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**AD HOC COMMITTEE FOR THE PROTECTION OF  
NATIONAL MINORITIES**

**(CAHMIN)**

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**PROPOSALS CONCERNING  
THE PRELIMINARY DRAFT FRAMEWORK CONVENTION FOR  
THE PROTECTION OF NATIONAL MINORITIES (CAHMIN (94) 12)**

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- Proposals by the Austrian Delegation
- Proposals by the Bulgarian Delegation
- Proposals by the Hungarian Delegation
- Proposals by the Norwegian Delegation
- Proposals by the Portuguese Delegation
- Proposals by the Romanian Delegation
  - Proposals by the Slovak Delegation
  - Proposals by the Swedish Delegation
  - Proposals by the Swiss Delegation
- Proposals by the Turkish Delegation
  - Proposals by the CDCC

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## PROPOSALS BY THE AUSTRIAN DELEGATION

**Article 5 (2):** Until now, the phrase "and in accordance with the requirements of a democratic society" was kept under brackets. The Austrian delegation is generally opposing this phrase and wishes to maintain this part under brackets.

**Article 8 (2):** Austria is strongly committed to the principle of using the minority language(s) before administrative and judicial authorities. The present text foreseeing its use only before administrative authorities seems to be in contradiction to the principle of equality before the law and equal treatment of the law. The Austrian delegation would prefer a simplified text approximately on the following lines:

"The Parties undertake that persons belonging to national minorities have the right to use orally and in writing their minority language in contacts with administrative and judicial authorities and that they receive from those authorities communications in that minority language.

The Parties undertake the implementation of this principle, if necessary by the use of interpreters and translations without any financial charge, in particular for areas traditionally inhabited by a substantial number of persons belonging to a national minority where the permanent use of their minority language would justify its use by those administrative and judicial authorities in whose territorial districts these persons are residing."

**Article 12 and 13:** provide different principles for the education of and in the minority language(s) with regard to private and public educational institutions. Again, this appears not to be compatible with the principle of equality before the law and equal treatment of the law.

The Austrian delegation proposes for both articles a text approximately on the following lines:

"The Parties undertake to recognise that every person belonging to a national minority has the right to learn his/her minority language and to be instructed in this minority language.

The Parties undertake the implementation of this principle within the State school system or in a private school system subsidised by the State."

**Article 15:** approaches an element of definition for a national minority. While fully understanding its intention, the present text needs a redrafting in order to avoid any misunderstanding.

**Chapter III:** Austria considers the establishment of an implementation mechanism consisting of governmental experts with competence to deal with legal problems in the application of the framework Convention a necessary and indispensable element for its appropriate functioning.

**Article D:** Austria has substantial reservations to recognise a "case-law" of the European Convention on Human Rights.

**Article I:** Austria agrees that no reservation shall be allowed to the individual protection principles as such. However, regarding the actual application of these principles States should have a wide margin of appreciation because actual situations of national minorities differ very much even within one country. The Austrian experts will propose in due time alternatives in this respect.

## PROPOSALS BY THE BULGARIAN DELEGATION

Additional preambular paragraph:

Taking into account that not all ethnic, religious or linguistic differences necessarily lead to the creation of national minorities;

Additional preambular paragraph:

Recognising that various approaches may be adopted at national level for implementation, taking into account the lack of a universally accepted definition of the term national minority;

**Article 5:** Additional paragraph 3: The Parties undertake to encourage, where appropriate, integrationist multiethnic organisations and movements and other means of eliminating barriers between ethnic groups and to discourage anything which could lead to confrontation based on ethnical, religious and linguistic differences.

**Article 19:** Additional paragraph 3: The Parties shall co-operate on questions relating to persons belonging to minorities, inter alia by exchanging information and experiences, in order to promote mutual understanding and confidence.

Additional Article to be introduced between Article C and Article D:

The Parties shall endeavour to ensure, as far as possible, an adequate extension of the principles enshrined in the present Convention also to persons belonging to ethnical, religious and linguistic minorities or regional cultures, who traditionally live on their territories.

Additional Article to be introduced between Article C and Article D:

The Parties undertake to adopt all necessary measures in order to guarantee that in areas in which persons belonging to a national minority form the majority of the population, the principles enshrined in the present Convention shall also apply to persons belonging to the majority in the State and to other national minorities.

