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

(CAHMIN)

Draft interim report

Secretariat document
prepared by
the Directorate of Human Rights

I. CAHMIN's terms of reference

1. At the Vienna Summit of Heads of State and Government (8-9 October 1993), the Committee of Ministers was instructed (inter alia):
 - "i. to draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities. This instrument would also be open for signature by non-member States;
 - ii. 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."
2. On 4 November 1993, the Committee of Ministers accordingly set up an ad hoc Committee for the Protection of National Minorities (CAHMIN), with terms of reference identical to the instructions given by the Heads of State and Government, quoted above. The Committee of Ministers specified that work on these two aspects of the terms of reference should be carried out simultaneously and completed by the following dates: (i) by 30 June 1994 and (ii) by 31 December 1995.
3. By its Decision CM/610/241194 of 24 November 1994, the Committee of Ministers further instructed the CAHMIN "to continue and complete the drafting of a Protocol complementing the ECHR in the cultural field, by provisions guaranteeing individual rights, in particular for persons belonging to national minorities". The completion date for this task was set for 31 December 1995.

In addition, the CAHMIN was invited to submit an interim report to the Committee of Ministers by 30 April 1995 at the latest.

4. In accordance with these instructions, the CAHMIN is submitting this interim report within the agreed time limit.

II. Progress of the work

5. In 1994, CAHMIN met 9 times in plenary and held one meeting of a working group. The first 7 meetings of the CAHMIN and the meeting of the working group were mainly devoted to the drafting of the framework Convention and explanatory report. At its 7th meeting (10-14 October 1994) the CAHMIN completed its work on the draft framework Convention for the protection of national minorities. This was adopted at

the 95th Ministerial Session of the Committee of Ministers on 10 November 1994. The framework Convention was opened for signature on 1 February 1995 and has so far been signed by 22 member States.*

6. The CAHMIN embarked on the second aspect of its terms of reference at its 8th meeting (7-10 November 1994), namely the preparation of a draft additional protocol to the ECHR. At the said meeting it held an exchange of views with Mr. Weber, Director of Education, Culture and Sport at the Council of Europe and, at its 9th meeting (5-9 December 1994), an exchange of views with Professor Decaux (Université de Paris X) who presented the proposal of the "Fribourg Group" for a draft protocol to the ECHR on cultural rights.
7. Representatives from the CDDH, the CDCC, the CDMM, the Commission for Democracy through Law, the High Commission for National Minorities of the CSCE (OSCE), the Commission of the European Communities and the Holy See have participated in the Committee's work.
8. At its 10th meeting (27 February - 3 March 1995) the CAHMIN adopted this interim progress report.
9. The following meetings of the CAHMIN have been scheduled before the end of 1995:
 - 11th meeting: 15-19 May 1995
 - 12th meeting: 11-15 September 1995
 - 13th meeting: 6-10 November 1995

III. State of progress

10. In its initial discussion on this subject, the CAHMIN noted that its terms of reference required it "to continue and complete the drafting of a Protocol complementing the ECHR in the cultural field, by provisions guaranteeing individual rights, in particular for persons belonging to national minorities" (see above, paras. 1 and 3). The Protocol should therefore guarantee universal individual rights and not rights reserved exclusively for persons belonging to national minorities, although the rights concerned should have particular relevance for persons belonging to national minorities.
11. These rights should fall within the "cultural field". Although the question arose of what was meant by the "cultural field", the CAHMIN considered that it would nevertheless not be appropriate to define this concept and that it would be preferable to adopt a pragmatic approach.

* Austria, Cyprus, Denmark, Estonia, Finland, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

12. Furthermore, it is an indispensable condition that any rights to be enshrined in the Protocol are to be justiciable, i.e. sufficiently precise to be able to be relied on in court. These rights should also be fundamental rights and the Protocol should ensure that the rights included in the Protocol do not restrict the scope of rights currently guaranteed in the ECHR and its Protocols. With respect to the scope of these rights, the CAHMIN recalled that the European Court of Human Rights has stated that the ECHR is a "living" instrument, to be interpreted in the light of current circumstances. The Court's progressive interpretation makes the identification of genuinely "new" rights difficult.
13. The CAHMIN subsequently collated the elements which, in accordance with its terms of reference (see paragraph 3) might be covered by the Protocol. The following elements were mentioned without claiming to be exhaustive and pending a more in-depth examination:
 - respect for cultural identity (the various aspects of this element are still to be defined, e.g. the right to develop one's customs and values);
 - the right to pursue cultural activities;
 - right to choose freely whether or not to belong to a group;
 - the right to a name;
 - the right to use one's language in private and in public;
 - the right to use one's language in relations with public authorities;
 - the right to learn a language of one's choice;
 - the right to education;
 - the provision of adult education;
 - the right to set up cultural and educational institutions;
 - the protection of cultural and scientific heritage;
 - the right of access to information and to impart information;
 - intellectual property rights;
 - the right of reply.
14. The CAHMIN examined the elements contained in the provisional list above in the light of the following criteria and questions:
 - is the right additional to those rights already guaranteed by the ECHR and the Protocols thereto?
 - is the right concerned a fundamental right?
 - does it correspond to a real need?
 - is it justiciable?
15. In order to meet the deadline of 31 December 1995 set by the Committee of Ministers and to be able to complete the work during the four meetings in 1995, the Committee instructed the Chair and Vice-Chair to prepare a preliminary draft protocol with the Secretariat's help for its 10th meeting (27 February - 3 March 1995) on the basis of the discussions which had been held during the 8th and 9th meetings.

[To be completed in the light of the results of the 10th meeting].