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

(CAHMIN)

**CONTROL OF THE IMPLEMENTATION OF
THE FRAMEWORK CONVENTION FOR
THE PROTECTION OF NATIONAL MINORITIES**

**Outline of several options
prepared by the Secretariat**

INTRODUCTION

1. At the CAHMIN's 4th meeting, the Secretariat was requested to prepare an informal document on the control of the implementation of the framework Convention which would set out the broad features of some of the options discussed at that meeting (see CAHMIN (94) 16 para. 40).

2. The present document does not purport to give a comprehensive overview of all possibilities that could be envisaged. In fact, many options and variants are already discussed in the study prepared by Ms ROHMER, which has been put at the disposal of the members of the CAHMIN (CAHMIN (94) 7).

Neither does it contain a detailed description of possible solutions, bearing in mind that the CAHMIN has not yet taken a decision of principle as to the nature of the control to be attached to the framework Convention. It simply aims at facilitating the CAHMIN's discussion of this issue by giving an outline of the three or four basic options that, by and large, have emerged from the CAHMIN's discussion during its 4th meeting (see CAHMIN (94) 16, paras. 34 - 36). It goes without saying that many variants of each of these options could be envisaged; the following descriptions are by no means exhaustive. For instance, elements of one option could be inserted into another.

3. Where possible, reference is made, for each of these options, to relevant parts of Ms ROHMER's study (CAHMIN (94) 7). Provisions of existing conventions to which reference is made below, are to be found in Appendix II.

OPTION I: COMMITTEE OF MINISTERS, ASSISTED BY A CONSULTATIVE COMMITTEE

4. This option is one of monitoring rather than one of control of the implementation of the undertakings. A consultative committee could be set up to which all or part of the following tasks could be given:

- making (general) proposals with a view to facilitating or improving the application of the convention by the Parties;

- making proposals for amendment of the convention;

- formulating an opinion on any proposal for amendment of the convention;

- expressing an opinion, at the request of a Party, on any question concerning the application of the convention;

- holding of exchanges of experience among the Parties on the application of the convention;

- collecting information on national legislation and other measures and data relating to the application of the convention;

- commissioning of studies;

- reporting to the Committee of Ministers on its work and on the functioning of the convention.

Alternatively, the monitoring task could also be given to an existing Committee. As an example, reference may be made to Article 9 of the 1977 European Convention on the Suppression of Terrorism ("1. The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention. 2. It shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.").

5. The committee could be composed of representatives of the Parties (provision could be made for participation as observers by member States who are not a Party and/or by non member States who are not a Party). It could be convened by the Secretary General of the Council of Europe, and a minimum frequency of meetings could be provided for (e.g. at least once a year or every two years). In addition, it could be envisaged that the Committee meet whenever one third of its members requests its convocation.

6. Under this option, it would be entirely up to the Committee of Ministers to decide whether or not to take any action on the basis of the report of the consultative committee (e.g. publication of that report). No specific provision would seem necessary, but rules could of course be included in the convention concerning the possibility of recommendations, publication of reports, etc.

7. See paras. 108-114 of CAHMIN (94) 7. An example can be found in Articles 18-20 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (no. 108 - 1981, see Appendix II).

OPTION II: COMMITTEE OF GOVERNMENTAL EXPERTS, EXAMINING REPORTS

8. A committee of governmental experts could be envisaged, which would control the implementation of the convention on the basis of reports submitted by the Parties.

9. The committee could be entrusted with all or part of the following tasks:

- examining reports submitted by the Parties on a regular basis (e.g. every two or three years) or upon the request of the committee;

- formulating its conclusions in a report to be transmitted to the Committee of Ministers;

- making recommendations to the Parties or proposing recommendations to the Committee of Ministers on the basis of those conclusions; these could be general or specific (in the latter case, the committee could be given the task of selecting situations which in its view should be the subject of recommendations to each Party; cf. Article 27 para. 3 of the European Social Charter (ESC), as amended by Article 4 of the Protocol amending the

European Social Charter, 1991 - see Appendix II);

- one or more of the tasks described in para. 4 above.