## **PROPOSALS BY THE HUNGARIAN DELEGATION**

### **In the preamble:**

after: "Having regard to the commitments concerning the protection of national minorities contained in the Copenhagen and other documents of the Conference on Security and Cooperation in Europe",

**Having regard to the Vienna Declaration of the Council of Europe,**

**Aware of the complementary nature of those Council of Europe legal and political instruments which govern areas particularly important in promoting the cultural identity of minorities,**

**Having regard to relevant international case-law and practice,**

**Considering that the right of persons belonging to minorities to protection of their identity, and in particular the right to use their language in private and public life, constitutes an inalienable right, in accordance with the principles contained in the United Nations International Covenant on Civil and Political Rights and with the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms;**

(before: "Being resolved to create legal obligations specifying the principles to be respected in order to assure the effective protection of national minorities and of the rights of persons belonging to those minorities in the member states and such other European states as may accede to the present instrument").

### **in Article 14:**

after "The Parties shall favour the effective participation of persons belonging to national minorities in cultural, social and economic life as well as in public affairs, in particular those affecting them" by whatever means are necessary to the public authorities. **In this respect, particular attention shall be given to the principles of decentralisation and local autonomy in order that local and regional authorities may be able to contribute where appropriate."**

Explanation: cf. the Vienna Summit document: "The creation of a climate of tolerance and dialogue is necessary for the participation of all in political life. In this regard, an important contribution should be made by regional and local authorities."

**In Chapter III:**

a. The Hungarian delegation is in favour of a monitoring mechanism, preferably involving independent experts. The work of these experts could be based on a scrutiny of reports submitted regularly by the states. In the course of its examination the Commission could be empowered to use, ex officio, all information in its possession, including any memorandums from the minorities concerned. (Given that, apart from certain rights, the framework Convention essentially sets out legal principles, any such memorandums would be classified as communications, information etc and not as complaints stricto sensu). The Commission could propose that the Committee of Ministers make recommendations. This is, broadly, the system used by the European Charter on Regional or Minority Languages.

The Hungarian delegation would welcome other proposals designed to strengthen the monitoring mechanism, possibly through optional undertakings.

b. The Hungarian delegation considers that it would be desirable to establish a mechanism whereby the European Court of Human Rights could give advisory opinions, in order to guarantee that the legal terms used in relation to human rights are properly interpreted. This would be consistent with the present wording of Article D: "The rights and freedoms flowing from the principles enshrined in the present Convention which are the subject of a corresponding provision in the European Convention on Human Rights or in the Protocols thereto, as well as the restriction clauses contained in Article 20, shall be interpreted in accordance with the European Convention on Human Rights and the case-law of its organs".

Suggested wording:

a. The European Court of Human Rights may at the request of the Committee of Ministers (acting on the initiative of the monitoring body instituted by the framework Convention), give advisory opinions on legal questions concerning the interpretation and applicability of rights flowing from the principles enshrined in the present Convention between co-existing communities.

b. Such opinions may not deal with questions relating to a judicial dispute between two states, except with their consent.

c. Decisions by the Committee of Ministers to request an opinion of the Court shall require a two-thirds majority vote of the representatives entitled to sit on the Committee.

d. The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its advisory competence.

e. Reasons shall be given for the Court's opinion.

**f. If the opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.**

**g. Advisory opinions of the Court shall be communicated to the Committee of Ministers.**

Explanation: The Hungarian delegation considers that a system of advisory opinions would be a logical addition to the framework Convention. The text suggested at a is very close to the wording of Protocols II and XI, and the wording of c - g is identical to that of Protocol XI. While it is true that Protocol II has not been used to date, Protocol XI has taken the same text and incorporated it in Articles 46 - 48. The proposal for advisory opinions in no way constitutes a hidden attempt to introduce some sort of legal remedy. The wording suggested clearly rules out this possibility, firstly through the method for reaching opinions, and secondly by a process of filtering: the monitoring body would make the proposal (assuming that it is set up), but it would be the Committee of Ministers who decided on its importance and appropriateness before the request was drafted and submitted.

In several places the framework Convention contains wordings identical to those of the ECHR. Advisory opinions would ensure that the terms used in the framework Convention were interpreted in the same way as the ECHR. For this reason, advisory opinions are the best way of guaranteeing that Article D is applied.

It is true that the wording of Protocol II is not very clear. The founding fathers were concerned at the time to avoid a situation in which

- proceedings initiated as the result of an individual petition could be thwarted by a advisory opinion, and
- a real case could be referred to the Strasbourg organs involving a state which had accepted neither the right of individual petition nor the optional jurisdiction of the Court.

