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

(CAHMIN)

**7th Meeting
10 - 14 October
Palais de l'Europe
Strasbourg**

Amendments to the explanatory report prepared by members of CAHMIN

**(Austria, Bulgaria, Finland, Germany, Netherlands, Norway,
Slovakia, Slovenia, United Kingdom)**

Introductory remark: The amendments have been reproduced as they have been sent by the members. A translation will be available at the 7th meeting.

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Austrian proposals to the draft explanatory
report on the framework Convention for the
protection of national minorities

document CAHMIN (94)21

par. 4, last sentence, should read as follows:

This examination culminated in a report of the CDDH to
"the Committee of Ministers of 8 September 1993, which set out ..

par. 9, second sentence, should read as follows:

Its aim is to specify legal principles of public
international law which States undertake to ...

par. 10 should read as follows:

In view of the range of different situations and
problems to be resolved, a choice was made for a framework
Convention which concentrates on programme-type provisions
setting out objectives which the Parties undertake to pursue.
All the provisions in section I and II are principles of public
international law and address only States, not individuals.
These principles are therefore non-selfexecuting. States carry
out the principles only by national implementation which is
therefore the only basis for eventual individual rights. The
different formulations of the principles as such express a
different degree of command directed towards States with
regards to the way of their domestic implementation leaving the
States a measure of discretion enabling them to take into
account particular national circumstances.

par. 11 should contain only the first and second sentences.
There is no need to mention again the CDDH-report of 8
September 1993 to which already par. 4 refers. That report
reflects the intensive discussions on the citizenship problem
which should not be repeated in the explanatory report.

par. 12 should read as follows:

13. The framework Convention consists of a preamble and
of five distinct sections.

par. 14 should read as follows:

14. Section I contains provisions which stipulate
certain fundamental principles of a general nature.

par. 15 should read as follows:

15. Section II contains a catalogue of specific substantive principles.

In par. 16 replace "Chapter" by "Section". The following words in brackets should be deleted since there is agreement not to have titles for the various sections of the framework Convention.

par. 17: delete the expression ("Miscellaneous provisions"). Replace "Chapter" by "Section".

par. 18: replace "Chapter" by "Section". Delete the expression ("Final provisions").

par. 21: replace in the last sentence "Chapters" by "Sections".

par. 22, first sentence, should read as follows:

The preamble mentions, in a non-exhaustive way, other sources of inspiration for

par. 25 should read at the end as follows:

... and in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Resolution 47/135, adopted by the General Assembly on 18 December 1992).

par. 32 should read as follows:

This paragraph does not guarantee a general freedom to an individual to choose arbitrarily to belong to any national minority. The individual's subjective choice is inseparably linked to objective criteria arising out of the person's individual identity.

Delete the second sentence.

After par. 34: replace "Chapter II" by "Section II". Delete "obligations".

par. 36: replace the second and third sentence by the following two sentences:

It was felt that the formal principle "equality before the law" should be supplemented by the substantive principle "equality in fact" which is to be attained by adequate measures in order to eliminate discrimination arising out of factual situations. The principle "equality in fact" aims at enabling persons belonging to national minorities to maintain and develop their identity in the context of their specific conditions achieving not only full, but also effective equality with the majority population.

par. 42: the second sentence should be changed into two sentences with the following text:

It does not prohibit voluntary assimilation. It excludes, however, forced assimilation.

par. 45 and 46: replace twice "interculturalism" by "intercultural dialogue".

par. 49: the second and third sentence should be deleted.

par. 50: the reference to the declaration of the Committee of Ministers of 29 August 1982 without specifying its contents does not enhance the clarity of the text. It is suggested to be more specific in this commentary.

The last part of the third sentence should read as follows:

"... language, it ___ also implies the freedom to receive and impart information and ideas in the majority language or in other languages."

par. 54: the second sentence should read as follows:

The words "in the framework of their legal systems" were inserted in order to respect the rule of law.

par. 59: this paragraph should be preceded by the title "Paragraph 4".

par. 61: the definite wording of the first sentence depends on the SAMIN's decision regarding Art. 14 (2) framework Convention to be taken at its next meeting.

The third sentence should read as follows:

The obligation out of this paragraph should be extended to pre-school education.

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par. 75 and 76: the Austrian side will make appropriate commentaries in the light of the new text for article 16 as soon as possible.

Additional Austrian proposal for the
draft explanatory report to the Framework Convention on
the protection of national minorities

Before par. 72, Austria proposes to introduce a new paragraph.

71a: "Demand" is generated by persons belonging to national minorities, but can be shared and supported by persons with other linguistic identities as well. This possible "additional demand" should also be taken into account when assessing the actual scope of "demand" in a given situation.

