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

**(CAHMIN)**

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**ACTIVITY REPORT  
- SITUATION AS OF 10 NOVEMBER 1995 -  
FOR THE ATTENTION OF THE COMMITTEE OF MINISTERS**

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**I. CAHMIN's terms of reference**

1. In the Declaration that they adopted in Vienna on 9 October 1993, the Heads of State and Government instructed the Committee of Ministers:
  - "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 1994.
3. The work on the framework Convention was completed in October 1994. 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.

**II. The work carried out on the Additional Protocol to the European Convention on Human Rights.**

4. Having completed the drafting of the framework Convention the CAHMIN embarked on the second aspect of its terms of reference, namely the preparation of a draft additional protocol to the ECHR. To this end the CAHMIN held the following meetings:

8th meeting (7-10 November 1994)

9th meeting (5-9 December 1994)

10th meeting (27 February - 3 March 1995)

11th meeting (15-19 May 1995)

12th meeting (11-15 September 1995)

13th meeting (6-10 November 1995)

5. Representatives from the CDDH, the CDCC, the CDMM, the Commission for Democracy through Law, the High Commissioner on National Minorities of the OSCE, the Commission of the European Communities and the Holy See were invited to participate in the Committee's work. Following a decision by the Committee of Ministers to that effect the Congress of Local and Regional Authorities of Europe (CLRAE) was also invited to participate as an observer.
6. In order to enhance the work, the CAHMIN at its 8th meeting 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. It also held during its 11th meeting a hearing with Mr Massip, Secretary General of the International Commission on Civil Status (CIEC) and Mr Hondius, Deputy Secretary General of the CIEC.
7. At its 10th meeting (27 February - 3 March 1995) the CAHMIN adopted an interim report for the attention of the Committee of Ministers.

### **III. Interpretation of the terms of reference**

8. In its preliminary discussions on this subject, the CAHMIN noted firstly that its terms of reference required it to draft 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. The rights concerned should however have particular relevance for persons belonging to national minorities.
9. Secondly it noted that 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 or possible to define this concept and that it would be preferable to adopt a pragmatic approach.
10. Thirdly, it considered it a *conditio sine qua non* that any rights to be enshrined in the Protocol should be sufficiently precise to be justiciable before a court. Moreover, these rights should be fundamental rights.

#### **IV. Proposals examined**

11. During the course of its meetings the CAHMIN examined the following proposals:

1. Respect for/choice of cultural identity;
- 1bis Respect for cultural identity in the fields of media and education;
2. Right to engage in cultural activities;
3. Right to be treated as a member of a cultural community/  
Right to identify with a cultural community;
4. Right to a name;
5. Freedom to use language of one's choice;
- 5bis Right to use one's language in relations with the public authorities;
- 5ter Public signs (topographical and other) written also in the minority language;
6. Right to learn the language of one's choice;
7. Right to be taught in one's own language;
8. Right to education of high quality/  
Right to tolerant education;  
Right to education respecting human rights;
9. Right to adult education;
10. Right to establish institutions;
11. Right to cultural heritage;
12. Right of access to information;
13. Right to reply;
14. Right to intellectual property.

The proposals were considered under the headings listed above. The headings of the rights retained appear in brackets in Appendix I.

12. The Committee set up a Drafting group consisting of the Chairman and Vice-Chairman, which was instructed to prepare with the assistance of the Secretariat a preliminary draft protocol for its 10th meeting (27 February - 3 March 1995) on the basis of the discussions held during the 8th and 9th meetings. Members of the CAHMIN were also invited to put forward proposals.

The collection of all proposals considered by the CAHMIN is contained in document CAHMIN (95)17 rev.2 (Appendix II). A chart with an overview of the discussions held during the meetings of the CAHMIN on the draft articles is contained in Appendix III.

13. The Austrian experts submitted to CAHMIN the following documents:

1. Proposal for a protocol complementing the European Convention of Human Rights in the cultural field, with explanatory report (CAHMIN (94) 22rev.)
2. New Austrian proposal for a draft additional protocol (CAHMIN (95) 18).  
The general concept for these proposals was explained in detail in:
  - "Conceptual Ideas Regarding the Austrian Proposal for an Additional Protocol in the Cultural Field" (CAHMIN (95) 9, Appendix V.)
  - "Additional Observations on the New Austrian Proposal for an Additional Protocol in the Cultural Field" (CAHMIN (95) 22, Appendix III).

