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CAHMEC(97)4rev.

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

(CAHMEC)

**Revised Memorandum
prepared by the
Secretariat**

NB:- Text appearing in bold has been approved by CAHMEC
-Text appearing in italics in draft Rules 7-21 has been introduced by the Secretariat to reflect comments made concerning the earlier draft in CAHMEC (97)4 (see CAHMEC (97)5, para. 11).

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**DRAFT
RESOLUTION 97/..**

**RULES ADOPTED BY THE COMMITTEE OF MINISTERS ON THE MONITORING
ARRANGEMENTS UNDER ARTICLES 24-26 OF THE FRAMEWORK
CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

adopted by the Ministers' Deputies at their ...th meeting on 1997

**I. THE ADVISORY COMMITTEE PROVIDED FOR BY ARTICLE 26 OF THE FRAMEWORK
CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES: COMPOSITION,
ELECTION AND APPOINTMENT**

A. MEMBERSHIP OF THE ADVISORY COMMITTEE

§1. Members

- 1. Members of the Advisory Committee shall be appointed in accordance with these rules. They shall sit either as ordinary or additional members.**
- 2. The number of ordinary members of the Advisory Committee shall not exceed 18.**
- 3. Members of the Advisory Committee may not be substituted.**
- 4. There shall not be more than one member in respect of any Contracting Party.**

§2. Qualifications and capacity of the members

- 5. The members of the Advisory Committee shall have recognised expertise in the field of the protection of national minorities.**
- 6. The members of the Advisory Committee shall serve in their individual capacity, shall be independent and impartial, and shall be available to serve the Committee effectively.**

B. PROCEDURE FOR ELECTION AND APPOINTMENT

§1. *General*

7. The Committee of Ministers shall elect persons to the List of Persons Eligible to Serve on the Advisory Committee (hereafter referred to as: the List) and appoint ordinary and additional members in accordance with the following rules.

§2. *Election of persons to the List*

8. Following the expression of its consent to be bound by the framework Convention, a Contracting Party may submit to the *Secretary General* the names and the *curricula vitae*, in one of the official languages of the Council of Europe, of at least two *experts* who have the required qualifications and capacity to serve on the Advisory Committee. *The Secretary General shall transmit these documents to the Committee of Ministers.*

9. The Committee of Ministers shall elect one of these persons to be entered on the List in respect of that Contracting Party.

10. Elections shall be held in the chronological order in which the names and *curricula vitae* submitted by Contracting Parties have been received. Once the framework Convention has entered into force, the very first elections will be held when the names of persons have been received from at least *twelve* Contracting Parties [*, unless the Committee of Ministers, in application of Rule 30, decides otherwise*]*.

11. The same procedure shall apply when entries on the List expire or lose their validity. For the sake of continuity, elections may be held during the two month period preceding the expiry or loss of validity of the current entry on the List in respect of a Contracting Party.

12. The entry on the List shall remain valid for [*four*] [*five*] [*six*] years. It shall however lose its validity at an earlier date in the following cases:

- at the request of the person concerned to the Secretary General;
- when the Committee of Ministers finds that the person concerned no longer has the required capacity;
- when the person concerned dies;
- when the term of ordinary membership of the Advisory Committee of the person concerned expires or loses its validity.

13. The Secretary General shall act as the depositary of the List.

§3. *Appointment and term of office of ordinary members*

* See the text added in brackets to Rule 30 and the footnote thereto.

a. Appointment of ordinary members

14. As long as the number of ordinary members of the Advisory Committee has not reached 18, each person whose name has been entered onto the List shall be appointed as an ordinary member of the Advisory Committee by the Committee of Ministers. Appointments shall follow the chronological order of the elections.

15. *Once the number of entries on the List exceeds the number of 18, the Committee of Ministers shall in filling vacant seats give priority to appointing, in the following order, persons on the List from the countries in respect of which:*

- a. there has not been an ordinary member for seven years or more;
- b. there was an ordinary member for less than three years immediately prior to a seat becoming vacant;
- c. there is currently no ordinary member.

For each of these categories, the rule shall apply that if the number of persons entitled to appointment exceeds the number of vacant seats, ordinary members shall be selected *by the Committee of Ministers through* the drawing of lots .

b. Term of office of ordinary members

16. The term of office of an ordinary member of the Advisory Committee shall be *[four] [five] [six]* years. [No one may be appointed to serve as ordinary member more than twice.] Ordinary membership will end at an earlier date in the following cases:
-at the request of the ordinary member to the Secretary General;
-when the Committee of Ministers finds that an ordinary member no longer has the required capacity;
-when the ordinary member dies.

17. However, the term of membership *of nine of the first twelve* ordinary members to be appointed shall be for *[two] [two and a half] [three]* years. *These nine shall be identified by the drawing of lots within one year from the commencement of work of the Advisory Committee.* [These members may be appointed three times to serve as ordinary members].

18. In order to ensure that, as far as possible, one half of the ordinary membership of the Advisory Committee shall be renewed every *[two] [two and a half] [three]* years, the Committee of Ministers may decide, before proceeding to any subsequent appointment, that the term or terms of office of one or more members to be appointed shall be for a period other than *[four] [five] [six]* years but not more than *[six] [seven and a half] [nine]* and not less than *[two] [two and a half] [three]* years.