FROM:

Republic of Bulgaria
Ministry of Foreign Affairs
Department of
International Organizations

September 30, 1994

BY FAX, TWO PAGES,
INCLUDING THIS ONE

TO:

Mr H.Hartig,
Principal Administrative Officer,
Directorate of Human Rights,
Secretary of the Committee
Council of Europe

fax (00 33) 88 41 27 93

Dear Mr Hartig,

Following you will find some proposals of the Bulgarian delegation to CAHMIN for the draft explanatory report on the Framework Convention on the Protection of National Minorities... (doc. CAHMIN (94) 21/26 August 1994):

- p.4 par.10 - to substitute "self-executing" by "directly applicable".
- p.4 par.12 - last sentence - to substitute "and jointly" by "or in community with others".
- p.4 par.13, 14, 15, 16, 17, 18 - to be redrafted in accordance with the decision of CAHMIN that there will be sections without titles in the text of the Framework Convention.
- p.4 par.15 - to substitute "substantive provisions" by "specific principles".
- p.5 par.25 - to insert "or" between "National, Ethnic ..." in order to reflect the proper wording of the United Nations Declaration.
- p.5 par.31 - we feel that in the second sentence one "to" is superfluous and should be deleted, and we propose to insert "principles of" so that the text would be formulated as follows, "... to come under the protection of the principles of the Framework Convention ...".
- p.10 par.61 - to add in the last sentence "constitutional obstacles" so that the wording will be as follows, "... administrative, technical and constitutional obstacles associated with the use of minority languages ...".
- p.11 par.62 - to insert in the last sentence "and the legal system". The sentence will be formulated as follows, "... in particular the financial resources and the legal system of the Party concerned ...".
- p.12 par.71 - in the first sentence "both" to be deleted and "and" to be substituted by "or". The sentence would then read, "This provision concerns instruction of or in a minority language".

In the second sentence to delete "and" and add after "technical" "and organizational difficulties ...".

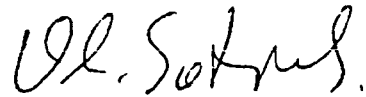
To insert in the last sentence "as well as administrative, technical and organizational conditions" after "... the available financial resources ...".

- p.13 par.77 - to insert "to this end" after the "expropriation, eviction or redrawing ..." in the last sentence.
- p.14 par.82 - to delete reference to the European Charter for Regional or Minority Languages.

We also feel that in the already adopted Art.9 (last sentence on p.30 of the English version of doc. CAHMIN (94) 28/19 September 1994) there is printing omission and "not" should be inserted before "... discriminated against".

Sofia.
30 September 1994

Yours sincerely,



Vladimir Sotirov,
Deputy Head of Department

FINLAND / FINLANDE

Helsinki, 3 October 1994

To the secretariat of the ad hoc Committee for the Protection of National Minorities (CAHMIN)

M. Hanno HARTIG

Principal administrative officer

Directorate of Human Rights

Council of Europe

Fax: 990-(33) 88.41.27.93

DRAFT FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Draft explanatory report

Some preliminary remarks and amendments by the Finnish delegation

Mr. Eero J. Aarnio

Mr. Arto Kosonen

Minor supplementary comments will be presented during the meeting of the committee.

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GENERAL CONSIDERATIONS

Objectives of the framework Convention

9. To be added after the first phrase: "So far Article 27 of the International Covenant on Civil and Political Rights and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms have been the only legally binding general provisions of the international law on this issue. The aim of the Convention is to specify ...".

Approaches and fundamental concepts

10. To be added after the last phrase: "The adequacy of the measures taken shall be evaluated by the Committee of Ministers assisted by the advisory Committee of experts appointed by the Committee of Ministers."

11. To be added after the last phrase: "The last-mentioned opinion corresponds the general comment No. 23(50) adopted by the Human Rights Committee of the United Nations from April 1994 on the Article 27 of the International Covenant on Civil and Political Rights."

COMMENTARY ON THE PROVISIONS OF THE FRAMEWORK CONVENTION

SECTION II

Article 10

Paragraph 1

60. To be added after the third phrase: "The importance of this issue has been emphasized by the provisions of the European

Charter for Regional or Minority Languages in 1992."

Paragraph 3

64. To be added in the end of the paragraph: "On the other hand the European Charter for Regional or Minority Languages includes more exact provisions on the use of minority language before the courts."

Article 12

Paragraph 2

67. To be added in the end of the paragraph: "The wording 'access to textbooks' means e.g. their publication and purchase of them from other countries."

GERMANY / ALLEMAGNE

- 1 -

Amendments of the draft explanatory report on the framework
Convention for the protection of national minorities
(CAHMIN (94)21)

Proposed by the german delegation

1. The third sentence of Nr. 11 should read als follows:

In its final activity report of 8 September 1993, the CDDH noted that for some, the term "national minority" was confined to minority group of citizens with a long history.