These reasons would not prevent the establishment of an organic link between the framework Convention and the Court. Nevertheless, the Committee of Ministers would continue to control the lodging of a request for opinion. This machinery also meets the concerns of those seeking stronger guarantees that the human rights involved in the protection of minorities do not infringe the human rights of those who do not belong to a given minority.

## **Chapter IV.**

### **Article A:**

Instead of: "in particular those of the members of the majority and of other minorities"... and the rights of others, **in particular the human rights of individuals and the principles protecting other minorities.**



Suggested wording for an Article C bis:

**Until a more complete code of the laws on the protection of national, ethnic or linguistic minorities has been issued, [the High Contracting Parties deem it expedient to declare that] in cases not covered by the present Convention, minorities remain under the protection and rule of the principles of the law of nations, as they result from the usages established [among civilised peoples], from the common heritage and historical destiny of European nations and from the laws of humanity and the dictates of public conscience.**

Explanation: The text suggested follows very closely the famous Martens clause of the Hague Convention of 1907, to which the countries represented in CAHMIN, i.e Council of Europe member states, are contracting parties.

"En attendant qu'un Code plus complet des lois de la guerre puisse être édicté, les Hautes Parties contractantes jugent opportun de constater que dans les cas non compris dans les dispositions réglementaires adoptées par elles, les populations et les belligérants restent sous la sauvegarde et sous l'empire des principes du droit des gens, tel qu'ils résultent des usages établis entre nations civilisées, des lois de l'humanité et des exigences de la conscience publique".

"Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of public conscience".

Article C bis does not contradict Article C but rather supplements it, even if the wording of Article C is likewise traditional. (Note that the Martens clause has been used in subsequent codification of humanitarian law. )

Article C is based on positive law, whether in conventions or legislation.

Article C bis also refers to ethical requirements (cf the importance of references to tolerance in the framework Convention!). In addition, it indicates that it does not consider this codification to be a definitive instrument. It would be important inter alia, in the event that the preparation and, above all, the entry into force of the Additional Protocol on cultural rights were to be delayed. Furthermore, whereas Article C is based on the principle of maintaining particular forms of national or international protection, the complementary Article C bis would reintroduce the general and European approach. Its wording based on "principles" is in keeping with the philosophy of the framework Convention.

## PROPOSALS BY THE NORWEGIAN DELEGATION

1. **Article 3, paragraph 2 In community with others**

"Persons belonging to national minorities may exercise and enjoy [their] [the] rights and freedoms [flowing from this Convention] individually as well as in community with other members of their group."

(Cp. CSCE Copenhagen Document paragraph 32, in fine; United Nations Declaration Article 4.1; ICCPR Article 27; ECHR Article 10.1)

2. **Article 5 A Cultural heritage**

"The Parties undertake to respect and to protect the cultural heritage of national minorities, including historical monuments and places of worship."

3. **Article 5 B, paragraph 1 Tolerance and pluralism**

"The Parties shall encourage pluralism and take effective measures to promote mutual respect, understanding and co-operation among all persons living on its territory, [irrespective of their ethnic, religious, linguistic or cultural identity], in particular in the fields of education, culture and the media."

Explanation: This article would replace the passage on pluralism in Article 7.3, in fine, as well as Article 10.1 on tolerance in education, being more general in scope. As it would place on states an obligation actively to promote understanding etc, it would not be superfluous in addition to Article 2, or to paragraph 5 of the preamble.

(Cp. CSCE Copenhagen Document paragraph 36, in fine, and paragraph 40.3).

**Paragraph 2:** "Likewise, the Parties shall take effective measures to combat racial, ethnic and religious hatred, anti-semitism, intolerance, and discrimination of persons belonging to national minorities."

(Cp. CSCE Copenhagen Document paragraph 40).

4. **Article 10 Education:**

**Paragraph 2:** "The Parties shall, where appropriate, take measures in the fields of education and research to encourage knowledge of the culture, history, language and religion of their national minorities."

**Paragraph 3:** "The Parties undertake to promote equal access to education at all levels for persons belonging to national minorities, and to provide adequate opportunities for such persons to gain knowledge of the society as a whole."

(Cp. United Nations Declaration Article 4.4).