## **V. Criteria to be fulfilled**

14. The CAHMIN examined the proposals contained in the list above (paragraph 11) in the light of its terms of reference (see paragraphs 8 and 9) and 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 and universal right?
  - does it correspond to a real need?
  - is it justiciable?
15. When the answers to these four questions are in the affirmative the CAHMIN considers that a rights lends itself for inclusion in an additional protocol.

## **VI. Main obstacles encountered**

16. The CAHMIN came up against a number of difficulties of a legal, political and economic nature.
17. One of the difficulties was to interpret the ECHR and the protocols thereto. The European Court of Human Rights not only interprets the ECHR extensively but also develops it. The Court has stated that the ECHR is a "living instrument", which is to be interpreted in the light of current circumstances. There is a risk that the rights introduced in the additional protocol would be more limited than those in the current provisions of the ECHR and the protocols thereto as the latter may be developed by the Court through extensive and progressive interpretation. It was also difficult to identify new individual rights which are both fundamental and really justiciable.
18. Furthermore, the point was raised that the recognition of certain proposed rights could come into conflict with the constitutional order of certain States. On the other hand, it was stressed that the utility of the protocol could depend to a large extent on the minimum content of the rights guaranteed. The nature and the scope of the positive measures which could be incumbent upon States was also taken into consideration.
19. Another difficulty is connected to the risk that some of the proposed rights could entail a "transfer of competence" from the executive and legislature to the judicial authorities, for example in the field of national education.

## **VII. Results of the work of the CAHMIN**

20. Taking into account the criteria and difficulties, the CAHMIN has drafted certain proposals which appear in Appendix I to this activity report.

## **VIII. Proposed follow-up to the work done**

21. In the light of what has been stated and observed above, the CAHMIN is of the

opinion that several possible ways forward are open to the Committee of Ministers, in particular the following four options:

*Option 1*

22. The Committee of Ministers might consider that the draft additional protocol, although limited to the rights mentioned in Appendix I, represents a further step towards providing judicial safeguards for individuals in the cultural field. The Committee of Ministers could therefore decide to open such a protocol for signature. In this case the CAHMIN would request the Committee of Ministers to accord it two additional meetings of five days each in order to finalise the draft additional protocol and the explanatory report.

*Option 2*

23. The Committee of Ministers, after having given a new political impetus to the work of the CAHMIN, could instruct the latter to complete the draft additional protocol by incorporating additional rights. However, the Committee considers that the Committee of Ministers would have to provide detailed guidelines on the rights to be included.

*Option 3*

24. The Committee of Ministers might consider that the contents of the draft additional protocol is not sufficiently substantial to justify its opening for signature. Moreover, if such a protocol were adopted, it is questionable whether it would assist any further developments regarding rights in the cultural field over the coming years. In that case, it would be preferable to suspend work on the drafting of an additional protocol to safeguard the rights of the individual in the cultural field.

*Option 4*

25. The Committee of Ministers might decide to suspend the work on the additional protocol to the ECHR and to reflect in a more general way on the feasibility of further standardsetting in the cultural field and in the field of the protection of national minorities, taking into account the achievements since the Vienna Summit of 1993.
26. The Committee of Ministers might also wish to reflect on the question of setting up the implementation mechanism of the framework Convention for the protection of national minorities.

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27. The experts of the CAHMIN are divided on the choice between options 1-4. However, they agree unanimously that the decision is above all a political one, which should be taken by the Committee of Ministers.