10. The committee would be composed of representatives of the Parties. Provision could be made for consultation and/or representation of NGOs. International organisations (e.g. the CSCE) could be invited to attend the meetings of the committee in an observer capacity. Provision could be made for observership of States which are not Parties (member States, non member States). The reports of the committee and those of the Parties could be made public, either on a mandatory basis (cf. the amended Article 27 ESC referred to above) or as a result of a specific decision of the Committee of Ministers or of the committee itself. Provision could also be made for the transmission of the report of the committee to the Parliamentary Assembly, for instance by the Secretary General (see Article 29 ESC as amended by the 1991 Protocol).

11. If the committee itself would not be empowered to address recommendations to the Parties, it would be for the Committee of Ministers to decide whether the report submitted by the governmental committee calls for the adoption of recommendations. These could be of a general or of an individual (addressed to one Party) nature. It could be provided that such (individual) recommendations would require a qualified majority (e.g. of two thirds of those voting: see Article 28 para. 1 ESC as amended by the 1991 Protocol). See however the problem signalled and the solution mentioned in CAHMIN (94) 7 para. 101 concerning the participation of non member States Parties in the work of the Committee of Ministers.

12. See paras. 91 and 98-107 passim of CAHMIN (94) 7.

OPTION IIA: COMMITTEE OF GOVERNMENTAL EXPERTS PRONOUNCING
ADVISORY OPINIONS (AUSTRIAN PROPOSALS)

13. See Appendix I ("Austrian observations to an implementation scheme within a framework convention for the protection of national minorities").

OPTION III: COMMITTEE OF INDEPENDENT EXPERTS

14. A committee of independent experts could be envisaged, which would control the implementation of the convention on the basis of reports submitted by the Parties.

15. The committee could be entrusted with all or part of the following tasks:

- examining reports submitted by the Parties on a regular basis (e.g. every two or three years) or upon the request of the committee; it could be provided that the first report be comprehensive whilst subsequent or ad hoc reports be more specific;

- where necessary, engaging in an (informal) dialogue with the reporting Party (the possibility of hearings with representatives of that Party could be provided for);

- where necessary, requesting supplementary information from the reporting Party;

- formulating its comments in a report to be transmitted to the Committee of Ministers together with the report submitted by the Party;

- proposing recommendations to the Committee of Ministers on the basis of those comments; these could be general or specific;

- one or more of the tasks described in para. 4 above.

16. The committee would be composed of (a limited number of) independent experts, who could be appointed by the Committee of Ministers or elected by the Parliamentary Assembly, from a list of experts of the highest integrity and of recognised competence in the matters dealt with in the convention, and nominated by the Parties. Special provision would need to be made for the appointment of experts from non-member States which are Parties to the convention. If the committee were to be of a limited composition, adding an ad hoc expert could be provided for in case no national of the reporting Party were sitting on the committee.

International organisations (e.g. the CSCE) could be invited to attend the meetings of the committee in an observer capacity. The reports of the committee and those of the Parties could be made public, either on a mandatory basis (cf. the amended Article 27 ESC referred to above) or as a result of a specific decision of the Committee of Ministers or of the committee itself (see e.g. Articles 15, para. 2, and 16, para. 3, of the European Charter for Regional or Minority Languages). Provision could also be made for the transmission of a general (annual?) report of the committee to the Parliamentary Assembly, for instance by the Secretary General (see Article 29 ESC as amended by the 1991 Protocol).

It could furthermore be provided that the committee may take account of information submitted to it by relevant NGOs (see e.g. Article 16, paras. 2 and 3, of the European Charter for Regional or Minority Languages). An early NGO input might be obtained through providing that reports by the Parties are made available to such NGOs or, upon request, to the public (see e.g. Article 23 ESC as amended by the 1991 Protocol).

17. Under this option, it would be for the Committee of Ministers to decide whether the report submitted by the governmental committee calls for the adoption of formal recommendations. These could be of a general or of an individual (addressed to one Party) nature. It could be provided that such (individual) recommendations would require a qualified majority (e.g. of two thirds of those voting: see Article 28 para. 1 ESC as amended by the 1991 Protocol). See however the problem signalled and the solution mentioned in CAHMIN (94) 7 para. 101 concerning the participation of non member States Parties in the work of the Committee of Ministers.

