advisory Committee notes with satisfaction that results so far have mostly been considered positive, including by representatives of the Roma. Substantial progress has been recorded in the education field, where the school drop-out rate has been lowered and results have improved, thanks in particular to the introduction of Roma educational-support staff, a measure which has proven promising and would be worth extending to other regions.

38. The authorities have indicated that they intend using the results of the Małopolskie Pilot Programme as a basis for developing longer-term, nationwide measures within a support programme for the whole of Poland's Roma community so that Roma in other regions, particularly in the province of Podkarpackie, can also benefit. The Advisory Committee welcomes in this context the adoption in August 2003 of a Programme for the Roma community in Poland with emphasis on educational measures.

39. Given the important needs in this area and the repeated requests from representatives of the Roma minority, the Advisory Committee considers it essential that the Government makes

available the necessary resources for its effective implementation<sup>8</sup>, which should take place in full consultation with Roma and representatives of civil society. The Advisory Committee also notes that during implementation, special attention will need to be paid to Roma women. More generally, the Advisory Committee recalls that, in designing further measures to promote full and effective equality in favour of the Roma, the Polish authorities should take into due account the Committee of Ministers' Recommendation (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

## Article 5

40. The Advisory Committee notes that the Polish legislation has numerous sectoral provisions governing key fields for protecting national minorities, such as culture and education. At the same time it regrets that rights in some other sectors which are no less important, mainly language rights (see related comments under Articles 10 and 11 below) and participation rights (see related comments under Article 15 below) are not sufficiently guaranteed by existing legislation or in some cases not guaranteed at all. The Government is aware of these shortcomings, and draft remedial legislation has been under examination for several years.

41. In this connection it is to be stressed that a Draft Law on National and Ethnic Minorities is currently being examined by the relevant parliamentary commissions. The Advisory Committee cannot but regret that this Draft Law, which has existed for several years and was prepared at the initiative of the *Sejm* Commission on National and Ethnic Minorities, has still not been enacted to date and that no calendar for its examination by the *Sejm* in plenary has been communicated. The Advisory Committee considers that the *Sejm* enactment of the Draft Law, which now enjoys the support of the Government and which representatives of minorities have long been calling for, would contribute significantly to completing the legal and institutional framework pertaining to national minorities and would be an important signal by the State of its commitment to minorities in Poland. Meanwhile the controversy and delays in the adoption of the Draft Law will continue to be interpreted by many as a sign of this lack of coherence and of a minimalist attitude of the state with regard to the recognition of minority rights.

42. The Advisory Committee notes that representatives of several national minorities attach great importance to state support for development of their cultural activities. Support for setting up cultural centres, museums and libraries is therefore a key demand of Ukrainians, Slovaks, Armenians, Russians and Belarusians. In several cases, it is alleged that promising projects – for example, the Hajnówka Belarusian museum – could have been realised if the authorities had taken more determined action. In this respect minorities' representatives have expressed a degree of frustration at how little will some authorities have shown, in occasional contrast to the support the same authorities give to Polish cultural institutions. The Advisory Committee notes in this context that notwithstanding measures which the authorities have taken to assist national minorities despite a difficult budgetary situation, the prevailing feeling among those concerned is that of a state minimum action for national minorities.

43. Seemingly a factor that might account, at least in part, for the difficulties in obtaining state support for establishing minority cultural institutions is that the authorities tend to prioritise financial support for projects and activities rather than institutions. National minorities' representatives regret that this makes it increasingly difficult, or even impossible, to

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<sup>8</sup> See the concluding observations of the United Nations Committee on Economic, Social and Cultural Rights on Poland, 19 December 2002, paragraphs 14 and 36 (doc E/C.12/1/Add.82)

obtain longer-term subsidies for setting up and running institutions, renting premises and paying staff. While understanding why the authorities might adopt such funding criteria, and without denying Poland's budget difficulties, the Advisory Committee nevertheless considers that the authorities should pay more attention to requests from minorities as regards setting up cultural centres, museums and libraries, which are often their main means of asserting their identity and making it visible to the public.

44. Renovation and maintenance of cemeteries, which deteriorate over time and are sometimes vandalised, is a central concern of several national minorities. There are for instance estimated to be around twelve hundred Jewish cemeteries, many of them in places which now have virtually no Jewish population, and around two hundred synagogues, which the Jewish community finds it difficult to continue maintaining. The Lemks, which have over 200 Orthodox churches and chapels in places where they are often no longer present, have similar problems in maintaining that heritage as has the Karaite minority, the numerically smallest minority in Poland, with its cemetery. Given the huge needs in this field, the Advisory Committee is of the opinion that the authorities should endeavour to agree with the representatives of the national minorities concerned on priorities for action and at the same time consider increasing the support available for national minorities in this field.

45. The Advisory Committee notes that the negative effects of Operation "Wisla", which the communist Government conducted in 1947, in a tragic context affecting the Polish population, and which forcibly displaced Ukrainians from south-east Poland to northern and western parts of the country, as well as forcing many Lemks out of their traditional area of settlement, have still not been completely resolved, despite the measures taken by the authorities in recent years. Large numbers of Ukrainians and Lemks today live outside their regions of origin and both minorities have to contend with geographical dispersal which further complicates the preservation of their identity. The authorities recognise that there remain at least two types of problem – restitution of property and preservation of cultural sites.

46. The lack of a specific law dealing with return of property seems to be delaying compensation of some Ukrainians and Lemks who were victims of nationalisation of their properties during Operation "Wisla". Representatives of the Ukrainians likewise attach great importance to compensation which they think should be given to members of their community imprisoned in the Jaworzno work camp from 1947 to 1949.

47. In view of the serious consequences of Operation "Wisla" which still affect Ukrainians and Lemks today, and while welcoming remedial measures which have already been taken, the Advisory Committee considers that, in consultation with representatives of the Ukrainians and Lemks, the authorities should step up their efforts to return property and preserve cultural sites so that satisfactory solutions to the problems can be found. The Advisory Committee recognises, in this connection, that despite the lack of a law on the restitution of property, the authorities of the province of Małopolskie have succeeded, by means of case-by-case administrative decisions which the courts have then upheld, in speeding up the process of returning property. It urges other provinces to draw inspiration from this experience. The Advisory Committee is also of the opinion that the authorities should continue discussions with representatives of the Ukrainian minority in order to settle the question of the follow-up to be given to past imprisonments at Jaworzno labour camp.

