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CAHMEC(96)2

AD HOC COMMITTEE ON THE IMPLEMENTATION MECHANISM
OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES

(CAHMEC)

Provisional list of questions to be
addressed by CAHMEC

Secretarial memorandum
prepared by the Directorate of Human Rights

INTRODUCTION:

The aim of this Secretariat memorandum is to facilitate the work of CAHMEC by providing a starting point for discussion. This document is being sent to the participants in advance of the first meeting of the CAHMEC (2-5 July in Strasbourg) and they are invited, should they wish to do so, to submit comments and/or proposals in writing in advance of the meeting.

The CAHMEC was given the following terms of reference by the Committee of Ministers:

" with a view to the preparation of the decisions by the ad hoc committee of Deputies, to clarify pertinent questions and to identify possible options raised by the implementation of Article 24-26 of the Framework Convention for the Protection of National Minorities."

The establishment of CAHMEC is part of the procedure agreed upon taken by the Ministers' Deputies at their 560th meeting (see document CAHMEC (96) 1). The importance of the issue before CAHMEC can not easily be overestimated, as it has often been emphasized that the implementation mechanism will be a major determining factor for the success of the framework Convention in contributing to democratic security in Europe.

For easy reference the text of Articles 24-26 of the framework Convention is reproduced in Appendix I. The main issue to tackle is the elaboration of the implementation mechanism, but in addition there is the question of the modalities for participation in the implementation mechanism by Parties which are not member of the Council of Europe.

This document sets out possible questions CAHMEC may wish to address in the form of a provisional list of questions, the second part contains a brief commentary.

I: PROVISIONAL LIST OF QUESTIONS

I: THE FUNCTIONS TO BE PERFORMED UNDER THE MONITORING MECHANISM;

a. INTAKE OF INFORMATION;

1. should it be possible for information from other sources than the state-report to play a part in the implementation mechanism, e.g. information from other Contracting Parties, other International Organisations, international supervisory bodies, the press, NGOS etc.?
2. if so, should certain information be expressly excluded from the process ?

b. PROCESSING OF INFORMATION;

1. if other sources of information than the State-report can be taken into account, which means could be employed to resolve questions of contradictory information?

c. CONCLUSIONS;

1. to whom could or should the conclusions be made available?

d. FOLLOW-UP;

1. what form(s) could or should the follow-up take (recommendations/general observations/other) and what modalities should be envisaged?
2. what should be the arrangements for monitoring the follow-up?

II: THE PROCEDURE TO BE FOLLOWED IN PERFORMING THE FUNCTIONS;

a. THE SHAPE OF THE PROCEDURE

1. which functions should be performed by the Committee of Ministers and which functions by the advisory committee?
2. what will the order (or sequence) of the monitoring procedure be?
3. should there be the possibility of hearings?

- b. THE PERIODICITY OF THE PROCEDURE
 - 1. what will be the periodicity of the monitoring cycle?
 - 2. should arrangements be made concerning ad hoc reports?

III: THE COMPOSITION OF THE ADVISORY COMMITTEE

- a. QUALIFICATIONS OF THE MEMBERS
 - 1. what additional qualification concerning the members of the advisory committee, if any, should be stipulated?
- b. NUMBER OF MEMBERS
 - 1. what should the number of members of the advisory committee be?
- c. CAPACITY OF THE MEMBERS
 - 1. what, if anything, should be provided concerning the capacity in which the members of the advisory committee sit?
- d. PROCEDURE FOR APPOINTMENT/ELECTION OF THE MEMBERS
 - 1. what should be the procedure for the appointment of members?

depending on the modalities retained under b, c and d:
 - 2. should there be a possibility for a substitute-member to participate in the advisory committee and if so, what should the procedure for appointment be?
 - 3. what should the length of term of membership of the advisory committee be and how many terms may one member serve?

II.

C O M M E N T A R Y

Although the provisions of the framework Convention leave much to be decided, they do make clear that the Committee of Ministers shall monitor the implementation, that there shall be periodic national reports as well as ad hoc reports and that in evaluating the adequacy of the measures taken the Committee of Ministers shall be assisted by an advisory committee. Thus, the framework Convention sets up a report-based mechanism and provides some rudimentary institutional aspects of this mechanism, indicating that there will be some form of division of labour between the Committee of Ministers and the advisory committee.