## **APPENDIX I**

### **Draft Protocol No. ... to the Convention for the Protection of Human Rights and Fundamental Freedoms guaranteeing certain individual rights in the cultural field**

#### **PREAMBLE**

- (1) The member States of the Council of Europe signatory hereto,
- (2) Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms 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"),
- (3) Having regard to the Declaration of Heads of State and Government of the member States of the Council of Europe adopted at Vienna on 9 October 1993,
- (4) Considering the existence of differences in cultural identity and the importance, in a democratic society based on the principle of tolerance, of making provision for the further protection of the individual's cultural identity,

Have agreed as follows:



**ARTICLE W: (RIGHT TO A NAME)**

1. Everyone has the right to have and to use his or her name; no-one shall be compelled to change his or her name.
2. This article shall not prevent States from taking such measures as are necessary [in the interest of family life] [regarding the civil status of persons in the interest of family life] [and prescribed by law regarding the status of persons] or for the purposes of transliteration and transcription of names.
3. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society for the prevention of disorder [or crime], for the protection of [health or] morals, or for the protection of the rights and freedoms of others.

**ARTICLE X: (FREEDOM TO USE LANGUAGE OF ONE'S CHOICE)**

1. Everyone has the right to use the language of his or her choice. A person's relations with judicial authorities, other public authorities, public institutions and educational institutions do not fall within the scope of this article.
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of the prevention of crime, for the protection of health, for the protection of rights of others, for legal certainty, [or for the protection of a language].

**ARTICLE Y: (RIGHT TO LEARN LANGUAGE OF HIS OR HER CHOICE)**

No one may be prevented from learning the language of his or her choice and in particular his or her mother tongue.

**ARTICLE Z: (RIGHT TO ESTABLISH INSTITUTIONS)**

1. No one may be prohibited from setting up cultural institutions.
2. The provision of the preceding paragraph shall not prevent States from taking such measures as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

**FINAL CLAUSES [...]**

## **APPENDIX II**

**Collection of draft articles and alternative versions  
for possible inclusion in a protocol  
complementing the ECHR in the cultural field by  
provisions guaranteeing individual rights, in particular  
for persons belonging to national minorities prepared  
by a working party of the CAHMIN and other proposals  
by members of the CAHMIN**

Introduction:

This document contains every draft article and every proposal made during the previous CAHMIN meetings (9th, 10th, 11th, 12th and 13th meetings of the CAHMIN).

**Draft Protocol No. ... to the Convention for the  
Protection of Human Rights and Fundamental Freedoms  
guaranteeing certain individual rights in the cultural field**

**PREAMBLE**

- (1) The member States of the Council of Europe signatory hereto,
- (2) Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms 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"),

**OR**

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I 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").

- (3) [Wishing to follow up] [In order to follow up] the Declaration of Heads of State and Government of the member States of the Council of Europe adopted at Vienna on 9 October 1993,
- (4) Considering it necessary to take more specific account of the cultural [dimension] [field] of the rights secured by the Convention, by provisions guaranteeing individual rights in the cultural field, [in particular for persons belonging to national minorities].
- (5) Recognising that individual rights in the cultural field are rights to an identity which [every individual] [every person] [everyone] exercises both individually and [collectively], [in community with others] [in community with other members of the group].

Have agreed as follows:

**Poland:**

Paragraph 2:

Being resolved to complement the ECHR with the formulation of provisions guaranteeing individual rights in the cultural field in particular for persons belonging to national minorities.

Paragraph 3:

Having regard to the Declaration of Heads of State and Government of the member States of the Council of Europe adopted at Vienna on 9 October 1993.

Paragraph 4 and 5:

Delete.

## **ARTICLE 1: CULTURAL IDENTITY**

### **Working party:**

#### **Variant 1:**

1. Everyone has the right to respect for his cultural identity.

#### **Variant 2:**

1. Everyone both has as an individual and shares with others the right to respect for and expression of his values and cultural traditions.

#### **Variant 3:**

1. Any person shall have the right to choose his or her cultural identity.

### **Other proposals:**

#### **Finland:**

Every person belonging to a cultural community has the right to respect for his or her customs, traditions and values which are part of the lifestyle and cultural identity of the community.

#### **Poland:**

Everyone has the right to his or her way of life and self expression to enable the free reign of his or her identity in the context of respect of the right of others.

#### **Malta:**

The denigration of any person belonging to a cultural, ethnic, religious or national authority is prohibited.

Note: [This has nothing to do with racial incitement. The State has a positive obligation to prevent such denigration, if necessary by enacting specific measures in criminal law.; Denigration is not innocent or constructive criticism found e.g. in Shakespeare's Romeo and Juliet - particularly aimed at Englishmen aping Italian fashions].