## **Article 6**

48. The Advisory Committee notes that, as its history attests, Poland has a long experience of handling ethnic and cultural diversity notwithstanding that especially the Second World War brought about a significant decrease in the numbers of persons belonging to national minorities, which now account for only a small proportion of the total population. In this context, the Advisory Committee considers it important that the authorities, who often stress the homogeneity of modern-day Poland, increase their awareness-raising efforts at all levels – and particularly in education and the media – to ensure greater recognition of the national minorities’ contribution to Polish society and intercultural dialogue. Over-insistence on the homogeneity of the Polish population may have an adverse effect on the rights of persons belonging to national minorities to assert their identity (see related comments about the latest census under Article 3 above).

49. The Advisory Committee notes with concern that in practice, as evidenced by certain cases of violation of legal provisions on non-discrimination mentioned by the Ministry of Justice, persons belonging to vulnerable groups are still discriminated against in various fields. The Roma are the most affected by this, and a number of them living on the outskirts of cities are reportedly still without access to some basic services such as waste disposal, water supply or electricity. The Ombudsman, for instance, has called on local authorities in Cracow to improve the housing of some of the Roma, and the Advisory Committee can but encourage the authorities to respond to such recommendations.

50. There are also reports of discrimination against Roma as regards employment and medical care<sup>9</sup>. Moreover, the Advisory Committee is deeply concerned to note that the practice of introducing or maintaining special Roma classes, which has been strongly criticised by the Roma in that it generates exclusion and marginalisation, has not yet been completely eradicated from schools (see related comments below under Article 12). The Advisory Committee therefore urges the authorities to step up their efforts to counter persistent discrimination of this kind by taking action as regards both the legislative framework and its implementation in practice (see related comments under Article 4 above).

51. The Advisory Committee notes the persistence, in Polish society, of negative stereotypes which contribute to stigmatising some minorities, in particular the Roma but also the Ukrainians and Germans. Such stereotypes reportedly appear not only in the media and some publications but also, sometimes, within the education system. In this context, the Advisory Committee recalls the need for the authorities to promote intercultural dialogue at all levels, including in the media and within the school curricula, so as to sensitise pupils to national minorities’ existence and, as far as possible, endeavour to promote dispassionate treatment of painful historical events.

52. The Advisory Committee notes that the question of erecting and/or renovating memorials to war victims has recently caused tension between the authorities and representatives of the German minority, particularly in the Opole region but to a lesser extent also in Silesia. The Advisory Committee recognises that this is a difficult and sensitive issue which resurrects painful episodes in Polish tragic history and that diverging perceptions of these historical events may sometimes be hard to reconcile. Cases of this kind pose complex and delicate questions, in particular as to the acceptability of certain symbols and certain place names, the translation of inscriptions, the question whether victims’ names and identities should be displayed and the further question whether a distinction should be drawn between soldiers and war victims. Issues of this kind have also been reported in connection with the Ukrainian minority’s erecting and/or renovating memorials in various places like Bircza,

<sup>9</sup> See the second report on Poland of the European Commission against Racism and Intolerance (ECRI), December 1999, paragraph 38.

Liszna, Kalisz or Łańcut, despite a 1994 bilateral treaty between Poland and Ukraine on the Protection of Memorial Sites and Resting Places of Victims of War and Political Repression.

53. The Advisory Committee underlines the importance of the work by the Council for the Protection of Memory of Fighting and Martyrdom, which is endeavouring to establish principles and guidelines to settle these issues in a manner that accommodates the interests of all parties. The Advisory Committee welcomes the setting up, in the province of Opolskie, of a special committee, made up, *inter alia*, of members of local authorities and representatives of the German minority to find acceptable solutions in problem cases. Care should be taken not to make reciprocity with neighbouring states a condition for settling these issues. The Advisory Committee however appreciates the steps taken by the Polish authorities in connection with the erection and/or renovation of memorials by means of promoting a continuing dialogue including in this dialogue representatives of the national minorities concerned and by adopting a non-discriminatory approach particularly as regards language requirements pertaining to inscriptions.

54. According to information from various sources, it appears that effective action against production and dissemination, in electronic or written form, of works that are insulting or offensive to particular national minorities or which incite racial hatred is not always being taken. Similarly anti-Semitic publications are said to be readily available from numerous booksellers, against whom the prosecuting bodies apparently seldom take any action. The Advisory Committee is deeply concerned about this information and urges the authorities to pay greater attention to it and, if need be, strengthen legislative and other measures in this area. In this connection the Advisory Committee notes with satisfaction that the *Sejm* is currently considering proposals to complete Article 256 of the Criminal Code so as to extend and strengthen penalties for the production, acquisition, possession or distribution of works inciting racial, ethnic or religious hatred and which would make it easier for the authorities to confiscate such works. The Advisory Committee hopes that these proposals will be enacted in the near future.

55. The Advisory Committee's attention was also drawn, during its visit to Poland, to the concept of "insignificant social consequences of an act", which prosecuting authorities can apply as a ground for not prosecuting the author of a criminal offence or for discontinuing criminal proceedings in case these have already been initiated (see Criminal Code, Article 1, paragraph 2 and Article 17, paragraph 1, item 3. According to information submitted to the Advisory Committee, in the case of hate speech or public insult directed at particular national minorities or vulnerable groups, as well as in the case of publication and dissemination of works that are clearly anti-Semitic or hostile to particular national minorities, criminal proceedings are discontinued or often not even initiated, precisely on the ground that the social consequences of the offence are considered insignificant.

56. The Advisory Committee welcomes that this problem was openly discussed with the authorities during its visit and that a detailed additional report on the issue was subsequently sent. According to this report from the Ministry of Justice the statistics record that there have been a significant number of prosecutions, namely 44 in 1999, 53 in 2000 and 25 in 2001 for incitement to racial hatred or racial violence, under Articles 118, 256 and 257 of the Criminal Code. These figures, however, do not make it possible to determine in how many cases prosecutions have not been initiated on the ground of an alleged absence of significant social harm. No clear trend can therefore be identified concerning the importance of these phenomena in practice, even though the Ministry of Justice explained that fewer proceedings are discontinued on the ground of absence of significant social harm.

