

Council of Europe
Conseil de l'Europe



Strasbourg, 22 May 1995

PUBLIC DOCUMENT
DOCUMENT ~~RESTRICTED~~ PUBLIC
CAHMIN (95) 14



COE056884

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

(CAHMIN)

Proposals by Mr Matscher

Proposal by Mr Matscher

**Chairman of the Sub-Commission on the Protection of Minorities
of the European Commission for Democracy through Law**

1. The present proposal concerns the rights to be included in the Protocol to the European Convention on Human Rights guaranteeing cultural rights. It is based on the various proposals submitted to the CAHMIN, the framework Convention on the protection of national minorities, the principles set out in the proposal of the Venice Commission for a European Convention for the protection of minorities, the proposal contained in Parliamentary Assembly Recommendation 1255 (1995) and Article 27 of the United Nations Covenant on Civil and Political Rights.

The proposal aims to establish which rights should, at the very least, be covered by the Protocol.

2. General provisions

It should be noted that the provisions guaranteeing specific rights could be preceded by provisions setting out the general principles of the right to enjoy respect for or to develop one's cultural identity and the right to choose freely whether or not to belong to a cultural community.

The guarantee of the right to develop one's cultural identity, set out in general terms, will serve as a guideline for interpreting the other provisions of the Protocol. It will prevent the limitations of specific rights from being used to undermine the very substance of the cultural rights guaranteed.

There should also be specific provision guaranteeing the right to choose freely whether or not to be treated as a member of a cultural community. While this principle now seems to be accepted by all European States, enshrining it in the Protocol to the European Convention on Human Rights is not only desirable but also necessary. A clause ensuring that no disadvantage whatsoever shall arise from this right will partly fill the vacuum created by the absence of a general clause on non-discrimination in the Convention system.

3. Specific rights

3.1. Right to a name

Although the right to a name could be considered as an autonomous right (see Article 18 of the American Convention on Human Rights), the development of the case-law of the Court relating to Article 8 of the European Convention does to a certain extent cover the right to a name (see Burghartz and Stjerna judgments). The additional protection provided by the Protocol will therefore focus on the right to use and express one's name in one's own ethnic language and will not duplicate any part of Article 8 of the Convention.

3.2. Right to use the language of one's choice

This involves two aspects. One is the right to use one's language in public or in private and the other concerns dealings with public authorities. The text prepared by the working group guarantees the first of these and completely ignores the second.

In fact, the first aspect seems to be covered by Article 10 of the European Convention on Human Rights, and the efforts of the CAHMIN should in principle concentrate on defining the second aspect. In this connection, the introduction of a provision ruling out the possibility of extending the principle of using the language of one's choice to dealings with authorities seems to be an attempt to limit rather than develop this right. It would however seem desirable to provide for the right of persons belonging to sizeable linguistic minorities to deal with the authorities in their own language, while making the exercise of that right subject to a number of conditions and granting the authorities a wide margin of appreciation. Such conditions might be a sufficient number of people using the minority language, their population density in a given region, the traditional use of the language in the region and, finally, the technical feasibility of applying this right.

3.3. The Protocol will have to guarantee that, in regions where a minority represents a substantial percentage of the population, the minority language will appear on public signs.

3.4. The Protocol will also have to guarantee, under certain conditions, the rights to learn and to receive education in one's mother tongue.

Generally speaking, these rights could be limited to compulsory state schooling.

The right to learn one's mother tongue within the compulsory state school system forms the hard core of cultural rights and in principle should not be subject to the condition of there being a sufficient number of pupils of the mother tongue in question.

On the other hand, the right to receive education in a minority language can be made subject to a series of additional requirements, notably that it be technically feasible. The States Parties should be given a wide margin of appreciation.

Where the State is unable to implement the rights in question for reasons of a technical nature, it must allow private, state-subsidised schools to provide this teaching, in accordance with the law. In all cases, it will be able to impose the teaching of official languages.

3.5. Finally, the Protocol protecting cultural rights may only contain a provision guaranteeing the right to cultural heritage (see Mr Economides' proposal). This right should cover two aspects, one of a substantive nature and the other of a rather more procedural type. The substantive aspect concerns the right of access to cultural property, which would oblige States to preserve the cultural property of a cultural community to the same degree enjoyed by the cultural heritage of the State. The procedural aspect concerns requests for protection of the cultural heritage.

4. One possible form of wording for the rights mentioned above is as follows:

1. Every person shall have the right, both as an individual and as part of a group, to preserve, express and develop in complete freedom his/her cultural identity in all its forms without being subjected to any attempt at assimilation against his/her will.
2. Every person shall have the right freely to choose whether to be treated as a member of a cultural community or not, and no disadvantage whatsoever shall arise from such a choice or the exercise of the rights pertaining to it.
3. The right to respect for one's private life within the meaning of Article 8 of the Convention shall cover *inter alia* the right of every person to use the surname and first name given to him/her in accordance with his/her personal status, as well as the right to use and express that surname and first name in the language of the ethnic group to which he/she belongs or previously belonged (or the language in which the names in question originated).
4. Every person shall have the right to use the language of his/her choice in public or in private, both orally and in writing.

As far as possible, every person shall have the right to use his/her mother tongue in applications to the political, administrative and judicial authorities of a region or State, if that language is the language of a cultural community representing a substantial percentage of the population in that region or of the country's total population and the language is traditionally used in that region or in the State. Under the same conditions, every person shall have the right, where he/she so requests, to receive a reply in his/her mother tongue from the authorities concerned and to use that language in proceedings before the authorities in question.

5. In regions where a cultural community represents a substantial percentage of the population, the language of that cultural community shall also appear on public signs (place-names etc).
6. Every person shall have the right to learn his/her mother tongue, within the compulsory state schooling system, if that language is used by a cultural community representing a substantial percentage of the population in that region or of the country's population as a whole. As far as possible, he/she shall have the right to receive all or part of his/her compulsory state schooling in his/her mother tongue.

Every person shall have the right to learn his/her mother tongue or receive education in his/her mother tongue and to set up establishments for this purpose, which are subsidised by the State, in accordance with national legislation.

The above-mentioned provisions in no way affect the right of States to impose the teaching of official languages in teaching establishments falling under their jurisdiction.

- 7. Every person shall have the right of access to cultural property and the right to use it, and to request its protection, conservation and upkeep in the public interest.**
-