19. An ordinary member appointed to *[fulfil a casual vacancy]* shall hold the seat for the remainder of the predecessor's term. As long as there are not more than 18 entries on the List, *casual vacancies will only be fulfilled by experts* entered onto the List in respect of the same Contracting Party.

§4. *Appointment and term of office of additional members*

20. From the moment a State-report** is received by the Secretary General from a Contracting Party in respect of which there is not an ordinary member of the Advisory Committee, the person who has been elected to the List in respect of that Contracting Party shall *be* an additional member of the Advisory Committee until the Advisory Committee has concluded its consideration of that report. Additional membership shall also end as soon as an ordinary member in respect of the Contracting Party concerned is appointed, and, *mutatis mutandis*, in the cases mentioned in Rule 17. *The additional member shall perform her or his functions* in accordance with Rules 35 and 36.

II. THE PROCEDURE TO BE FOLLOWED IN PERFORMING THE MONITORING FUNCTIONS

§1. *Transmission and publicity of State-reports*

22. **State-reports shall be transmitted by the Contracting Party to the Secretary General who will transmit them to the Committee of Ministers. The State-reports shall be made public by the Council of Europe upon receipt by the Secretary General, without prejudice to the right of the State to make the report public at an earlier date.**

23. **The periodical basis for transmission of State-reports mentioned in Article 25 paragraph 2 of the framework Convention is set at five years, calculated from the date on which the previous report was due.**

§2. *Consideration of State-reports by the Advisory Committee*

24. **The Committee of Ministers shall transmit the State-reports to the Advisory Committee.**

25. **The Advisory Committee shall consider the State-reports and shall transmit its opinions to the Committee of Ministers.**

§3. *Consideration of State-reports by the Committee of Ministers*

** The "full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention" transmitted pursuant to Article 25, paragraph 1 of the framework Convention and "any further information of relevance to the implementation of this framework Convention" transmitted pursuant to Article 25, paragraph 2 of the framework Convention shall hereafter be referred to as State-reports.

26. Following receipt of the opinion of the Advisory Committee, the Committee of Ministers shall consider and adopt its conclusions concerning the adequacy of the measures taken by the Contracting Party concerned to give effect to the principles of the framework Convention. It may also adopt recommendations in respect of the Contracting Party concerned, and set a date-limit for the submission of information on their implementation.

§4 Publicity

27. The conclusions and recommendations of the Committee of Ministers shall be made public upon adoption.

28. The opinion of the Advisory Committee concerning the report of a Contracting Party shall be made public at the same time as the conclusions and recommendations of the Committee of Ministers, unless in a specific case the Committee of Ministers decides otherwise.

29. Comments of the Contracting Parties in relation to the opinion of the Advisory Committee shall be made public together with the conclusions and recommendations of the Committee of Ministers and the opinion of the Advisory Committee.

§5. Working methods of the Advisory Committee

30. The Advisory Committee shall commence its work once twelve ordinary members have been appointed [or at an earlier stage if the Committee of Ministers so decides and in any event not later than one year after the entry into force of the framework Convention] ***.

31. The Advisory Committee may request additional information from the Contracting Party whose report is under consideration.

32. The Advisory Committee may receive information from sources other than State-reports.

33. Unless otherwise directed by the Committee of Ministers, the Advisory Committee may invite information from other sources after notifying the

*** While the Committee recognised that the text appearing between square brackets is outside the terms of reference given by the Ministers' Deputies, the CAHMEC considered that it might be useful to make provision in the Rules for the eventuality that Contracting Parties might not, or not immediately, nominate persons for elections. In this case, strict adherence to the rule that the Advisory Committee commences its work once twelve ordinary members (Ministers' Deputies Decision No. CM/674/280597, Appendix, guideline ii) have been appointed could delay or prevent the start of this work.

In order to prevent this situation arising, the CAHMEC stressed the desirability for the Committee of Ministers to encourage States to ratify the framework Convention and to submit nominations for the Advisory Committee in accordance with Rule 8; such an invitation could be addressed by the Committee of Ministers to Contracting Parties.

Committee of Ministers of its intention to do so.

34. The Advisory Committee may hold meetings with Representatives of the Government whose report is being considered and shall hold a meeting if the Government concerned so requests.

A specific mandate shall be obtained from the Committee of Ministers if the Advisory Committee wishes to hold meetings for the purpose of seeking information from other sources.

These meetings shall be held in closed session.

35. Additional members of the Advisory Committee shall only participate in the work of the Advisory Committee in respect of the report of the Contracting Party in respect of which they have been elected to the List.

36. Additional members shall sit in an advisory capacity; they shall not have the right to take part in a possible vote. The same shall apply to ordinary members regarding the report of the Contracting Party in respect of which they have been elected to the List.

§6. Ad hoc reports

37. The Advisory Committee may invite the Committee of Ministers to request an *ad hoc* report from a Contracting Party.

§7. Follow-up

38. The Advisory Committee shall be involved in the monitoring of the follow-up to the conclusions and recommendations on an *ad hoc* basis, as instructed by the Committee of Ministers.

§8. Rules of procedure and periodic reports

39. The Advisory Committee shall draft its rules of procedure which shall be submitted to the Committee of Ministers for approval. The same procedure shall apply to any subsequent modification to the rules of procedure.

40. The Advisory Committee shall periodically inform the Committee of Ministers on the state of its work.

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