57. The Advisory Committee is of the opinion that criminal provisions on absence of significant social harm should be handled with extreme caution in cases of behaviour insulting to national minorities or incitement to hatred. Even though there are not always individually identifiable victims or economic interests at stake in this type of case, the possible effects on the spirit of tolerance, mutual respect and understanding among all persons, irrespective of their ethnic, cultural or religious identity, must not be underestimated.

#### **Article 7**

58. In a recent case involving persons seeking registration of their association called the “Union of People of Silesian Nationality” (*Związek Ludności Narodowości Śląskiej*), the European Court of Human Rights found no violation of the freedom of association by the Polish authorities. The Advisory Committee points out, however, that the Court did not express a view on whether Silesians were a national minority<sup>10</sup> and refers here to its foregoing comments (see related comments in paragraph 28 above).

#### **Article 8**

59. Several minorities have a different religion from the great majority of the Polish population. This has implications in various fields, as is the case with those national minorities’ particular commitment to preserving their religious heritage, which is an essential element of their identity. In this connection the Advisory Committee recalls the need for the authorities to take that dimension sufficiently into account in designing measures and policies for these national minorities, including in the allocation of financial support (see related comments under Article 5 above).

#### **Article 9**

60. The Advisory Committee notes with satisfaction that, on the basis of Article 21, paragraph 9 of the Broadcasting Act, and as stated in the State Report and the appendix to it, there are regular radio and television broadcasts in many minority languages. It is worth observing that the Draft Law on National and Ethnic Minorities would go further than current legislation in two ways: firstly public broadcasters would have a duty to produce and broadcast programmes in minority languages and secondly editorial boards responsible for preparing minority programmes should include members proposed by the national minorities themselves, an indication that progress is possible in this sphere.

61. The Advisory Committee notes that representatives of several national minorities said they were interested in receiving more broadcasts in their own languages. It seems however that to date – according to the information from the National Council of Radio and Television Broadcasting – only the Belarusians and Germans have formally applied for broadcasting licences. The Belarusians were awarded a licence, and the Germans, after an initial refusal some years ago, reapplied at the end of 2002 to be allowed to set up their own radio station at Opole.

62. Although, in the authorities’ opinion, the Germans now seem to meet the statutory technical requirements for being granted a licence, a licence has not so far been awarded reportedly due to a lack of available frequencies. While not denying such difficulties, the

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<sup>10</sup> See judgment of 20 December 2001 in the case of *Gorzeliak v. Poland* (the Grand Chamber agreed to the referral request on 10 July 2002) and in particular para. 62



Advisory Committee nevertheless recalls that Article 9, paragraph 3 of the Framework Convention also contains a positive obligation on States Parties – as clearly attested by the explanatory report – notably as regards allocation of frequencies. Consequently, and given that the Germans have several times expressed their wish to have more programmes in German and seem technically and financially able to produce such programmes themselves, the Advisory Committee urges the competent authorities to look into meeting the Germans’ needs which Opole public radio, with its limited programmes in German, does not appear to meet.

63. An amendment to the Broadcasting Act (Articles 4 and 39b) introduced in 2001 the concept of “social broadcaster”. Broadcasting companies recognised as social broadcasters are exempt from fees for award of a broadcasting licence. It seems, however, that no minority organisation has yet applied to be recognised as a social broadcaster, despite the advantages this status may grant. The Advisory Committee therefore encourages the competent authorities, in particular the National Council of Radio and Television Broadcasting, to step up relevant information aimed at minority organisations and, more generally, to design a more proactive policy as regards access to media for persons belonging to national minorities.

64. The Advisory Committee notes that because several national minorities are dispersed over a large part of Poland, it is sometimes difficult, for many of those concerned, to receive the programmes broadcast for them. This applies, for example, to the Ukrainians, whose communities in west Pomerania and the Carpathian lowlands complain of not being able to receive the programme *Telenowyny*, broadcast solely by the Warsaw region station of the third public television channel. The Advisory Committee notes that the authorities are aware of the problem, which is apparently essentially a technical one. The Advisory Committee calls on the authorities to investigate means of remedying the situation speedily. More generally, the authorities, in consultation with the representatives of the national minorities concerned, could review the existing shortcomings in the geographical cover of broadcasting and consider with them how the situation could be improved, including the feasibility of producing and broadcasting certain programmes for national minorities at the national level and no longer exclusively at the regional level.

65. As regards public radio and television stations’ programmes intended for national minorities, the Advisory Committee notes that although national minorities’ representatives are involved in a number of them, and some of them are produced by journalists belonging to national minorities, some other programmes are prepared without significant consultation with national minorities. This apparently applies, for instance, to “Ethnic Climate”, a national programme on cultural diversity which is broadcast by the third public television channel, and also to “Unsere Heimat”, a bilingual German-Polish programme broadcast by Opole public radio. The Advisory Committee considers that the competent authorities should pay more attention to involving persons – including journalists – belonging to national minorities in the preparation of programmes for those national minorities and/or in the bodies which supervise these programmes (see related comments under Article 15 below). The authorities could also intensify their efforts to sensitise producers and broadcasters to this question and promote journalism training for national minorities in order to meet the existing needs.

## **Article 10**

66. Article 4 of the 1999 Polish Language Act provides that Polish is to be employed as the official language by the authorities. The Advisory Committee notes that there is at present no provision in the Polish legal order providing for the use of minority languages in relations between persons belonging to national minorities and the administrative authorities. The

bilateral agreements which Poland has concluded with its neighbours do not provide for any such possibility either. As a result, no province, county or municipality, whatever percentage of the local population persons belonging to national minorities account for, is able to allow use of minority languages in official dealings.