#### **Turkey:**

Everyone shall have the right to an effective remedy and appropriate protection against any kind of defamation he/she may be subjected to on the ground of his/her cultural [or ethnic, linguistic or religious] characteristics.

**Switzerland:**

1. Everyone has the right to choose his or her cultural identity freely without being subjected to any attempt at assimilation against his or her will.
2. There shall be no interference by a public authority with the exercise of this right except such as is prescribed by law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

**Finland:**

1. Everyone has the right to respect for his or her customs, traditions and values which are part of the lifestyle and cultural identity of the community to which he or she belongs.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection for the rights or freedoms of others. (cf. 8(2) ECHR).

**Italy:**

In view of the expression of his/her cultural identity and in the frame of national legislation no person shall be denied the right to adequate access to the radio and television broadcasting media owned by public authorities.

No person shall be denied proportional [adequate] attention to his/her cultural identity in the sphere [area] of the public education.

**ARTICLE 2:           CULTURAL [ACTIVITY][ACTIVITIES]**

**Working party:**

1.       Everyone has the right to exercise a cultural activity both in public and in private.
2.       The exercise of this right may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, [for preventing the disclosure of information received in confidence], (cf. 10 (2) ECHR).

**Other proposal:**

**Poland:**

Everyone has the right to develop cooperation in the field of culture with persons from other cultures with the aim of reciprocal enrichment of both cultures.

### **ARTICLE 3:**

#### **Working party:**

##### **Variant 1:**

#### **Right to be treated as a member of a cultural community**

Everyone has the right freely to choose to be treated or not to be treated as a member of a cultural community and no disadvantage shall result from this choice or from the exercise of the rights connected to that choice. This right implies the freedom to change one's choice or not to identify oneself with any community or group of a cultural or other nature and the right to be protected against forced assimilation.

##### **Variant 2:**

#### **Right to identify with a cultural community**

Everyone has the right to identify with the cultural communities of one's choice and to maintain relations with them; this includes the freedom to alter such choice or not to identify with any cultural community as well as the right to be protected from forced assimilation.

#### **Other proposals:**

##### **Malta:**

##### **Variant 1:**

Every person has the right to identify himself with a group [community] or national minority and to opt out of any group, [community] or national minority.

##### **Variant 2:**

No person shall be compelled to belong to or to identify himself with any group [community] or national minority or to leave such group, [community] or national minority.



## **COMBINATION OF ARTICLES 1, 2 AND 3**

### **Working party:**

1. Everyone has the right to respect for his or her cultural identity. This right includes the freedom to change one's cultural identity and the freedom to enjoy one's own culture, either alone or in community with others and in public or private.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of public order, health or morals, or for the protection of animals, the environment or the rights and freedoms of others.

## **ARTICLE 4: RIGHT TO A NAME**

### **Working party**

#### **Variant 1:**

1. No person shall be denied the right to have and to use his name, surname or patronym.

#### **Variant 2:**

1. No person shall be compelled to change his name, surname or patronym [with the aim to make him lose his cultural identity].  
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2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary for the transcription of the name, surname or patronym for official record purposes.

### **Other proposals:**

#### **Austria [CAHMIN (94)22 rév.]:**

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.

#### **Austria:**

1. No one shall be denied the right to have and to use his or her name in its traditional form by the State of which he or she is a national.
2. No restrictions shall be placed on the exercise of this right other than such as are in accordance with law and are necessary in a democratic society in the interests of public safety, for the maintenance of ordre public, for the prevention of disorder or crime, for the protection of morals, or for the protection of the rights and freedoms of others; in case of a name's transliteration from one script into another, the public authority performing such a transliteration shall be guided by relevant accepted international standards which preserve the name's univocality in both languages and its reversibility into the original language.

#### **Professor Matscher:**

The right to respect for private life within the meaning of article 8 of the ECHR includes the right of every person to keep his/her surname and first name in accordance with his/her personal status, as well as the right to use and express this surname and first name in the language of the ethnic group to which he/she belongs or belonged [or in which the names concerned have their origins].

[Note: In this way, paragraph 2 of article 8 of the ECHR would remain applicable to article 4 of the Protocol.]

