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

**(CAHMIN)**

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**Austrian proposal for an additional Protocol  
in the Cultural Field to  
the European Convention on Human Rights  
with Explanatory Memorandum**

Introductory note by the Secretariat

On 21 July 1994 the following document was submitted to the Secretariat for distribution among the members of the CAHMIN.

The revised version contains a number of linguistic changes.

The member States of the Council of Europe signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1

Every national shall have the right to have his/her surname (patronym) and first names expressed in a language traditionally used in his/her State and to the official recognition of his/her surname (patronym) and first names in this language by that State.

Article 2

- (1) Every national shall have the right to receive instruction of and instruction in his/her language where that language is traditionally used in his/her State.
- (2) Within the State school system or in a private school system subsidised by the State, the exercise of this right shall be subject to the consideration by the State as to whether the demand for such instruction is sufficient in respect of the necessary public expenditure to provide such instruction.

Article 3

- (1) Every national shall have the right to use, orally and in writing, his/her language in contacts with public authorities of his/her State and to receive from those authorities spoken and written communications in the same language wherever that language is traditionally used in his/her State.
- (2) The exercise of this right shall be granted without any financial charge, if necessary by the use of interpreters and translations, in case of a permanent demand for such a use of that language before those public authorities whose territorial districts include a sufficient number of nationals traditionally using such a language to justify its use before those authorities.
- (3) Paragraphs (1) and (2) of this article shall also apply to public services provided by the public authorities or by other persons acting on their behalf.

Article 4

- (1) Any State may, at the time of signature or when depositing its instrument or ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply and state the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

(2) Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

(3) Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the day of receipt of such notification by the Secretary General.

(4) A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 63 of the Convention.

#### Article 5

(1) As between the States Parties, the provisions of Articles 1 to 3 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

(2) Nevertheless, the right of individual recourse recognised by a declaration made under Article 25 of the Convention, or the acceptance of the compulsory jurisdiction of the Court by a declaration made under Article 46 of the Convention, shall not be effective in relation to this Protocol unless the State concerned has made a statement recognising such right or accepting such jurisdiction in respect of Articles 1 to 3 of this Protocol.

#### Article 6

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### Article 7

(1) This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which (seven) (five) member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.

(2) In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

## Article 8

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance or approval;
- (c) any date of entry into force of this Protocol in accordance with Articles 4 and 7;
- (d) any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this ...day of .....199., in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

### Explanatory Memorandum to the Austrian Proposal for an Additional Protocol in the Cultural Field

#### I. Introductory remarks

The relevant instruction in the Vienna Declaration of the Council of Europe Summit of 9th October 1993 reads as follows:

"to begin work on drafting a protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities."

The present draft protocol tries to fulfil this mandate in the following way:

- It complements the ECHR<sup>1</sup> in the cultural field with provisions regarding the use of a citizen's language, which is a fundamental and universal cultural good.
- It guarantees individual and justiciable rights.
- These rights are guaranteed to all citizens within their State, but are of particular importance to persons belonging to national minorities.

#### II. General principles

The Austrian draft proposal for an Additional Protocol in the Cultural Field is based on the following general principles:

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<sup>1</sup> ECHR: European Convention on Human Rights ("Convention for the Protection of Human Rights and Fundamental Freedoms")

1. The rights contained in the draft protocol concentrate on the use of language, a basic and universal cultural good of every human being.
2. The holder of the rights is the national or citizen as a constituent element of every State. The concept of the citizen as a human rights subject is variously expressed in the main human rights instruments (Article 3 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms; Article 13 para. 2, Article 21 paras. 1 and 2 of the Universal Declaration of Human Rights; Article 12 para. 4 and Article 25 of the International Covenant on Civil and Political Rights; article 5 (d) (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination).
3. Under existing international human rights provisions, no person has an individual right to his/her own language. The rights provided for in the draft protocol therefore apply equally to all citizens. There is no need to distinguish in this context between persons belonging to minorities or majorities.
4. The rights contained in the draft protocol are individual rights to be exercised individually or in community with others.
5. The term "language traditionally used in the State" applies to those languages which citizens traditionally use in relationship with their State. This term covers therefore the majority language as well as other languages traditionally used by citizens on the territory of their State.
6. The system of the draft protocol follows the established practice of the ECHR to distinguish between the "right" as such and the "exercise of the right" which determines the juridical conditions of its application.

### III. Commentary to the provisions of the draft Protocol

#### Preamble:

The draft text is taken from Protocol No.7 to the ECHR. There appears to be no need for an elaborate preamble with political programme type provisions since the articles of the draft additional protocol are to be incorporated into the ECHR as additional articles.