Explanation: Paragraph 1 in the preliminary draft would only be included if one does not include a general provision on tolerance and pluralism as has been proposed above (Article 5 B). Paragraph 2 would substitute the same paragraph in the preliminary draft, including research as well as language and religion, and making it clearer that education at all levels is covered by the provision and that the curricula must be supplemented by teacher training etc. Paragraph 3 in the preliminary draft is considered unnecessary in addition to paragraph 2. Paragraph 3 above contains a particularly important aspect of the general principle of equality laid down in Article 4.2.

5. **Article 13 A Minority interests:**

"The Parties shall take due account of the legitimate interests of persons belonging to national minorities in all their activities, [*inter alia* when dividing the national territory into political and administrative sub-divisions, as well as into constituencies]".

(Cp. United Nations Declaration Article 5; Venice proposal Article 14.2).

6. **Article 14 Participation**

"The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life as well as in public affairs, in particular in decisions affecting the regions where they live and in matters concerning the minority to which they belong".

Explanation: The article would replace the same article in the preliminary draft, putting a stronger obligation on the States, and having a less abrupt ending which puts emphasis on participation in decision-making, and on geographical as well as material areas of special concern.

(Cp. CDDH report (15); United Nations Declaration Article 2 paragraphs 2 and 3; Venice proposal Article 14.1).

## **PROPOSALS BY THE PORTUGUESE DELEGATION**

### **Article 3**

**"Every person shall have the right to choose to be treated or not to be treated as belonging to a national minority and no disadvantage..."**

### **Article 4**

We propose to add to paragraph 3: **"The measures adopted in accordance with paragraph 2, which must not be contrary to the wishes of the national minorities concerned, shall not..."**

### **Article 5**

It would perhaps be appropriate to add at the end of paragraph 1: **"...their religion, language, traditions, values, customs, institutions and artistic heritage, especially architectural".**

### **Article 7**

It would perhaps be appropriate to add at the end of paragraph 3: **"...and in order to promote tolerance and cultural pluralism".**

### **Article 7 bis**

We suggest adding a new article, to follow Article 7 in the draft, to read as follows:

**"1. The Parties undertake to recognise that the right to freedom of thought, conscience and religion implies the freedom to change one's religion or belief, and freedom, either alone or in community with others, and in public or in private, to manifest that religion or belief, in worship, teaching, practice and observance.**

**2. The right to freedom of thought, conscience and religion also includes the right to create and maintain institutions for the exercise of that right".**

### **Article 8**

1. In paragraph 1, line 2, it seems unnecessary to say "the right to use his/her minority language without interference, in private and in public", where "his/her language" would be sufficient.

2. At the end of paragraph 2 we suggest adding: **"...The Parties shall in particular endeavour to ensure that such requests are assessed on the basis of objective and non-discriminatory criteria and to ensure the above-mentioned conditions at the local and regional level.**

**The same principles shall be applicable, where appropriate (mutatis mutandis) to territorially dispersed minorities".**

Similarly, we suggest replacing the words "shall endeavour to ensure, as far as possible" (line 3) with "**shall undertake to promote**".

3. We suggest adding the following to paragraph 3, line 1: "The Parties undertake to guarantee, **in particular as part of their international responsibilities in this field and in order to ensure a fair trial**, the right of every person...".

4. We also suggest adding a fourth paragraph, to read as follows: "**The Parties shall endeavour progressively to ensure, if the need is also felt to exist and under the conditions laid down in paragraph 2 of this article, the application of the principles referred to in paragraph 2 in relations between persons belonging to national minorities and the judicial authorities**".

#### **Article 10**

We suggest adding the following to the end of paragraph 1: "...and a spirit of tolerance **and respect concerning the differences between the various groups which constitute their population**".

#### **Article 11**

1. We suggest deleting the words "legal and" (paragraph 1, line 1).

2. We suggest replacing "However, in the regions where..." (paragraph 2, line 2) with: "However, **where**...".

#### **Article 12**

1. In paragraph 2, we suggest: "The exercise of this right shall not be restricted as concerns private educational and training establishments, **or in public establishments following private initiatives**".

2. In paragraph 3, line 3, we suggest the following wording: "...shall ensure that schooling {omit the word "mandatory"} given by public schools, **in particular** for pupils belonging to those national minorities, shall include..."