**Finland:**

Everyone shall have the right to a name and to use this name, surname or patronym.

## **ARTICLE 5: FREEDOM TO USE LANGUAGE OF ONE'S CHOICE**

### **Working party:**

1. Everyone has the [right] [freedom] to [express oneself] [to use], orally and in writing, [in] the language of one's choice, both in public and in private.  
[restriction clause cf. 10 (2) ECHR].
2. This right does not apply to relations between a person and public authorities.

### **Other proposals:**

#### **Malta:**

1. Everyone has the right to use his mother tongue both in public and in private.
2. No restriction shall be placed on the exercise of such a right except to help in the mastery of another language [a foreign language] during the hours of instruction of such language [or a foreign language].

#### **Switzerland:**

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 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] [a language] [threatened languages] [regional or minority languages] [indigenous, minority or threatened languages].
3. The preceding provisions do not concern relations between persons and public authorities.

#### **Belgium:**

1. Everyone has the right, both in private and in public, to use the language of his or her choice.
2. No restrictions shall be placed on the exercise of this right except such as are prescribed by law and are necessary in a democratic society in the interests of national security and public safety, for the prevention of disorder or crime, for the protection of health, for the protection of relations between employer and employees, for the protection of consumers, for the protection of [(threatened) languages] [a language] [regional or minority languages] [indigenous, minority or threatened languages].
3. The preceding provisions do not concern relations between persons and public authorities nor officially recognised education.

**France:**

Everyone has the right, in the context of private use, to use the language of his or her choice. This provision does not apply to relations between persons and public authorities and excludes the educational field.

**Luxembourg:**

2. This freedom does not apply to relations between persons and public authorities, or to contractual documents having legal value, or to commercial documents intended for the public and for public display, whose linguistic status shall be regulated by law.

**Informal drafting group:**

1. Everyone has the right to use the language of his choice. A person's relations with judicial authorities, other public authorities or public or educational institutions do not fall within the scope of this article.
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of [national security], public safety, for the prevention of disorder or crime, for the protection of health, for the protection of [the reputation or] rights of others, [for preventing the disclosure of information received in confidence], [for maintaining the authority and impartiality of the judiciary], [for the protection of consumers], [for the protection of social relations], or for the protection of a language.

**ARTICLE 5bis:      RIGHT TO USE ONE'S LANGUAGE IN DEALINGS WITH THE  
PUBLIC AUTHORITIES**

**Austria:**

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 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.

**Switzerland:**

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.

**Professor Matscher:**

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 rights 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.

**ARTICLE 5ter: PUBLIC SIGNS (TOPOGRAPHICAL AND OTHER) WRITTEN  
ALSO IN THE MINORITY LANGUAGE**

**Professor Matscher:**

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).

**ARTICLE 6:           RIGHT TO LEARN [LANGUAGE OF CHOICE] [HIS OR HER  
MOTHER TONGUE] [HIS OR HER OWN LANGUAGE]  
[HIS OR HER LANGUAGE]**

**Working party:**

**Variant 1:**

[No one may be prevented from] [Everyone has the right to] [Everyone is free to] [receiving instruction of] [learning] the [language of his or her choice [and in particular his or her mother tongue]] [his or her mother tongue] [his or her own language] [his or her language] [and to set up [private] institutions for this purpose] [in accordance with national legislation].

**Variant 2:**

Everyone has the right to [receive instruction of] [learn] [the language of his or her choice] [his or her mother tongue] [his or her own language] [his or her language] [and to set up the requisite [private] institutions for this purpose, [in accordance with national legislation] [according to the national laws governing the exercise of this right].

**Variant 3:**

Everyone has the right to [receive instruction of] [learn] [the language of his or her choice] [his or her mother tongue] [his or her own language] [his or her language] and to obtain from the public authorities, in proportion to the needs and the available resources, the means of guaranteeing such instruction.

**Other proposals:**

**Malta:**

1. Every person [citizen] [habitually resident in a State] has the right to be taught his or her mother tongue.
2. The preceding provision shall not, however, in any way impair the right of a State to enforce the instruction of (one) official language.

**Professor Matscher:**

1. 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.



2. 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.
3. 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.