18. See paras. 92-97 and 104-107 passim of CAHMIN (94) 7.

A P P E N D I X I

Austrian observations to an implementation scheme within a framework Convention for the protection of national minorities

The member States of the Council of Europe have stated in the Vienna Declaration of 9 October 1993 their determination that the Council of Europe should apply itself to transforming, to the greatest possible extent, the political minority protection commitments of the CSCE into legal obligations. One possible instrument for this purpose is the framework Convention which sets out legal protection standards in the form of principles for the protection of national minorities. However, these principles, if standing alone, would have little impact on the real situation of national minorities when they are not equipped with an appropriate scheme for their implementation. In line with the above-mentioned original commitment of the Vienna Declaration, the safeguard of the legal principles of the framework Convention will require a legal implementation scheme. The elaboration and adoption of the framework Convention alone cannot be regarded as the end of the Council of Europe's involvement. Rather should it be viewed as the beginning of the era of the legal protection of national minorities for which a durable structure tailored to the particular legal situation is indispensable.

This legal situation is characterised by the fact that non-self-executing legal principles have to be translated and transformed into domestic legislation by the States Parties to the framework Convention. Its legal principles are necessarily of a general nature in order to permit their flexible application in a great variety of minority situations. Within this large margin of appreciation the interests of the national minorities will have to be accommodated in legal form. Rules are therefore needed to give guidance in this broad discretionary area in order to arrive at coherent implementation practices by individual States Parties.

The task of elaborating such rules requires a very good knowledge of the relevant minority situations dictated by the political, economic, social and cultural conditions in the respective country and determined by the size of each national minority, the relations between minority and the majority and the aspirations of the national minority. All these factors have a bearing when considering the application of the protection principles of the framework Convention. Only governmental experts possess this detailed in-depth knowledge.

The task of the governmental experts would be to discuss and to pronounce opinions on legal aspects regarding the application of the principles of the framework Convention. Such statements ("advisory opinions") could help interpreting the rather general protection principles. These opinions would not be of a formally legal binding nature but could be viewed as authoritative suggestions for legal approaches within each principle.

Every State Party should be represented in the implementation committee. Every member should have the right to raise any issue of interest provided that the questions involved relate to legal aspects of minority protection. Brief explanations of factual situations should serve as a starting point only to establish the legal context to the protection principles of the framework Convention. Political evaluations of minority situations should explicitly

be excluded. Such a procedure could and should induce participants to articulate their interests under a legal perspective thus obeying to the overriding principle of the rule of law.

The possible advantages of an implementation scheme along these lines could be summarised as follows:

1. The creation of a system of "advisory opinions" for minority protection would allow to focus the application of the general protection principles on specific concrete problems.
2. "Advisory opinions" would constitute a body of rules born out of the need to regulate specific cases and situations in practice. Since it is expected that the number of "advisory opinions" will grow in the foreseeable future, the rules would contribute to enhance the density of legal relations in the field of minority protection.
3. It is the primary responsibility of the States to ensure the protection of national minorities. It seems therefore appropriate to engage governmental representatives in the elaboration of the detailed rules in the form of "advisory opinions" for the application of the principles of the framework Convention.
4. The elaboration of rules for minority protection in areas with wide discretionary powers of the State requires from its authors a combined in-depth knowledge of factual minority situations and of the legal situation in the respective country. Only governmental experts have this knowledge. The use of independent experts would most likely lead to a loss of expertise detrimental to the quality and acceptability of the said rules ("advisory opinions").
5. Non-member States of the Council of Europe would most likely hesitate to adhere to the framework Convention when they are excluded from its application or otherwise are subject to independent experts with probably little knowledge of the situation in the country.
6. The formal procedure in the future committee for the adoption of "advisory opinions" should follow the accepted practice of the Council of Europe. The aim to achieve generally a large consensus should not exclude the possibility of majority decisions. Unanimity should not be required.
7. No intervention by any other organ against the decisions of the future committee and in particular against "advisory opinions" should be permitted.

Because of its expertise, the Office of the CSCE High Commissioner on National Minorities should have the status of permanent observer in the future committee.

These proposals are inspired by the system of "conclusions" practised within the Executive committee of the UNHCR.