**The same principles shall be applicable where appropriate (mutatis mutandis) to territorially dispersed minorities".**

## Article 13

We suggest amending paragraph 1 as follows:

1. Within the framework of their education systems, the Parties undertake to secure to every person belonging to a national minority the right, in private educational and training establishments, to be instructed in his/her own (minority) language".

2. In paragraph 2, line 4, we suggest adding: "...in public establishments allowing all or part of the schooling of pupils belonging to..."

The same principles shall be applicable, when appropriate (mutatis mutandis) to territorially dispersed minorities".

## Article 14

We suggest adding:

"1. The Parties shall encourage the effective participation, at the national, regional and local level, of persons..."

2. To this effect, the Parties undertake to promote:

- a. that these persons be consulted, by means of appropriate procedures and in particular through institutions representing them, whenever the Parties envisage to take legislative or administrative measures which are capable of affecting them directly.
- b. that these persons be involved in the preparation, implementation and evaluation of national and regional development plans and programmes which are capable of affecting them directly.
- c. that studies be carried out in co-operation with these persons in order to assess the effects which envisaged development activities might entail for them".

## Article 15

We propose replacing the words "ses ressortissants" {in the French version} with "leurs ressortissants" {no change in English}.

## Article 18

We suggest adding: "The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in international non-governmental organisations and to establish and maintain..."

## **Article 19**

1. We suggest changing line 2 to read as follows: "...multilateral agreements with other States, in particular neighbouring States, in order to settle questions concerning the protection of national minorities...".
2. We suggest changing the wording to read: "Where appropriate, the Parties shall take measures to encourage transfrontier co-operation, especially in border areas..."

## **Article F**

We suggest adding two further provisions to this article, to read as follows:

3. Prior to the entry into force of this Convention, each member State may, when depositing its instrument of ratification, acceptance or approval or at any subsequent time, declare that the Convention is applicable with regard to itself in its relations with those member States which have made the same declaration within 90 days of the date on which its declaration was deposited.
4. A member State which has not made such a declaration may apply the Convention in its relations with other member States which are contracting parties on the basis of bilateral agreements".

## **Article I**

It would probably be more correct to say: "Aucune réserve à la présente Convention n'est admise" {no change in English version}.

## PROPOSALS BY THE ROMANIAN DELEGATION

### I. With regard to the text already approved by the CAHMIN (reproduced in bold)

While extending the widest support possible to the compromise arrived at after strenuous discussions, the Romanian delegation would like to emphasise the appraisal retained in paragraph 10 of the "Interim activity report" submitted to the Committee of Ministers, according to which "To date, the Committee has formulated and provisionally retained the draft articles which appear in Appendix II".

Accordingly, the Romanian delegation is prepared to continue to uphold this compromise text, which contains a series of provisions resulting from indicative votes. However, it retains the option of re-asserting some of the comments it has offered at the time when the indicative votes were taken, whenever

- the elements of the negotiated text will be called into question;
- the draft provisions which are to be approved by the CAHMIN will appear to be in direct contradiction with the text already retained (which largely reflects the most general co-ordinates of the future instrument).

As it has been stated at previous meetings, the Romanian delegation was not entirely satisfied with the formulae currently reflected in draft Articles 4 (paragraphs 2 and 3). 16 and C.

In the light of these preliminary remarks, it is to be noticed that:

- a. In Article 5 paragraph 2, the square brackets placed - after an inconclusive vote (8-8) - with respect to the phrase "and in accordance with the requirements of a democratic society" have been removed. Considering this question as a matter of principle, the Romanian delegation deems appropriate the return to the drafting reflected in the report furthered to the Committee of Ministers.
- b. The text of draft Article 7 is reproduced in bold. This might lead to the impression that it would enjoy a status equivalent to the provisions comprised in the Interim activity report.

Although a general exchange of views with regard to this article took place at the third meeting of the CAHMIN, it can hardly be concluded that the proposal put forward by the CDMM should be deemed "approved text". Not only the item "information freedoms" is listed in paragraph 11 of the "Interim activity report" as a topic with respect to which the Committee has not drafted a corresponding provision, but the CAHMIN itself, through its Chairman, agreed with the Romanian expert that there also existed alternative proposals for draft Article 7, which merited further consideration (reference is made here in particular to a suggestion coming from the German delegation concerning paragraph 3). In general, draft Article 7, as it stands, does not pose substantial difficulties for the Romanian delegation. Nonetheless, the language employed in paragraph 3 of this draft article contrasts with that of Article 4 paragraph 2 (already accepted by the Committee).