## **ARTICLE 7: RIGHT TO BE TAUGHT IN ONE'S OWN LANGUAGE**

### **Austria [CAHMIN (94) 22rev.]:**

1. Every national shall have the right to receive instruction of an 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.

### **Austria:**

1. Within the State school system no national shall be denied the right to have adequate opportunities for receiving an instruction of his/her language and, insofar appropriate, also an instruction in his/her language wherever in his/her State that language is traditionally used.
2. In such areas adequate opportunities shall be made available when a sufficiently strong demand for a particular instruction under paragraph 1 can be fulfilled by the State at reasonable conditions.

### **Malta:**

1. Every person [citizen] (habitually resident in a State) has the right to be taught and to receive instruction in his or her mother tongue.
2. The preceding provision shall not, however, in any way impair the right of a State to enforce the instruction of (one) official language.
3. States shall only be bound to observe rights set forth in paragraph 1 if there is a sufficient demand for such rights and if the financial and human resources are available.

### **Switzerland:**

Right to learn a language and to be taught in one's 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 employed by a substantial number of speakers.

**Professor Matscher:**

1. 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.
2. 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.
3. 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.

## **ARTICLE 8: RIGHT TO EDUCATION OF HIGH QUALITY**

### **Working party:**

Everyone has the right of access to high-quality instruction based on the principle of tolerance.

### **Other proposals:**

#### **Malta:**

1. Every citizen shall have the right to receive the highest level of education available in the State where he is habitually resident.
2. There shall be no interference by a public authority except such as in accordance with the law and is necessary because of proven financial limitations [constraints] or because of the number of places available in the educational institutions of the State.
3. Nothing in this Article implies that a State has to organise courses where the demand is insufficient or uneconomic.

#### **Portugal:**

- Everyone shall have the right to instruction oriented on human rights and based on the opening of the mind, mutual understanding, solidarity and respect for other cultures;

#### **OR:**

- Everyone shall have the right to instruction aimed at the full development of his/her personality and his/her aptitudes in the respect and understanding of others and of their rights;

#### **OR:**

- Everyone shall have the right to knowledge of human rights and to take part in the establishment of a culture governed by human rights.

#### **Norway: Right to tolerant education**

In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of everyone to receive only such education and teaching which is in conformity with the principle of tolerance towards all people [regardless of their cultural identity, race, colour etc.]

**ARTICLE 9: RIGHT TO ADULT EDUCATION**

**Working party:**

**Variant 1:**

Within the available educational structures, every adult has the right to receive continuing education.

**Variant 2:**

No person shall be denied the right to adult education [within the framework of available educational facilities/structures].

## **ARTICLE 10: RIGHT TO ESTABLISH INSTITUTIONS**

### **Working party:**

#### **Variant 1:**

1. No one may be prohibited from setting up cultural [and educational] institutions [in accordance with national legislation].

#### **Variant 2:**

1. Everyone has the right, either alone or in community with others, to establish and [to use] [to join] institutions of an [educational], cultural, [religious, artistic, scientific or any other] purpose.
- 2. No restrictions shall be placed on the exercise of this right other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights or freedoms of others.

### **Other proposals:**

#### **Malta:**

1. Every person has the right, either alone or in community with others to establish educational, religious, artistic, scientific, sport or health institutions.
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with this law, and is necessary in a democratic society in the interests of national security, public safety or for the prevention of disorder or crime, for the protection of health or morals, [or for the protection of the rights and freedoms of others].

#### **Norway:**

1. No one shall be denied the right to exercise cultural activity, either alone or in community with others and in public or private. This right includes the freedom to set up and maintain cultural institutions.
2. There may be no interference by a public authority with the exercise of such a right except such as in accordance with the law and necessary in a democratic society for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

## **ARTICLE 11: RIGHT TO CULTURAL HERITAGE**

### **Working party:**

No one shall be denied the right of access to and the right of the use of cultural property, according to the national laws governing the exercise of these rights.

### **Other proposals:**

#### **Professor Economides:**

Every person has the right to access and use of cultural property and to request the protection, conservation and upkeep of cultural property in the interest of the public.

#### **Poland:**

Every person has the right to acquire, preserve, access, study, conserve, promote and transmit his cultural heritage both in material and immaterial form.