67. The Advisory Committee notes that in Poland there seem to be areas where persons belonging to national minorities live traditionally or in substantial numbers. The present situation is therefore not compatible with Article 10, paragraph 2 of the Framework Convention. The Advisory Committee urges the Polish authorities to consider how to remedy this legislative shortcoming. It notes with interest in this connection that Articles 9 to 11 of the Draft Law on National and Ethnic Minorities provide for some use of minority languages, as “auxiliary languages”, in dealing with local self government authorities of municipalities. Although the meaning and concrete implications of the term “auxiliary languages” remains rather unclear at this stage, this could represent some progress in the matter. In any case, the Advisory Committee considers it necessary for the authorities to assess, in consultation with national minorities’ representatives, the real needs and requests in the matter, and subsequently determine in which geographical areas of the country, minority languages might be used in official dealings.

68. On 18 March 2002 the Ministry of Internal Affairs and Administration adopted a Decree “concerning cases in which names and texts in the Polish language may be accompanied by translations into foreign languages” as an order implementing the 1999 Polish Language Act. The scope of this Decree covers “names and texts in Polish appearing in offices and public institutions as well as texts intended to enter the public domain and appear in public means of transport” (Article 1 of the Decree), particularly in cities where national minorities live in a compact way. Although this Decree seems to allow for a modest use of minority languages concerning certain names and texts visible to the public, it is by no means sufficient to give effect to the principles laid down in Article 10, paragraph 2 of the Framework Convention.

69. The Advisory Committee is concerned that this Decree, which treats minority languages as foreign languages and applies the same restrictive rules to both categories, risks sending the public an unfortunate signal as to the place of minority languages and cultures in Polish society. The Advisory Committee therefore expresses the hope that the term “foreign languages” will no longer be referred to in legislation in relation to the use of minority languages. The legitimate needs of minority languages and cultures are very different from those of foreign languages, and it is important to treat them separately instead of reducing their level of protection to the lowest common denominator. The Advisory Committee nevertheless notes that the Decree provides for new possibilities (however limited) to use minority languages. It welcomes that some local authorities have very recently started to use these possibilities, as recently seen by the display of public information, names of offices and public institutions in German and in the Roma language in two towns of the Opole region, namely in Lasowice Wielkie and Strzelce Opolskie. The authorities should however step up their efforts to inform those concerned about such opportunities and simultaneously contemplate expanding the legal possibilities to make use of minority languages in official dealings.

## **Article 11**

70. The Advisory Committee notes that Article 7 of the 1999 Polish Language Act makes Polish compulsory in a whole range of private activities relating to names of goods and services and also in announcements and advertisements. The Advisory Committee trusts that

the official interpretation of that provision does not, in practice, prevent persons belonging to national minorities from displaying in their minority language, signs and other information of a private nature visible to the public: it is indeed important that, as provided in Article 2 of the Polish Language Act, the specific rights of persons belonging to national minorities should take precedence over the more general provisions of the Act. In this connection the Advisory Committee recalls that minority languages, which need special protection, should not systematically be treated in the same way as foreign languages in legislation if this creates an insufficient level of protection from the point of the Framework Convention (see related comments under Article 10 above).

71. The Advisory Committee notes that there is at present no legal basis in Polish law allowing the display of traditional local names, street names and other topographical indications intended for the public in minority languages. The bilateral agreements which Poland has concluded with its neighbours do not provide for any such possibility either. The Advisory Committee nevertheless acknowledges that, as stated by the Polish authorities, topographical indications in German and Kaszub have sometimes been put up, apparently without any adverse reaction from the population, but it stresses that such cases are isolated ones without any legal basis.

72. The present legal framework is therefore not compatible with Article 11, paragraph 3 of the Framework Convention. The Advisory Committee therefore urges the Polish authorities to consider how to remedy this legislative shortcoming. The Advisory Committee notes with interest in this connection that, under Article 12 of the Draft Law on National and Ethnic Minorities, it would be possible to display such topographical indications in minority languages, which would represent a substantial progress in the matter. It seems that the Belarusian minority in the province of Podlaskie has in the past made requests in this regard to local or regional authorities but that these requests were turned down, notably on financial grounds. While noting that financial considerations cannot justify a blanket refusal, the Advisory Committee considers it necessary for the Polish authorities to examine, in consultation with representatives of national minorities, particularly the Belarusians, what demand there is in this matter and which geographical areas could be concerned.

## **Article 12**

73. The Advisory Committee acknowledges that efforts have been made, in the school curriculum, to promote knowledge of the cultures, histories, languages and religions of national minorities living in Poland. Despite this, Poland still too often seems to be presented as an ethnically and linguistically homogeneous country (see related comments under paragraph 48 above). The Advisory Committee therefore expresses the hope that the authorities will take further steps to increase the multicultural and multiethnic content of the curriculum and that, more generally, efforts to raise both the majority's and minorities' awareness of minority cultures will be intensified.

74. The Advisory Committee welcomes the efforts by the Ministry of Education and Sport as regards production of textbooks in minority languages and teacher training. A number of bilateral agreements facilitate co-operation in this field and the national minorities concerned benefit from them. However, groups which do not have the benefit of such bilateral agreements still seem to have unmet needs in these matters. Representatives of the Kaszubs, for instance, said that introduction of the Kaszub language into schools, a fairly recent development, was not without its problems, notably a shortage of textbooks and of teachers with the necessary skills.

The Advisory Committee therefore encourages the authorities to continue their efforts to assist development of instruction in Kaszub.

75. The situation regarding education of the Roma gives rise to deep concern and differs significantly from the situation of other minorities and the majority. Even though there are great differences between Roma communities in Poland, the Roma minority is not yet guaranteed equal educational opportunity, and, as the authorities themselves admit, nearly 30% of Roma children fail to complete compulsory schooling.

76. Although most pupils of Roma origin attend state schools within an integrated system in which there is a mix of Roma and other children, the authorities state that, in isolated cases, there are still what are termed “Roma classes” - 20 or so special classes at primary level which are solely for Roma pupils. These classes were set up as a start-of-school aid to Roma pupils to help them overcome the dual handicap of imperfect command of Polish and lack of a preschool education. Even though the decision to send a pupil to a Roma class is taken by the parents, and no testing seems to be used in that connection, the Advisory Committee notes with concern that there is a great deal of criticism concerning maintenance of such classes, in particular from Roma representatives themselves. Such classes, which are not designed specifically to develop Roma language and culture, appear to perpetuate a form of separation rather than help Roma integrate into the Polish school system.