## **II. With regard to the proposed text**

As a general comment, it is the understanding of the Romanian delegation that the "comparative list of minority rights" prepared by the Working Party of DH-MIN, and in respect to which the CDDH did not have the opportunity to reach a final decision, formed an indicative basis for the work of the CAHMIN.

### **Article 3**

- the current formulation contrasts with the programmatic character of the rest of the provisions.

### **Article 8 paragraph 2**

- particularly in the light of the great financial, logistic, and other difficulties, the language contained in paragraph 34.1 of the Copenhagen Document (comprising a "national legislation clause") would be preferable, and render a commitment in that direction meaningful;
- due to the very nature of the instrument to be drafted (framework Convention), a provision drafted in a more general manner would help respond to the high complexity of situations in this field. Therefore, the first phrase of paragraph 2 should end after the word "authorities";
- the second sentence of draft Article 8 paragraph 2 does not seem necessary, for the scope of the principle referred to in this provision is already defined in its first part;
- for reasons of terminological coherence, the "request" mentioned in paragraph 2 should be related to "persons belonging to national minorities."

### **Article 8 paragraph 3**

- the Copenhagen Document, as well as the Vienna Summit Declaration, referring to the use of the language, employs the term "public authorities"; accordingly, the provision concerning the judiciary should mirror the characteristics retained for the disposition on administrative authorities, including the insertion of the "national legislation clause".

### **Article 9 paragraph 3**

- as long as one of the alternative criteria is defined in such terms as "substantial numbers", reference to the national legislation seems indispensable. The same should apply with respect to other provisions containing similar indications;
- the Romanian delegation also proposes that only this criterion be kept, for the alternative ("traditionally inhabited by...") represents a much too vague and highly subjective concept, leaving the door open for discretionary interpretations.

#### **Article 11 paragraph 2**

- the second sentence should be dropped, the hypothesis envisaged being exceptional; moreover, a majority of the experts did not support this approach.

#### **Article 12**

- although the latest meeting report stresses the "possibility of requiring the pupils belonging to a national minority to learn the official language of the country", this element has not received appropriate reflection in the preliminary draft framework Convention.

#### **Article 14**

- the mention "... in particular those affecting them" is restrictive and it should therefore be deleted.

#### **Article 15 paragraph 3**

- this provision should be deleted, for it raises obvious definitional problems.

To a lesser extent, the same seems also true with regard to paragraph 2. In any case, since the usefulness of such a provision relates only to the case of States that are not Parties to the ECHR, it would be advisable to resort to a concise, general formulation of Article 15.

#### **Articles 16 and 17**

The Romanian delegation reserves its position on what it sees as the appropriate placing of these provisions.

#### **Article 19 paragraph 1**

- the relationship between the objective of the protection of persons belonging to national minorities and some of the fields of co-operation listed in the draft provision is not very clear (on this point, see paragraph 45 of the latest meeting report, stating that "... it was decided to include a non-exhaustive list of fields in which such co-operation would be particularly appropriate in the context of the protection of national minorities").

#### **Article 19 paragraph 2**

- although the topic covered by this draft provision has been discussed to some extent at the previous meeting, no such provision focusing on specific areas in which transfrontier co-operation should be stimulated was mentioned. The draft exceeds the framework drawn by the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

## **Article 21**

- if there is a reason for having this provision (which is not based on the list of undertakings contained in paragraph 11 of the "Interim activity report", whereas certain points retained on this list were not followed by corresponding proposals - see the item "political representation"), it should be looked for in the position of States that are not Parties to the ECHR. However, this aspect is largely outweighed by the need to stand by the initial agreement on the non-self-executing character of the provisions to be included in the future framework Convention.

## **Article D**

- the Romanian delegation estimates that the safeguard encapsulated in this draft provision is, on the one hand, self-evident, and on the other, contradictory in the hypothesis of the future Convention being opened to non-member States.

In any case, the Romanian delegation does not support explicit references to the case-law of the relevant organs of the ECHR, which is neither in accordance with the prescriptions of the treaty law, nor with the civil law tradition.