A P P E N D I X I I

Excerpts from Council of Europe conventions (Articles referred to in the main text)

1. Convention for the Protection of Individuals with regard to Automatic processing of Personal Data (No. 108 - 1981)

CHAPTER V — CONSULTATIVE COMMITTEE

Article 18

Composition of the committee

1. A Consultative Committee shall be set up after the entry into force of this convention.
2. Each Party shall appoint a representative to the committee and a deputy representative. Any member State of the Council of Europe which is not a Party to the convention shall have the right to be represented on the committee by an observer.
3. The Consultative Committee may, by unanimous decision, invite any non-member State of the Council of Europe which is not a Party to the convention to be represented by an observer at a given meeting.

Article 19

Functions of the committee

The Consultative Committee:

- a. may make proposals with a view to facilitating or improving the application of the convention;
- b. may make proposals for amendment of this convention in accordance with Article 21;
- c. shall formulate its opinion on any proposal for amendment of this convention which is referred to it in accordance with Article 21, paragraph 3;
- d. may, at the request of a Party, express an opinion on any question concerning the application of this convention.

Article 20

Procedure

1. The Consultative Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this convention. It shall subsequently meet at least once every two years and in any case when one-third of the representatives of the Parties request its convocation.
2. A majority of representatives of the Parties shall constitute a quorum for a meeting of the Consultative Committee.
3. After each of its meetings, the Consultative Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of the convention.
4. Subject to the provisions of this convention, the Consultative Committee shall draw up its own Rules of Procedure.

2. European Social Charter: Amending Protocol (Turin, 1991)

Article 1

Article 23 of the Charter shall read as follows:

"Article 23 - Communication of copies of reports and comments

1. When sending to the Secretary General a report pursuant to Articles 21 and 22, each Contracting Party shall forward a copy of that report to such of its national organisations as are members of the international organisations of employers and trade unions invited, under Article 27, paragraph 2, to be represented at meetings of the Governmental Committee. Those organisations shall send to the Secretary General any comments on the reports of the Contracting Parties. The Secretary General shall send a copy of those comments to the Contracting Parties concerned, who might wish to respond.
2. The Secretary General shall forward a copy of the reports of the Contracting Parties to the international non-governmental organisations which have consultative status with the Council of Europe and have particular competence in the matters governed by the present Charter.
3. The reports and comments referred to in Articles 21 and 22 and in the present article shall be made available to the public on request."

Article 2

Article 24 of the Charter shall read as follows:

"Article 24 - Examination of the reports

1. The reports sent to the Secretary General in accordance with Articles 21 and 22 shall be examined by a Committee of Independent Experts constituted pursuant to article 25. The committee shall also have before it any comments forwarded to the Secretary General in accordance with paragraph 1 of Article 23. On completion of its examination, the Committee of Independent Experts shall draw up a report containing its conclusions.
2. With regard to the reports referred to in Article 21, the Committee of Independent Experts shall assess from a legal standpoint the compliance of national law and practice with the obligations arising from the charter for the Contracting Parties concerned.
3. The Committee of Independent Experts may address requests for additional information and clarification directly to Contracting Parties. In this connection the Committee of Independent Experts may also hold, if necessary, a meeting with the representatives of a Contracting Party, either on its own initiative or at the request of the Contracting Party concerned. The organisations referred to in paragraph 1 of Article 23 shall be kept informed.

4. The conclusions of the Committee of Independent Experts shall be made public and communicated by the Secretary General to the Governmental Committee, to the Parliamentary Assembly and to the organisations which are mentioned in paragraph 1 of Article 23 and paragraph 2 of Article 27."

Article 3

Article 25 of the Charter shall read as follows:

"Article 25 - Committee of Independent Experts

1. The Committee of Independent Experts shall consist of at least nine members elected by the Parliamentary Assembly by a majority of votes cast from a list of experts of the highest integrity and of recognised competence in national and international social questions, nominated by the Contracting Parties. The exact number of members shall be determined by the Committee of Ministers.
2. The members of the committee shall be elected for a period of six years. They may stand for re-election once.
3. A member of the Committee of Independent Experts elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.
4. The members of the committee shall sit in their individual capacity. Throughout their term of office, they may not perform any function incompatible with the requirements of independence, impartiality and availability inherent in their office."