77. The Advisory Committee welcomes the fact that, under the Pilot Programme to assist the Małopolskie Roma community in 2001-2003, the authorities offer a new instruction model based on integrating Roma into ordinary classes. This model has already produced positive results: only four schools in Małopolskie continue to have Roma classes, pupils’ average standard has improved, the drop-out rate has fallen and programmes for Roma teachers’ assistants seem to have been widely welcomed by Roma parents, leaders and school directors. The Advisory Committee considers that similar measures to encourage Roma integration into ordinary schooling, together with increased support for pre-school access, should be extended to the whole of the country without delay. That could be done, in particular, as part of the recently adopted Programme for the Roma community in Poland (see related comments under Article 4). More generally, the Advisory Committee recalls that the system must also take full account of Roma language and culture, in accordance with the principles laid down in Committee of Ministers’ Recommendation No. (2000) 4 on the education of Roma/Gypsy children in Europe.

### **Article 13**

78. Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

### **Article 14**

79. The Law on the Education System provides that pupils and students belonging to national minorities should be able to learn their minority’s language, history and culture. The arrangements concerning exercise of that right are laid down in a 1992 ministerial Decree on the Organisation of Instruction enabling to maintain National, Ethnic and Linguistic Identity of Students Belonging to National Minorities. To set up a minority-language class, the minimum requirement is 7 pupils at primary level and 15 pupils at secondary level, which is a low enough minimum to allow smaller or more scattered communities, in particular the Ukrainians and Lemks, to avail themselves of this possibility.

80. The Advisory Committee welcomes these legal guarantees and the many opportunities available, in practice, to persons belonging to national minorities for receiving instruction of/in their languages, in one form or another, as part of the public education system. The Advisory Committee however underlines that notwithstanding precise minimum requirements for setting up minority classes, the position is less clear as regards closure of such classes, a matter in which the local authorities seem to have a decisive role. Such decisions are often taken with financial considerations as a principal ground. The Advisory Committee therefore urges the authorities to pay due attention to the existing thresholds and the needs of persons belonging to national minorities in this matter.

81. In most classes or schools attended by Lithuanian pupils, the language of instruction is Lithuanian. Such schools play an essential role in preserving Lithuanian language and culture in the province of Podlaskie, which is the traditional area of settlement of this minority. In this connection the Advisory Committee is concerned about the closure threats to a number of Lithuanian schools at Puńsk and Sejny. These closure threats are related to falling pupil numbers and resultant difficulties in financing the schools, notwithstanding that there would appear to be a sufficient demand from the persons concerned to keep these schools open.

82. The Advisory Committee welcomes the fact that local authorities which run schools for national minorities receive from the state budget a 20% larger grant per pupil belonging to a national minority in the case of large schools, 50% larger in the case of smaller schools, and that, failing all else, there is a reserve fund within the national education budget. It is indeed essential that local authorities, having been given larger education responsibilities as part of decentralisation, should at the same time be allocated the necessary support, in particular financial support, by central government. The Advisory Committee therefore urges the competent authorities to explore, in consultation with the parties concerned at the local level, all means of maintaining the Lithuanian schools threatened with closure.

83. The Advisory Committee notes that it is not yet possible to use minority languages in taking the final primary and secondary school examinations. It welcomes the decision by the Ministry of Education and Sport to allow this as from 2005.

84. The Advisory Committee is of the opinion that the Government should ascertain the extent to which the current position of the Roma language in the Polish education system meets the demands of persons belonging to this community. Such an examination would help to establish whether further measures are required to ensure adequate opportunities exist to be taught the Roma language or to receive instruction in this language.

## **Article 15**

85. The Advisory Committee welcomes national minorities' participation in public affairs concerning them, whether at local or regional level. Several national minorities, in particular the Germans, Ukrainians, Belarusians and Lithuanians, are well represented in elected bodies in their areas of settlement, at municipal, county and, in some cases, provincial level. The recent introduction of Plenipotentiaries for Minorities in several provinces where national minorities reside is a positive development. These Plenipotentiaries can be valuable links between national minorities and the authorities at various levels, particularly after the decentralising reform, under which issues concerning national minorities will increasingly be dealt with in consultation with the three levels of authorities, namely the provinces (*voivodships*), counties (*powiaty*) and municipalities (*gminy*). The Plenipotentiaries' role may

thus prove crucial provided that they maintain regular contact with representatives of national minorities and that persons belonging to national minorities who feel the need to approach them can do so easily.

86. As regards participation at national level, the Advisory Committee welcomes the existence of a special provision, in the 2001 Act on elections to the *Sejm* and the Senate, exempting minorities' parties from the 5% electoral threshold for allocation of seats. Despite this positive measure, national minorities are still proportionately, poorly represented in Parliament and seem to have had fewer and fewer representatives in the last two parliaments. At present they have only a small number of members of Parliament, mainly Germans and Belarusians. It is thus particularly important to reinforce existing mechanisms and develop others so as to improve minorities' participation at national level, particularly in the case of the smaller and scattered minorities (see also related comments under Article 9 above).

87. The positive role played by the *Sejm* Commission on National and Ethnic Minorities should be underlined. Among other things it instigates legislation and is consulted on draft legislation affecting national minorities. The Advisory Committee notes with interest that this Committee also makes visits to national minority communities and, together with representatives of the ministries and local authorities concerned, has meetings with national minorities' representatives. The Advisory Committee encourages development of such contact, which contributes to a better participation of persons belonging to national minorities in matters concerning them.

88. Development and co-ordination of government policies and measures for national minorities are the responsibility of the Team for National Minority Issues, whose secretariat is provided by the Ministry for Internal Affairs and Administration. Sub-groups have been set up on particular topics, in particular Roma matters and minority education. Only the ministries and departments concerned are represented in the Team, though representatives of national minorities are invited to some of the Team's meetings, depending on the agenda.