Questions of functions to be performed, of procedure and of composition are left to be determined. It is proposed to group the matters to be considered into the following three "chapters":

- I: the functions to be performed under the monitoring mechanism;
- II: the procedure to be followed in performing the functions;
- III: the composition of the advisory committee.

I. THE FUNCTIONS TO BE PERFORMED UNDER THE IMPLEMENTATION MECHANISM

To examine the functions that need to be performed under the implementation mechanism it is useful to consider the various stages of a monitoring cycle. In general terms the steps of any monitoring cycle are the following:

- A. intake of information;
- B. processing of information;
- C. conclusions;
- D. follow-up;

In the following these four stages will be considered in a first attempt to identify pertinent questions and possible options, without however claiming to be complete or comprehensive. The CAHMEC will certainly wish to amend and add to this list.

STAGE A: INTAKE OF INFORMATION

The information going into the monitoring system is the raw material of the procedure and has an important determining effect on the outcome: information that does not go into the process can not influence the outcome. The framework Convention makes clear that the primary source of information will be the reports of the Contracting parties, which will have to give full information on the measures taken to implement it. The following are suggested as possible pertinent questions concerning the in-take of information:

1. should it be possible for information from other sources than the State-report to play a part in the implementation mechanism, e.g. information from the other Contracting Parties, other International Organisations, international supervisory bodies, the press, NGOS etc.?

2. if so, should certain information be expressly excluded from the process ?

STAGE B: PROCESSING OF INFORMATION

Following the initial intake of information, the information received has to be processed. This can consist of performing two distinct functions: establishing the relevant facts and evaluating on the basis of the facts.

Establishing the facts is linked to the intake of information (STAGE A). On the one hand, if only the State-reports are to be taken into account, they will form the exclusive factual basis for the evaluation. Only if the information is incomplete would there be a necessity for action, e.g. a request for further information. On the other hand, if different sources of information are to be taken into account it is unlikely, as experience shows, that all information will always correspond. Where there is such a difference, there will be a need to resolve it. A pertinent question would be which means could be employed when seeking further and/or more precise information and/or examining the credibility of information. This could for example entail putting written questions, hearings and fact finding in situ.

It is suggested that the question whether or not there will be a need to deal with contradictory information is in effect answered by the answer to the question under STAGE A. It is inevitable unless the taking in of information is limited exclusively to the State-reports. A pertinent question would be:

1. if other sources of information than the State-report can be taken into account, which means could be employed to resolve questions of contradictory information ?

11. The second function, *evaluation*, consists of determining, once the facts have been established, whether the measures taken are in accordance with what is required by the relevant standard. On the one hand this may involve the appreciation of the facts that have been established, on the other hand it may involve the interpretation of the standard concerned.

STAGE C CONCLUSIONS

It follows from the above that once information has been taken in and processed there will be a result: there will be findings of fact and evaluations: together these form the conclusions of the monitoring cycle. It is recalled that the explanatory report to the framework Convention states:

"97. The monitoring of the implementation of this framework Convention shall, in so far as possible, be transparent. In this regard it would be advisable to envisage the publication of the reports and other texts resulting from such monitoring."

Thus, a possible pertinent question might be:

1. to whom should or could the conclusions be made available ?

STAGE D FOLLOW-UP

Under the stage of follow-up the question is what form it would take. Different forms could be envisaged, such as recommendations and general observations.

Concerning recommendations it should be pointed out that they could vary considerably in scope and content, ranging from recommendations for action by national authorities (e.g. introduction, amendment and/or implementation of national legislation or policies) to forms of technical assistance. Furthermore they could be country-specific or address several countries.

Another option to consider might be the possibility of general observations, for example concerning issues of general importance that come up in the course of the monitoring cycle.

The questions could thus be:

1. what form(s) could or should the follow-up take (recommendations/general observations/other) and what modalities should be envisaged ?

It would seem logical that there should be some kind of monitoring of follow-up, particularly if it were to take the form of recommendations. The question could be:

2. what should the arrangements for monitoring the follow-up be?