#### **Malta:**

1. The destruction of any monument which has attained a historic, religious, or symbolic significance for any group of persons is prohibited.
2. For the purposes of paragraph (1) the word "monument" includes a building, statue, fountain, cemetery or an open site.
3. The preceding provisions should not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.

#### **Poland:**

1. Everyone shall have the right of access, in so far as this is possible, to any object of cultural value forming part of the cultural heritage, as well as the right to use and study it, according to the national laws governing the exercise of these rights.

2. **Variant 1:**

Everyone has the right of access, in so far as this is possible, to any object of cultural value forming part of the cultural heritage, as well as the right to use and study it, according to the national laws governing the exercise of these rights.

#### **Variant 2:**

The High Contracting Parties shall, in the public interest, take the action needed to protect cultural heritage of importance for persons or groups of persons residing on their territory.

**Hungary:**

1. Every person has the right to access and use of cultural property and to request the protection, conservation and upkeep of cultural property in the interest of the public (Professor Economides' proposal).
2. The State shall, in fulfilling its functions in the field of heritage protection, respect this right, having due regard to its international obligations and the means at its disposal for this purpose.

**Italy:**

1. Everyone has the right to respect for his cultural identity.
2. The High Contracting Parties shall undertake not to destroy cultural heritage of significance for persons or groups residing on their territory.

**CDCC:**

The States party shall undertake not to destroy cultural traces of significance for persons and groups who reside or have resided on their territory.



**ARTICLE 12:      RIGHT OF ACCESS TO INFORMATION**

**Working party:**

1.      Everyone has the right to access to information held by public authorities.
2.      The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for the preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary (cf. 10 (2) ECHR).

**ARTICLE 13:        RIGHT TO REPLY**

**Working party:**

Everyone whose person is directly affected by the presentation in the periodical media, in particular the press, radio and television, of facts concerning him/her has the right to reply.

**ARTICLE 14:        RIGHT TO INTELLECTUAL PROPERTY**

**Finland:**

Every natural or legal person is entitled to the peaceful enjoyment of his right to benefit from the protection of the moral and material interests resulting from any scientific, religious, spiritual, literary or artistic production of which he is the author or from the cultural heritage of the community to which he belongs. No one shall be deprived of his intellectual property except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

**OR:**

The right to peaceful enjoyment of possessions within the meaning of article 1 of the Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms includes the right of every person to benefit from the protection of the moral and material interests resulting from any scientific, religious, spiritual, literary or artistic production of which he is the author or from the cultural heritage of the community to which he belongs.

[In this way, the provisions of article 1 of the Protocol No. 1 would be entirely applicable to article 2 of the Protocol, provided that the party has ratified the Protocol No. 1, too.]

## **FINAL CLAUSES**

### **Working party:**

#### **Article A**

The States Parties shall regard Articles 1 to 14 of this Protocol as additional to the Convention, and all the provisions of the Convention shall apply accordingly.

#### **Article B**

1. This Protocol shall be open for signature by members States of the Council of Europe signatories to the Convention, which may express their consent to be bound by:
  - a. signature without reservation as to ratification, acceptance or approval; or
  - b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **Article C**

This Protocol shall enter into force on the first day of the month following the expiration of a period of one year after the date on which ... Parties to the Convention have expressed their consent to be bound by the new Protocol in accordance with the provisions of Article B.

#### **Article D**

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 E**

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

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. the date of entry into force of this Protocol or of any of its provisions in accordance with Article C; and
- d. any other act, notification or communication relating to this Protocol.

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

Done at Strasbourg, this ... day of .... 19.. 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.

## **Other propositions:**

### **Austria:**

#### **Article A:**

1. As between 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 B:**

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 C:

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.

**Text appended to the collection of draft articles and alternative versions for possible inclusion in a Protocol to the ECHR in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities prepared by a working party of the CAHMIN and other proposals by members of the CAHMIN**

**- New Austrian proposal for a draft additional protocol -**

**Protocol no....**

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**

(1) No one shall be denied the right to have and to use his/her name in its traditional form by the State of which he/she is a national.