89. While recognising the value of the Team's work in general and as regards co-ordination in particular, the Advisory Committee is nevertheless concerned at national minority representatives' limited role in this governmental structure. Merely inviting them from time to time to participate in the Team's work, depending on the Team's agenda, would not seem to guarantee a sufficient involvement. The authorities should therefore consider increasing minority representatives' participation in the Team, for example by providing for the regular participation of all national minorities in the Team, introducing a procedure so that they can formally put items on the Team's agenda or even making them members of the Team. In this connection the Advisory Committee notes with interest that the Draft Law on National and Ethnic Minorities provides, for a new, joint commission with representatives of the Government as well as national minorities on which national minorities would have seats as of right. It expresses the hope that the authorities will draw inspiration from this to improve national minority participation in co-ordinating bodies at national level.

90. The Advisory Committee is pleased to see that attention has been paid to Roma participation in designing and – albeit to a lesser extent – in implementing and evaluating the 2001-2003 Pilot Programme of support to the Małopolskie Roma community. The Advisory Committee encourages the authorities to continue their efforts as regards consultation under the Programme for the Roma community, in particular through the Sub-team on Roma Issues.

## **Article 16**

91. Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

**Article 17**

92. The Advisory Committee finds it important that the new visa requirements are implemented in a manner that does not cause undue restrictions on the right of persons belonging to national minorities to establish and maintain contacts across frontiers and welcomes initiatives aimed at easing the issuance of free visas with neighbouring countries, as was recently the case with Ukraine.

## **Article 18**

93. The Advisory Committee welcomes Poland's conclusion, with its neighbours, of numerous bilateral agreements protecting national minorities. At the same time, it expresses the hope that the Polish authorities will bear in mind that making the implementation of protective measures for national minorities living in Poland systematically conditional to progress recorded on similar issues in neighbouring countries is not in line with the spirit of the Framework Convention and cannot compensate shortcomings in the protection scheme set up under domestic law (see General remarks, paragraph 9). In this context, the Advisory Committee welcomes the efforts of the Council for the Protection of Memory of Fighting and Martyrdom and its commitment not to require reciprocity with neighbouring states a condition for settling the issues falling under its competence (see paragraph 53 above).

94. The Advisory Committee recalls that some minorities do not enjoy the protection of a bilateral agreement and that mechanisms for consulting national minorities in the conclusion or amendment of bilateral agreements are often much more limited – and this also applies to guarantees of legal remedies – than they would be in a protection regime provided by domestic law. Representatives of the Slovak minority, for example, complain of having been insufficiently associated in designing the arrangements for bilateral co-operation between Poland and Slovakia in education matters.

## **Article 19**

95. Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.



#### **IV. MAIN FINDINGS AND COMMENTS OF THE ADVISORY COMMITTEE**

96. The Advisory Committee believes that the main findings and comments set out below could be helpful in a continuing dialogue between the Government and national minorities, to which the Advisory Committee stands ready to contribute.

##### **Concerning Article 3**

97. The Advisory Committee *finds* that it should be possible to consider the inclusion of persons belonging to other groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and *considers* that the Polish authorities should consider this issue in consultation with those concerned.

98. The Advisory Committee *finds* that the 2002 census contained a question about the ethnic origin (“nationality”) of the respondent and another about the language used at home, whose replies were compulsory. While recognising the need for quality data in this area, the Advisory Committee *considers* that the right not to be treated as a person belonging to a national minority also extends to a census and that a compulsory answer to a question on ethnic origin or a question on language used is not compatible with that principle.

99. The Advisory Committee *finds* that there have been allegations of irregularities in the conduct of the latest census, which raise some doubt on the reliability of its results as to the numbers of persons having declared their belonging to a national minority and those having stated that they spoke Kaszub. The Advisory Committee *considers* that the authorities should interpret these results with caution, particularly for purposes of developing policies and measures and allocating subsidies to national minorities.

##### **Concerning Article 4**

100. The Advisory Committee *finds* that the authorities have recently paid closer attention to the legislative anti-discrimination framework, however mainly with regard to its institutional aspect. The Advisory Committee *considers* that care should be taken that various institutions like the General Inspectorate for the Prevention of Discrimination or the body for implementing policy on national minorities are able to co-ordinate their anti-discrimination work properly. The Advisory Committee *considers* that the relations between these new bodies and existing ones, above all the Ombudsman and the Plenipotentiary for Equal Treatment between Women and Men, should be clarified.

101. The Advisory Committee *finds* that there continue to be great socio-economic differences between many Roma and the rest of the population, and the Roma in the mountains of the Małopolskie province sometimes suffer *inter alia* deplorable housing conditions, poor water supply and educational difficulties, including illiteracy and school drop-out. Given the important needs in this area and the repeated requests from representatives of the Roma minority and despite progress made by the authorities, the Advisory Committee *considers* it essential that the Government makes available the necessary resources for the effective implementation of the newly adopted Programme for the Roma community in Poland, which should take place in full consultation with Roma and representatives of civil society.

## Concerning Article 5

102. The Advisory Committee *finds* that the Polish legislation has numerous sectoral provisions governing key fields for protecting national minorities, such as culture and education. At the same time, the Advisory Committee *considers* that rights in some other sectors which are no less important, mainly language rights and participation rights are not sufficiently guaranteed by existing legislation or in some cases not guaranteed at all. The Advisory Committee *considers* that the *Sejm* enactment of the Draft Law on National and Ethnic Minorities, which now enjoys the support of the Government and which representatives of national minorities have long been calling for, would contribute significantly to completing the legal and institutional framework pertaining to national minorities and would be an important signal by the State of its commitment to national minorities in Poland.

103. The Advisory Committee *finds* that representatives of several national minorities like Ukrainians, Slovaks, Armenians, Russians and Belarusians attach great importance to state support for development of their cultural activities. The Advisory Committee *considers* that the authorities should pay more attention to requests from national minorities as regards setting up cultural centres, museums and libraries, which are often their main means of asserting their identity and making it visible to the public.

104. The Advisory Committee *finds* that renovation and maintenance of cemeteries, which deteriorate over time and are sometimes vandalised, is a central concern of several minorities like Jews, Lemks and Karaites. The Advisory Committee *considers* that the authorities should consider increasing the support available for these national minorities in this field.