#### Article 1:

This article contains two rights:

- a) The right to have the national's name expressed in a language traditionally used in his State.

Considering several attempts of States in the course of the 20th century forcibly to change names of some of their citizens, it seems appropriate to have a special provision of this kind, which is of particular importance to persons belonging to national minorities. This right guarantees only a minimum standard for the linguistic form of a citizen's name. In many cases existing State legislation will grant a wider range of choice. In such a case, Article 60

ECHR will allow citizens the continued benefit of more generous State legislation so that their rights will not be reduced to the minimum standard of the draft protocol.

- b) The right to recognition of a name in a language traditionally used in the State.

The right to have a name recognized seems to be tied to the relationship of the citizen to his State. State legislation in this field most likely does not extend to names of non-citizens. Problems of transcription in the case of languages with different alphabets should be left to the State concerned.

Article 2 (1):

Every individual learns his/her language in the first place from his/her parents and the immediate social environment. Language decisively determines the human personality. As part of the human rights relationship between citizens and their State, the linguistic identity of the citizens should be fully respected by the State. This is of particular importance for persons belonging to national minorities. Furthermore, this human rights relationship justifies the creation of justiciable rights of citizens to receive - within the educational system of their State - instruction of their language and instruction in their language. The degree of implementation of these two rights can, however, differ according to the particular circumstances in the State. (see Article 4).

Since languages, although being a universal cultural good, have an uneven geographical distribution among States and also within States, it seems appropriate to direct these two rights towards where the persons in question traditionally use the particular language as their language.

Article 2 (2):

The exercise of these rights is subject to several specific conditions:

- a) The existence of a "demand" for such type of instruction is an important criterion for the State to determine whether instruction of or in a language traditionally used in that State is required at all. It would make no sense to oblige that State to provide a specific instruction when it is not actually requested by the citizens themselves. Logically, such a "demand" will originate in the first place from citizens who traditionally use the language in question. However, other citizens can join in the "demand" for particular types of instruction as well. The concept of "demand" therefore permits interaction between persons using different languages and seems to offer legislative and administrative flexibility, particularly in multilingual areas of a State.
- b) "Demand" for instruction in and through a language traditionally used in a State must be sufficiently strong to justify the necessary public expenditure. The State needs a measure of discretion in order to be able to weigh the need to reserve public funds against the size of the "demand". This discretionary element will give the State the necessary flexibility to offer various options for instruction within its educational system to meet the varying demand for different traditional languages.

Article 3 (1):

The question of the language citizens may use to communicate with the authorities of their State is a fundamental aspect in the human rights relationship between the citizen and his State. Because of their numerical inferiority, it is of particular importance to persons belonging to national minorities.

The right as such is conceived as a fundamental right of every citizen and refers to spoken and written "contacts" and "communications" of the citizen with the authorities of his State and vice versa. This provision does not affect the legal status which a language might have as an official language.

This right should apply conceptually to the public authorities of the State, because of their fundamental role in shaping the citizen-State relationship. There remains, however, a large margin for this provision's implementation (see art. 4).

Article 3 (2):

The exercise of this right is subject to several conditions:

- a) The requirement of "permanent demand" reflects the need to provide such services only in cases with a certain density of relations between citizens and State authorities. Occasional requests from individuals to perform official acts and correspondence in a traditionally used language would not justify providing this service.
- b) The objective criterion of "sufficient number of nationals using such a language" limits the application of this right to areas where there is a demographic density of persons using traditionally that language.
- c) The exercise of this right is limited to relations with those authorities in whose territorial districts the above mentioned conditions apply.

Article 3 (3):

This article provides for the use of a language traditionally used in a State also for public services, subject to the conditions set out in article 3 (2).

Article 4:

This article offers the State a wide range of options regarding the eventual application of the draft protocol. The present text is almost identical to Article 6 of the Protocol No. 7.

As in the texts used in Protocols Nos. 1, 4 and 7, each State may furthermore determine individually the extent of the draft protocol's application to its territory in the following manner:

- by specifying which languages it considers to be a language traditionally used in its territory,

- by specifying which provisions of the draft protocol will apply to each traditional language. It is deliberately intended to give States the possibility to apply the protocol's provisions differently in case of each language. This rule will permit flexibility to comply with different situations of the languages (written/unwritten languages) and with different degrees of manifestations of linguistic identities by citizens.

Articles 5 - 8:

These are almost identical to Articles 7 - 10 of Protocol No. 7.