(2) No restrictions shall be placed on the exercise of this right other than such as are in accordance with law and are necessary in a democratic society in the interests of public safety, for the maintenance of ordre public, for the prevention of disorder or crime, for the protection of morals, or for the protection of the rights and freedoms of others; in case of a name's transliteration from one script into another, the public authority performing such a transliteration shall be guided by relevant accepted international standards which preserve the name's univocality in both languages and its reversibility into the original language.

**Article 2**

(1) No national shall be denied by his/her State within its State school system the right to have adequate opportunities for receiving an instruction of his/her language and, insofar appropriate, also an instruction in his/her language wherever in his/her State that language has been traditionally used.

(2) In such areas adequate opportunities shall be made available when a sufficiently strong demand for a particular instruction under paragraph 1 of this article can be fulfilled by the State at reasonable conditions.

**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 in his/her State that language has been traditionally used.

(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 of ratification, acceptance or approval,

a) specify the language or languages having been traditionally used to which this Protocol shall apply and state the extent to which it undertakes that the provisions of this Protocol shall apply to such language or languages;

b) 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 language having been traditionally used or to any other territory specified in the declaration. In respect of such on the language or 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 language having been traditionally used or any territory specified in such a 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.

(5) The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this article, may be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

#### Article 5

(1) As between the States Parties, the provisions of Articles 1 to 4 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 [five] [seven] member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provision 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.

### APPENDIX III - Chart of the discussions held in the CAHMIN on the draft articles

	8th meeting CAHMIN (94) 33	9th meeting CAHMIN (94) 35	10th meeting CAHMIN (95) 9	11th meeting CAHMIN (95) 16	12th meeting CAHMIN (95) 21	13th meeting CAHMIN (95) 22
<b>Preamble</b>			§§ 8-13			§§ 5-6
<b>Art. 1: Cultural Identity</b>		§§ 54-61	§§ 14-17	§§ 23-32	§§ 17-25	§§ 7-12(1)
<b>Art. 2: Cultural Activity</b>			§§ 18-20		§ 4 (1)	
<b>Art. 3:</b> <b>Var 1:</b> Right to be treated as a member of a cultural community <b>Var 2:</b> Right to identify with a cultural community		§§ 15-21	§§ 21-27		§§ 5-9 (1)	
<b>Art. 4: Right to a name</b>	§§ 26-30		§§ 29-34	§§ 33-41	§§ 28-35	§§ 13-18
<b>Art. 5: Freedom to use language of one's choice</b>	§ 23-25		§§ 35-38	§§ 43-49	§§ 36-47	§§ 19-23
<b>Art. 5 bis: Right to use one's language in dealings with the public authorities</b>	§ 25		§ 38	§§ 50-55 (2)		
<b>Art. 5 ter: Public signs (topographical and other) written also in the minority language</b>				§§ 56-57 (2)		
<b>Art. 6: Right to learn language of one's choice</b>			§§ 39-44	§§ 58-64	§§ 48-55	§§ 25-27
<b>Art. 7: Right to be taught in one's own language</b>		§§ 38-40	§§ 45-49	§§ 65-68 (2)		

	8th meeting CAHMIN (94) 33	9th meeting CAHMIN (94) 35	10th meeting CAHMIN (95) 9	11th meeting CAHMIN (95) 16	12th meeting CAHMIN (95) 21	13th meeting CAHMIN (95) 22
<b>Art. 8: Right to education of high quality / Right to tolerant education</b>		§§ 38-40	§§ 50-51		§§ 10-12 §§ 56-58	§§ 28-31 (1)
<b>Art. 9: Right to adult education</b>		§§ 41-44		§ 4 (1)		
<b>Art. 10: Right to establish institutions</b>		§§ 32-37	§§ 52-58		§§ 13-15 §§ 59-62	§§ 32-36
<b>Art. 11: Right to cultural heritage</b>		§§ 22-31		§§ 5-18 (2)		
<b>Art. 12: Right of access to information</b>		§§ 45-49		§ 19 (1)		
<b>Art. 13: Right to reply</b>				§ 20 (1)		
<b>Art. 14: Right to intellectual property</b>		§§ 50-53		§ 21 (1)		
<b>Final Clauses</b>						

1. This draft article was not retained.
2. The CAHMIN decided not to give priority to examining this right.