105. The Advisory Committee *finds* that the negative effects of Operation “Wisla”, which the communist Government conducted in 1947 in a tragic context affecting the Polish population and which forcibly displaced Ukrainians from south-east Poland to northern and western parts of the country, as well as forcing many Lemks out of their traditional area of settlement, have still not been completely resolved, despite the measures taken by the authorities in recent years. The Advisory Committee *considers* that the authorities should step up their efforts to return property and preserve cultural sites, in consultation with representatives of the Ukrainians and Lemks, so that satisfactory solutions to the problems can be found.

## Concerning Article 6

106. The Advisory Committee *finds* that Roma are discriminated against in the fields of employment and medical care. The Advisory Committee *considers* that the authorities should step up their efforts to counter persistent discrimination of this kind by taking action as regards both the legislative framework and its implementation in practice.

107. The Advisory Committee *finds* that negative stereotypes which contribute to stigmatising some national minorities persist in Polish society, in particular as regards the Roma but also the Ukrainians and Germans. In this context, the Advisory Committee *considers* that there is a need for the authorities to promote intercultural dialogue at all levels, including in the media and within the school curricula, so as to sensitise pupils to national minorities’ existence and as far as possible endeavour to promote dispassionate treatment of painful historical events.

108. The Advisory Committee *finds* that the question of erecting and/or renovating memorials to war victims has recently caused tension between the authorities and representatives of the German minority, particularly in the Opole region but to a lesser extent also in Silesia. The Advisory Committee *considers* that the Polish authorities should be encouraged to deal with erection and/or renovation of memorials by means of promoting a continuing dialogue including in this dialogue representatives of the national minorities concerned, and by adopting a non-discriminatory approach particularly as regards language requirements pertaining to inscriptions.

109. The Advisory Committee *finds* that information from various sources suggest that effective action against production and dissemination, in electronic or written form, of works that are insulting or offensive to particular national minorities or which incite racial hatred is not always being taken. The Advisory Committee also *finds* that anti-Semitic publications are said to be readily available from numerous book-sellers, against whom the prosecuting bodies apparently seldom take any action. The Advisory Committee *considers* that the authorities should pay greater attention to these phenomena and, if need be, strengthen legislative and other measures in this area.

110. The Advisory Committee *finds* that information from various sources suggest that in the case of hate speech or public insult directed at particular national minorities or vulnerable groups, as well as in the case of publication and dissemination of works that are clearly anti-Semitic or hostile to particular national minorities, criminal proceedings are discontinued or often not even initiated, on the ground that the social consequences of the offence are considered insignificant. The Advisory Committee *considers* that criminal provisions on absence of significant social harm should be handled with extreme caution in cases of behaviour insulting to national minorities or incitement to hatred.

### **Concerning Article 8**

111. The Advisory Committee *finds* that several national minorities differ in religion from the great majority of the Polish population and that this has implications in various fields, as is the case with those national minorities' particular commitment to preserving their religious heritage, which is an essential element of their identity. The Advisory Committee *considers* that the authorities should take sufficiently into account that dimension in designing measures and policies for these national minorities, including in the allocation of financial support.

### **Concerning Article 9**

112. The Advisory Committee *finds* that representatives of several national minorities said they were interested in receiving more broadcasts in their own languages. Although, in the authorities' opinion, the Germans now seem to meet the statutory technical requirements for being granted a licence, a licence has not so far been awarded reportedly due to a lack of available frequencies. Given that the Germans have several times expressed their wish to have more programmes in German and seem technically and financially able to produce such programmes themselves, the Advisory Committee *considers* that the competent authorities should look into meeting the Germans' needs which Opole public radio, with its limited programmes in German, does not appear to meet.

113. The Advisory Committee *finds* that because several minorities are dispersed over a large part of Poland, it is sometimes difficult, for many of those concerned, to receive the programmes broadcast for them. The Advisory Committee *considers* that the authorities should

investigate means of remedying the situation speedily. The Advisory Committee also *considers* that the authorities, in consultation with the representatives of the minorities concerned, could review the existing shortcomings in the geographical cover of broadcasting and examine with them how the situation could be improved, including the feasibility of producing and broadcasting certain programmes for national minorities at the national level and no longer exclusively at the regional level.

114. The Advisory Committee *finds* that although national minorities' representatives are involved in a number of public radio and television stations' programmes intended for minorities, other programmes are prepared without significant consultation with minorities. The Advisory Committee *considers* that the competent authorities should pay more attention to involving persons – including journalists – belonging to national minorities in the preparation of programmes for these national minorities and/or in the bodies which supervise these programmes.

### **Concerning Article 10**

115. The Advisory Committee *finds* that there is at present no provision in the Polish legal order providing for the use of minority languages in relations between persons belonging to national minorities and the administrative authorities and that no province, county or municipality, whatever percentage of the local population persons belonging to national minorities account for, is able to allow use of minority languages in official dealings. Given that there seem to be areas where persons belonging to national minorities live traditionally or in substantial numbers, the Advisory Committee *considers* that the present situation is not compatible with Article 10, paragraph 2 of the Framework Convention and that the authorities should examine how to remedy this legislative shortcoming. The Advisory Committee also *considers* it necessary for the authorities to assess, in consultation with national minorities' representatives, the real needs and requests in the matter, and subsequently determine in which geographical areas of the country minority languages might be used in official dealings.

116. The Advisory Committee *finds* that that the 1999 Decree “concerning cases in which names and texts in the Polish language may be accompanied by translations into foreign languages”, which treats minority languages as foreign languages and applies the same restrictive rules to both categories, risks sending the public an unfortunate signal as to the place of minority languages and cultures in Polish society. The Advisory Committee *considers* that the legitimate needs of minority languages and cultures are very different from those of foreign languages, and it is important to treat them separately instead of reducing their level of protection to the lowest common denominator.

### **Concerning Article 11**

117. The Advisory Committee *finds* that there is at present no legal basis in Polish law allowing the display of traditional local names, street names and other topographical indications intended for the public in minority languages, albeit topographical indications in German and Kaszub have sometimes been put up in isolated cases without any legal basis. The Advisory Committee *considers* that the present legal framework is not compatible with Article 11, paragraph 3 of the Framework Convention and *considers* that the Polish authorities should examine how to remedy this legislative shortcoming. The Advisory Committee also *considers* it necessary for the Polish authorities to examine, in consultation with representatives of national minorities, particularly the Belarusians, what demand there is in this matter and which geographical areas could be concerned.