## **III. With respect to the Preamble**

- reiterating the observation that the approval or the rejection of various proposals submitted in the course of the negotiations within the CAHMIN were the result of indicative, sometimes inconclusive votes, the Romanian delegation would insist that the principle of loyalty (the inclusion of which received some support that should not be discarded) be considered for mentioning at least in the preambular part. As it has been repeatedly stated, the principle is enshrined in a series of European documents on the basis of which the Committee currently worked. Moreover, at its third meeting, the CAHMIN agreed on the preparation of draft provisions on, inter alia, No. 19 of doc. CAH-MIN 94 (6) dealing with "minority obligations".

## PROPOSALS BY THE SLOVAK DELEGATION

- To redraft the last paragraph of the preamble as follows "Being resolved to create legal obligations specifying the principles to be respected in order to assure the effective protection of the rights of persons belonging to national minorities within the rule of law, respecting the territorial integrity and the national sovereignty of the member States and such other European States as may accede to the present instrument",
- To consider redrafting of the beginning of the Article 1 Chapter I as follows "The respect for the rights of persons belonging to national minorities aimed at the protection of them forms an integral part of the international protection of human rights..."
- To amend Article 4 of Chapter II by a new paragraph 4 reading as follows "4. In regions traditionally inhabited by national minorities or by substantial numbers of a national minority, the Parties shall take the necessary measures to ensure that those who do not belong to this minority shall not suffer from any discrimination including such that may result from implementation of the measures of protection foreseen by the present Convention".
- To insert in Article 8 paragraph 1 "The Parties undertake to recognise that every person belonging to a national minority, notwithstanding the need to use the official language or languages of the State concerned, has the right to use his/her minority language with interference, in private and in public, both orally and in writing"
- In Article 8 paragraph 2:

In regions traditionally inhabited by national minorities or by substantial number of a national minority, if those minorities so request and where this request corresponds to a real need, the Parties shall endeavour, notwithstanding the need to use the official language of the State concerned and within the frame of their legal system, as far as possible, to ensure the conditions, necessary for persons belonging to these national minorities to use their minority language before public authorities. The Parties shall in particular endeavour to ensure those conditions at the local level.
- In article 12 paragraph 1 to insert as follows: "The Parties undertake to recognise that every person belonging to a national minority, notwithstanding the need to learn the official language, has the right to learn his/her minority language".
- In Article 15 paragraph 3 to add at the end "... nationals and reside lawfully within their territory".

## **PROPOSALS BY THE SWEDISH DELEGATION**

Proposal made by the Swedish expert for a new article, to follow Article 7 in the draft:

"The Parties undertake to recognise that every person belonging to a national minority alone or in community with others has the right to profess and practise his or her own religion as well as the right to establish his or her own religious institutions, organisations and associations."

(Copenhagen document, paragraphs 32.3 and 32.6)

## PROPOSALS BY THE SWISS DELEGATION

### 1. Preamble

We propose adding a third paragraph as follows:

"Wishing to implement the Declaration of the Heads of State and Government of member States of the Council of Europe, adopted in Vienna on 9 October 1993",

Paragraph 7 could be supplemented as follows:

"Having regard to the commitments concerning the protection of national minorities contained in United Nations declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990",

The last paragraph could be amended as follows:

"Being resolved to define the principles to be respected and the obligations which flow from them to assure the effective protection of national minorities..."

### Article 4

Paragraph 2 could be amended as follows, without altering the substance of the provision:

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

### Article 7

Paragraph 2 could be changed, without altering the substance, to read:

"Paragraph 1 shall not prevent Parties from requiring the licensing of sound radio, television broadcasting or cinema enterprises provided that this is non-discriminatory and based on objective criteria".

### Article 8

We suggest amending paragraph 2 as follows:

"In regions traditionally inhabited by national minorities or by substantial numbers of a national majority, if those minorities so request and where this request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would

make it possible to use the minority language in relations between persons belonging to national minorities and the administrative authorities. The Parties shall in particular endeavour to ensure those conditions at the local and regional level."

## Article 20

This provision is a faithful reflection of CAHMIN's discussions. Nevertheless, we wonder if, as it stands, it is appropriate for inclusion in a framework convention whose provisions have been defined as not being "self-executing". At the very least, it is **paradoxical to state that an international instrument does not directly confer any rights or freedoms on the persons to whom it applies, while on the other hand referring specifically to the restrictions to be placed on those rights and freedoms.** The restriction clauses in the European Convention on Human Rights can be justified on the ground that its provisions may, in the majority of member states, be directly invoked against national authorities and, in addition, be the subject of international review. In contrast, in a framework Convention which restricts itself to setting aims which States will then undertake to implement with a wide margin of discretion, it would be sufficient to give the essential factors which make it possible to restrict the rights and freedoms flowing from the principles laid down in this instrument.