II. THE PROCEDURE TO BE FOLLOWED IN PERFORMING THE FUNCTIONS

a. THE SHAPE OF THE PROCEDURE

As recalled above, the framework Convention makes clear some rudimentary aspects of the implementation mechanism, indicating that there will be some form of division of labour between the Committee of Ministers and the advisory committee. It is suggested that a discussion on this question can be most fruitfully undertaken by considering by whom the possible functions identified above are to be performed.

The CAHMEC may wish to consider the division of labour between the Committee of Ministers and the advisory committee in the light of procedural requirements such as efficiency, effectiveness, transparency, credibility, and impartiality. In this respect consideration might also be given to the possibility of hearings as part of the procedure.

The following questions are suggested:

1. which functions should be performed by the Committee of Ministers and which functions by the advisory committee ?
2. what will the order (or sequence) of the monitoring procedure be ?
3. should there be the possibility of hearings ?

b. THE PERIODICITY OF THE PROCEDURE

The periodicity of the monitoring cycle has not been determined in the provisions of the framework Convention. Clearly this is a pertinent question in need of clarification. What is clear is that the first report will have to be submitted within a year from the entry into force.

The question is:

1. what will be the periodicity of the monitoring cycle ?

In addition to the periodic reports ad hoc reports may be requested. The following question may arise:

2. should arrangements be made concerning ad hoc reports?

III. THE COMPOSITION OF THE ADVISORY COMMITTEE

The composition of one of the acting bodies in the monitoring mechanism, the Committee of Ministers is obviously not a subject for discussion in the CAHMEC. All member States sit in the Committee of Ministers, irrespective of whether they are a party to the framework Convention or not¹. The composition of the advisory committee is a pertinent matter in which a number of points can be distinguished:

a. QUALIFICATIONS OF THE MEMBERS

Article 26 of the framework Convention provides for the following concerning the qualifications of the members of the advisory committee:

" recognised expertise in the field of the protection of national minorities"

The CAHMEC may wish to explore further the question of qualifications, for instance with a view to different disciplines that could be relevant and possibly other additional qualifications (e.g. practical experience, knowledge of country situations). The following question is suggested:

1. what additional qualification concerning the members of the advisory committee, if any, should be stipulated?

b. NUMBER OF MEMBERS

The number of members of the advisory committee needs to be determined. Possible options might be:

- a. a fixed number, independent of the number of contracting parties or member States of the Council of Europe;
- b. a number corresponding to the number of contracting parties;

The question of the participation of non-member contracting parties could be dealt with

¹ Concerning the participation of non-member States consideration might be given to their participation at the level of the Committee of Ministers (Article 24); see page 10.

separately, (see page 10).

The following question is suggested:

1. what should the number of members of the advisory committee be?

c. CAPACITY OF THE MEMBERS

The question of the capacity of the members of the advisory committee concerns in particular whether the members will participate as representatives of their national authorities or whether they will sit in an individual capacity.

The following question is suggested:

1. what, if anything, should be provided concerning the capacity in which the members of the advisory committee sit?

d. PROCEDURE FOR APPOINTMENT/ELECTION OF THE MEMBERS

The procedure for the appointment or the election of members could be organised in a variety of ways, ranging from appointment by individual States to election by the bodies of the Council of Europe (Committee of Ministers and Parliamentary Assembly). Different methods exist within the Council of Europe which may be used as points of reference. The following question is proposed:

1. what should the procedure for the appointment of members be?

Depending on the modalities retained under b, c and d, the following question might arise:

2. should there be a possibility for a substitute-member to participate in the advisory committee and if so, what should the procedure for their appointment be?
3. what should the length of term of membership of the advisory committee be and how many terms may one member serve?

* * *

PARTICIPATION OF NON-MEMBER PARTIES IN THE MONITORING MECHANISM

Article 24 paragraph 2 of the framework Convention indicates that the modalities of the participation of non-member Parties in the implementation mechanism is to be determined. As indicated in the introduction it will be easier to tackle this question in the light of the consideration of point A above. Independently of that however the question arises whether the non member Party shall sit in the Committee of Ministers when it exercises any function under the implementation mechanism.

A P P E N D I X I

Article 24

1. The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.
2. The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

Article 25

1. Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.
2. Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.
3. The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

Article 26

1. In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.
2. The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