## Concerning Article 12

118. The Advisory Committee *finds* that while efforts have been made in the school curriculum to promote knowledge of the cultures, histories, languages and religions of national minorities living in Poland, Poland still too often seems to be presented as an ethnically and linguistically homogeneous country. The Advisory Committee *considers* that the authorities should take further steps to increase the multicultural and multiethnic content of the curriculum and that, more generally, efforts to raise both the majority's and minorities' awareness of national minority cultures should be intensified.

119. The Advisory Committee *finds* that the situation regarding education of the Roma gives rise to deep concern and differs significantly from the situation of other national minorities and the majority. The Advisory Committee *finds* that there is a great deal of criticism concerning maintenance of "Roma classes", in particular from Roma representatives themselves since such classes, which are not designed specifically to develop Roma language and culture, appear to perpetuate a form of separation rather than help Roma integrate into the Polish school system. The Advisory Committee *finds* that, under the Pilot Programme to assist the Małopolskie Roma community in 2001-2003, the authorities have offered a new instruction model based on integrating Roma into ordinary classes and that this model has already produced positive results. The Advisory Committee *considers* that similar measures to encourage Roma integration into ordinary schooling, together with increased support for pre-school access, should be extended to the whole of the country without delay as provided for by the Programme for Roma community in Poland recently adopted.

## Concerning Article 14

120. The Advisory Committee *finds* that there are both legal guarantees and many opportunities available, in practice, to persons belonging to national minorities for receiving instruction of/in their languages, in one form or another, as part of the public education system. The Advisory Committee also *finds* that notwithstanding precise minimum requirements for setting up minority classes, the position is less clear as regards closure of such classes, a matter in which the local authorities seem to have a decisive role and where decisions are often taken with financial considerations as a principal ground. The Advisory Committee *considers* that the authorities should pay due attention to the existing thresholds and the needs of persons belonging to national minorities in this matter.

121. The Advisory Committee *finds* that in most classes or schools attended by Lithuanian pupils, the language of instruction is Lithuanian, but that closure threats to a number of Lithuanian schools at Puńsk and Sejny have been reported. The Advisory Committee *considers* that the competent authorities should explore, in consultation with the parties concerned at the local level, all means of maintaining the Lithuanian schools threatened with closure.

Concerning Article 15

### **Concerning Article 15**

122. The Advisory Committee *finds* that several national minorities, in particular the Germans, Ukrainians, Belarusians and Lithuanians, are well represented in elected bodies in their areas of settlement, at municipal, county and, in some cases, province level. The Advisory Committee also *finds* that the recent introduction of Plenipotentiaries for minorities in several provinces where national minorities reside is a positive development.

123. The Advisory Committee *finds* that as regards participation at national level, national minorities are still proportionately poorly represented in Parliament and seem to have had fewer and fewer representatives in the last two parliaments. The Advisory Committee *considers* that it is particularly important to reinforce existing mechanisms and develop others so as to improve national minorities' participation at national level, particularly in the case of the smaller and scattered minorities.

124. The Advisory Committee *finds* that development and co-ordination of government policies and measures for national minorities are the responsibility of the Team for National Minority Issues in which national minority representatives' have a limited role. The Advisory Committee *considers* that the authorities should consider increasing national minority representatives' participation in the Team, for example by providing for the regular participation of all national minorities in the Team, introducing a procedure so that they can formally put items on the Team's agenda or even making them members of the Team.

Concerning Article 18

### **Concerning Article 18**

125. The Advisory Committee *finds* that Poland has concluded with its neighbours numerous bilateral agreements protecting national minorities. The Advisory Committee *considers* that the Polish authorities should bear in mind that making the implementation of protective measures for national minorities living in Poland systematically conditional to progress recorded on similar issues in neighbouring countries is not in line with the spirit of the Framework Convention and cannot compensate shortcomings in the protection scheme set up under domestic law.

## V. CONCLUDING REMARKS

126. The Advisory Committee considers that the concluding remarks below reflect the main thrust of the present opinion and that they could therefore serve as the basis for the corresponding conclusions and recommendations to be adopted by the Committee of Ministers.

127. Poland has in many respects made valuable efforts to support national minorities and their cultures, including through certain sectoral legislative provisions in such fields as the educational and electoral systems and through the recent adoption of the Programme for the Roma community in Poland.

128. Although the legal and institutional framework protecting persons belonging to national minorities is fairly well developed in some areas, it lacks overall coherence and contains important shortcomings. This is particularly the case for the use of minority languages in relations with administrative authorities, as well as the display of traditional local names and other topographical indications in minority languages. In these areas, legislative guarantees are needed as a matter of priority. The adoption of a comprehensive law on national minorities could ensure legal coherence and address the issue of limited state support for national minorities in practice.

129. Poland should pursue the efforts made to solve the issues linked to monuments and cemeteries affecting many national minorities including Germans, Ukrainians, Jews, Lemks and Karaites. These efforts should be made in a spirit of tolerance and intercultural dialogue and in consultation with those concerned. The same applies to demands by many national minorities, including the Ukrainians, Slovaks, Armenians, Russians and Belarusians with regard to the setting up of and support for cultural centres, museums and libraries.

130. Despite regular radio and television broadcasts in a number of minority languages, the Advisory Committee finds that there is scope for improvement in the media sector, especially concerning additional radio programmes and geographical cover of broadcasting for dispersed national minorities. Greater attention should also be paid to involving more consistently persons belonging to national minorities in the preparation of programmes intended for them.

131. Notwithstanding the existing legal guarantees and the many opportunities available to persons belonging to national minorities for receiving instruction of/in their languages as part of the public education system, there is reason for concern about the threats of closure of a number of Lithuanian schools. It is thus important that all means of maintaining these schools be explored in consultation with those concerned.

132. Despite efforts by the Government, there remain problems in the implementation of the Framework Convention as concerns Roma. Consultation with the Roma is crucial for the successful implementation of the newly adopted Programme together with further action to address acts of discrimination and ensure equal opportunities for access to education.

133. While participation in public affairs at local and regional level is satisfactory, there is a clear need to reinforce participation of persons belonging to national minorities at national level.