Therefore, we suggest that Article 20 be worded as follows:

"The rights and freedoms flowing from the principles enshrined in the present Convention shall only be subject to such restrictions as are justified by an overwhelming public interest; their very essence shall not be affected. The more serious restrictions must be expressly provided for in law. Cases of serious manifest and imminent danger shall constitute exceptions".

This provision should be read in the light of Articles B and D of Chapter 4.

## PROPOSALS BY THE TURKISH DELEGATION

**Preamble. paragraph 6:** Insert the word "solidarity" between "of" and "tolerance".

**Preamble. paragraph 9:** Delete the word "European" in the penultimate line.

**Article 8 paragraph (2):** In regions inhabited mainly by persons belonging to a national minority, if the overwhelming majority of these persons so request ...

**Article 8 paragraph (3):** [The Parties undertake to guarantee,, as far as possible, the right of every person belonging to a national minority to be informed promptly in a language which he understands, of the reasons for his arrest, or any charge against him and of the nature and cause of any accusation against him, as well as to defend himself, if necessary with the free assistance of an interpreter.]

**Article 9 paragraph (3):** In regions inhabited mainly by persons belonging to a national minority, if the overwhelming majority of these persons so request...

**Article 10. paragraph (1):** Add the words "and solidarity" at the end of the paragraph.

**Article 12 paragraph (3):** In regions inhabited mainly by persons belonging to a national minority, if the overwhelming majority of these persons so request ...

**Article 13 paragraph (2):** In regions inhabited mainly by persons belonging to a national minority, if the overwhelming majority of these persons so request...

**Article 18:** Replace the word "citizens of" by "persons lawfully residing in".

**Article 19:** Change the last part of the paragraph as follows: "...where persons belonging to national minorities reside."

**Article 20 paragraph (1):** Third line : paragraphs 2 and 3

Fifth line: societies in the interests of national security, public safety.



## PROPOSALS BY THE CDCC

1. On a general level, the CDCC wishes to emphasise certain key concepts which have been established as a result of its work. Although included in the CDCC's proposed articles (cf. Memorandum CN/80/MC), they have not been incorporated in the preliminary draft framework Convention.

In the opinion of the two CDCC representatives, it would be regrettable if the framework Convention were to fall short of the results already achieved through the work of the CDCC. Moreover, surely the CAHMIN's very terms of reference, by allowing for the participation of various Council of Europe steering committees, implies that, in the interests of reducing compartmentalisation, work of a legal nature should take account of the Organisation's other activities, especially in the fields of education and culture?

2. Regarding the right to education (Article 10), the CDCC wishes the **intercultural perspective** of education to be made explicit. This is one of the key concepts relating to identities, implying not only respect for identities, but also the notion of interaction and synthesis between cultures as opposed to segregation.

In the context of the CDCC's work, "the Council of Europe thus moved from a project involving special education for the "culturally different" ...to education for all with a cultural parameter, to the discovery of diversity, of otherness, and to the inculcation of the abilities and skills needed in order to master the interplay of different cultures".

(Antonio Perrotti, The Case for Intercultural Education, p. 21, Council of Europe Publications).

Therefore, the CDCC proposes that paragraph 2 of Article 10 be amended as follows:-

2. **"In an intercultural perspective**, the Parties shall endeavour to include in school curricula the teaching, not only of the culture and history of the majority, but also of those of their national minorities"

3. The CDCC representatives regret that cultural freedoms are not the subject of a separate article, which would give them the same weight as is given to linguistic and educational issues. They recognise, however, that the main elements which they proposed are to be found in different articles of the preliminary draft.

Nevertheless, they would like to propose the following two changes:-

a) It would be appropriate to incorporate the notion of **identification** or non-identification, of a person with a minority group. The point is to protect all individuals from possible pressures from their own or any other minority group.

The CDCC therefore proposes the introduction of a new Article 15, to read as follows:-

**The Parties shall secure to persons belonging to national minorities the right freely to choose their own culture and the group with which they do, or do not, identify.**

b. Article 5, paragraph 1

In order to improve the text and follow established usage, it is proposed that the word "customs" be replaced by "cultural heritage"

4. In the Preamble, paragraph 5, it is proposed that "as well as a token" be deleted, since the meaning is not very clear.