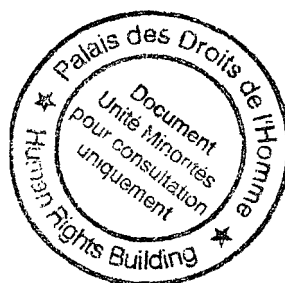




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**AD HOC COMMITTEE FOR THE PROTECTION  
OF NATIONAL MINORITIES**

**(CAHMIN)**

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**Preparation of an additional draft to the European Convention  
on Human Rights (ECHR) in the cultural field**

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**Proposals from the Swiss delegation**

**Article 5: Freedom to use language of one's choice**

1. Everyone has the right, both in public and in private, to use the language of one's choice.
2. Only the use of language in public can be restricted and only in as far as these restrictions are prescribed by law and are measures which are necessary in a democratic society for the legal security or the protection of minority or threatened languages.
- [3. The preceding provisions do not concern relations between persons and public authorities.]

**Brief comment:**

*ad para 1:*

The 1st paragraph establishes the general principle of freedom to use the language of one's choice, both in private and in public. In the view of the Swiss delegation, it is a fundamental right the principle of which has not been contested in the context of the CAHMIN<sup>1</sup> and its inclusion in a protocol to the ECHR guaranteeing rights in the cultural field is considered to be essential, even if one cannot exclude that this right could otherwise be derived from an extensive interpretation of articles 8 and 10 of the ECHR.

*ad para 2:*

If the right to use a language in private cannot be restricted, this is not the same in the case of the use of a language in public. The proposed clause provides two reasons for restrictions:

- "the legal security", a well-known expression in many European legal orders which embodies the measures that can be taken legitimately by the State with the objective of controlling a proper application of the law and the security of transactions. These measures can have the effect of restricting the linguistic freedom, in particular in the contractual field, or concerning the protection of consumers.

- "the protection of minority or threatened languages" aims at embodying the measures which restrict the right to express oneself in a public in a language, in order to protect a minority or threatened language in the area where it is traditionally used. It can concern for example, the obligation of bilingualism in the field of advertising<sup>2</sup> or the regulation of the use of languages in the media. Paragraph 2 allows the State in this way, without requiring it to do so, to take measures aiming at the protection of minority languages. Of course, it does not grant any rights to the individual.

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<sup>1</sup> Cf. Report of the 10th meeting of CAHMIN, doc CAHMIN (95)9, §35.

<sup>2</sup> Concerning this matter, see Decision of 31 March 1993 of the UN Human Rights Committee on the case of McIntyre and al.c.Canada (Communications 359/1989 and 385/1989), spec. no. 11.4. This decision has been published in RUDH 1993. p.1566ss.

*ad para 3:*

Paragraph 3 has the objective of underlining clearly that the freedom guaranteed by article 5 does not concern all the relations between the individuals and the State and that in consequence a person cannot claim to have a right towards the State. The regulation of the use of language with authorities is however the object of the draft article 6 mentioned below. Paragraph 3 is between [ ], however, it may be considered that, its content could better be included in the explanatory report, in particular if the proposal of article 6 is accepted by the Committee.

#### **Article 6: Freedom to use language of choice in relations with public authorities**

In an area where a language is traditionally used, everyone has the right to use it in his or her relations with public authorities, as far as this language is effectively spoken and practised by a substantial number of speakers.

#### **Brief comment:**

The right to use a language in relations with the authorities is rightly considered to be a particularly important right in the cultural field, in particular for persons belonging to national minorities. The Swiss delegation is conscious of the difficulties of guaranteeing such a right in the framework of the ECHR. It considers however that the proposed wording sufficiently defines the guaranteed right to make it applicable without great difficulties.

Thus, the right will only be guaranteed under several cumulative conditions, enabling the specification of the identity of the beneficiaries of the right.

- First, one has to be in an area where a language is traditionally used.
- Secondly, the language concerned must be not only spoken but effectively practised, which means currently used.
- This practise must be shared by a substantial number of speakers.

The explanatory report could likewise specify that these conditions should be given a restrictive interpretation.

The Swiss delegation knows that the notions of "area where a language is traditionally used" and "substantial number of speakers" and to a lesser degree, of "effective practise" are undetermined notions. Nevertheless, it points out that the Convention already contains an important number of those undetermined notions<sup>3</sup>. It wishes moreover to recall that in such cases, the Court must interpret these notions having regard to the specific circumstances of each case. The Swiss delegation points out furthermore that the formulation proposed safeguards the universal character of the rights guaranteed, whilst limiting the circle of the beneficiaries of the right.

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<sup>3</sup> As an example, we will cite the notion of "private life" protected under article 8 ECHR.

### **Article 7: Right to be taught in one's own language**

1. No one may be prevented from learning a language of his or her choice and from setting up institutions for this purpose.
2. In the areas where a language is traditionally used, everyone has the right to receive a public instruction in this language as far as this one is effectively spoken and practised by substantial number of speakers.

#### **Brief comment:**

##### *ad para 1:*

This paragraph embodies the right, uncontested in its principle, to learn a language of one's choice and to set up private institutions for this purpose. The wording takes into account the wish not to provide a right directly or indirectly to the performance of a State<sup>4</sup>.

The Swiss delegation, based on discussions concerning the right to set up institutions<sup>5</sup>, proposes that the CAHMIN restricts itself to recognising this right in the linguistic field, a domain where its acceptability seems less problematic. It has therefore inserted it in article 7 of its proposal.

##### *ad para 2:*

Considering its importance for the linguistic minorities, the right to receive a public instruction of one's language (and not in-one's-language) has been included in this paragraph. This right is only guaranteed under some cumulative conditions, comparable to those of article 6 of the Swiss proposal, to which explanation of motives we refer here.

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<sup>4</sup> Cf. Report of the 10th meeting of CAHMIN, doc. CAHMIN (95)9 § 39ss.

<sup>5</sup> See article 10 of the Working Group project and the report of the 10th meeting of CAHMIN, doc CAHMIN (95)9, §52ss.