Article 4

Article 27 of the Charter shall read as follows:

"Article 27 - Governmental Committee

1. The reports of the Contracting Parties, the comments and information communicated in accordance with paragraphs 1 of Article 23 and 3 of Article 24, and the reports of the Committee of Independent Experts shall be submitted to a Governmental Committee.
2. The committee shall be composed of one representative of each of the Contracting Parties. It shall invite no more than two international organisations of employers and no more than two international trade union organisations to send observers in a consultative capacity to its meetings. Moreover, it may consult representatives of international non-governmental organisations which have consultative status with the Council of Europe and have particular competence in the matters governed by the present Charter.
3. The Governmental Committee shall prepare the decisions of the Committee of Ministers. In particular, in the light of the reports of the Committee of Independent Experts and of the Contracting Parties, it shall select, giving reasons for its choice, on the basis of

social, economic and other policy considerations the situations which should, in its view, be the subject of recommendations to each Contracting Party concerned, in accordance with article 28 of the Charter. It shall present to the Committee of Ministers a report which shall be made public.

4. On the basis of its findings on the implementation of the Social Charter in general, the Governmental Committee may submit proposals to the Committee of Ministers aiming at studies to be carried out on social issues and on articles of the Charter which might possibly be updated."

Article 5

Article 28 of the Charter shall read as follows:

"Article 28 - Committee of Ministers

1. The Committee of Ministers shall adopt, by a majority of two-thirds of those voting, with entitlement to voting limited to the Contracting Parties, on the basis of the report of the Governmental Committee, a resolution covering the entire supervision cycle and containing individual recommendations to the Contracting Parties concerned.

2. Having regard to the proposals made by the Governmental Committee pursuant to paragraph 4 of Article 27, the Committee of Ministers shall take such decisions as it deems appropriate."

Article 6

Article 29 of the Charter shall read as follows:

"Article 29 - Parliamentary Assembly

The Secretary General of the Council of Europe shall transmit to the Parliamentary Assembly, with a view to the holding of periodical plenary debates, the reports of the Committee of Independent Experts and of the Governmental Committee, as well as the resolutions of the Committee of Ministers."

3. European Charter for Regional or Minority Languages (1992)

Article 15 - Periodical reports

1. The Parties shall present periodically to the Secretary General of the Council of Europe, in a form to be prescribed by the Committee of Ministers, a report on their policy pursued in accordance with Part II of this Charter and on the measures taken in application of those provisions of Part III which they have accepted. The first report shall be presented within the year following the entry into force of the Charter with respect to the Party concerned, the other reports at three-yearly intervals after the first report.

2. The Parties shall make their reports public.

Article 16 - Examination of the Reports

1. The reports presented to the Secretary General of the Council of Europe under Article 15 shall be examined by a committee of experts constituted in accordance with Article 17.
2. Bodies or associations legally established in a Party may draw the attention of the committee of experts to matters relating to the undertakings entered into by that Party under Part III of this Charter. After consulting the Party concerned, the committee of experts may take account of this information in the preparation of the report specified in paragraph 3 below. These bodies or associations can furthermore submit statements concerning the policy pursued by a Party in accordance with Part II.
3. On the basis of the reports specified in paragraph 1 and the information mentioned in paragraph 2, the committee of experts shall prepare a report for the Committee of Ministers. This report shall be accompanied by the comments which the Parties have been requested to make and may be made public by the Committee of Ministers.
4. The report specified in paragraph 3 shall contain in particular the proposals of the committee of experts to the Committee of Ministers for the preparation of such recommendations of the latter body to one or more of the Parties as may be required.
5. The Secretary General of the Council of Europe shall make a two-yearly detailed report to the Parliamentary Assembly on the application of the Charter.

Article 17 - Committee of experts

1. The committee of experts shall be composed of one member per Party, appointed by the Committee of Ministers from a list of individuals of the highest integrity and recognised competence in the matters dealt with in the Charter, who shall be nominated by the Party concerned.
2. Members of the committee shall be appointed for a period of six years and shall be eligible for reappointment. A member who is unable to complete a term of office shall be replaced in accordance with the procedure laid down in paragraph 1, and the replacing member shall complete his predecessor's term of office.
3. The committee of experts shall adopt rules of procedure. Its secretarial services shall be provided by the Secretary General of the Council of Europe.