2. At the end of Nr. 11, the following sentences should be added:

It therefore follows that States acceding to this framework Convention define the elements of the term "national minority" in their own competence. No provision of this framework Convention can be interpreted in such a way as to restrict this right or otherwise place it in question.

Nr. 12 accordingly should begin: "Furthermore..."

3. The second sentence of Nr. 33 should be deleted.
4. The third (last) sentence of Nr. 34 should read as follows:

The term "others"_____ shall ____ include persons belonging to the same national minority, to another national minority, or to the majority.

5. The second sentence of Nr. 36 should read:

Such measures need to be "adequate", i.e. in conformity with the proportionality principle, in order to avoid violation of the rights of others as well as discrimination against others.

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6. At the end of Nr. 42, the following sentence should be added:

Measures of protection against assimilation shall be in conformity with the proportionality principle in order to avoid violation of the rights of others as well as discrimination against others.

7. In Nr. 62, the following second sentence should be inserted:

The existence of such a real need is to be assessed by the state on the basis of objective criteria.

8. In the first sentence of Nr. 67, the word "multicultural" should be replaced by "intercultural".

9. The text in Nr. 84 should be replaced by the text:

The framework convention leaves the Parties a measure of discretion. A detailed provision concerning limitations, restrictions or derogations was not considered appropriate. Therefore the article provides only in a general way for the possibility of limitations, restrictions or derogations. The scope of application of this article concerns only those rights which are provided for in international legal instruments, in particular the European Convention on Human Rights. To the extent that in implementing the framework Convention rights are established which are already contained in other legal instruments, particularly the European Convention on Human Rights, limitations, restrictions or derogations of these rights are only permissible to the extent of the limitations provided for in international legal instruments.

NETHERLANDS / PAYS-BAS**SUGGESTIONS FOR AMENDMENTS OF THE DRAFT EXPLANATORY REPORT ON THE FRAMEWORK CONVENTION ON THE PROTECTION OF NATIONAL MINORITIES, SUBMITTED BY THE NETHERLANDS (CAHMIN (94) 21).****Paragraph 4:**

- add to texts which formed the basis for discussion in DH-MIN: "documents of the CSCE, particularly the Copenhagen Document of 1990";
- change "other proposed legal measures" in "other proposals" or "other proposed measures"

Paragraph 5:

delete "established by the upheavals of European history". Although it is correct that these words appear in the Vienna Declaration, CAHMIN deliberately decided to take a broader perspective. For example, during the 6th CAHMIN meeting it was decided not to have a reference in the Preamble to these words. In order to remain consistent in this respect, these words have to be deleted.

Paragraph 10:

- reference must be made to "principles";
- delete the words "which will not, in principle, be self-executing";

Paragraph 10 might read as follows:

"10. In view of the range of different situations and problems to be resolved, a choice was made for a framework Convention which define principles to be respected and obligations which flow from them. The framework Convention concentrates on programme-type provisions setting out objectives which the Parties undertake to pursue. These provisions (...) leave the States concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, thus enabling them to take the particular circumstances into account."

Paragraph 11:

- replace "universal support" by "general support of all Council of Europe Member States".

Paragraph 12:

First sentence poses some problems. Speaking about "persons belonging to national minorities" instead of "national minorities" still does not solve the issue of what a national minority should be. It is therefore preferable to limit this sentence to the mere statement that the framework Convention does not contain collective rights. The first sentence might read as follows:

"The framework Convention does not contain collective rights for national minorities. Instead, emphasis is placed on the protection of persons belonging to national minorities. In this respect, the framework Convention follows the example of documents adopted by other international organisations."

(The second sentence may consequently be deleted.)

Paragraph 23:

Given the fact that the framework Convention not only reiterates already existing rights, laid down in the ECHR, but

also elaborates in more detail some of these rights, the text of paragraph 23 might read as follows: "Given that ... protocols thereto, or to elaborate in more detail on some of these undertakings."

Paragraph 27:

It is proposed to delete the second sentence of this paragraph, since it is superfluous.

Paragraph 31:

Third line: delete the word "to" between "not" and "he".

Paragraph 32:

This paragraph does not reflect fully the discussions during CAHMIN-meetings. Although it is generally accepted that sometimes objective elements are necessary to determine the question whether a person can belong to a national minority, this is not necessarily always the case, for example in the case of religious minorities. Accordingly, this paragraph might read as follows:

"32. This paragraph does not guarantee a general freedom for every individual to choose to belong to a national minority or not. Regularly, objective elements may determine the exercise of the right guaranteed in this paragraph, since an individual normally has to "belong" to a national minority in order to be able to claim it."

Paragraph 38:

It is proposed to delete the second sentence, since it is very difficult to implement such a sentence in practice. After all, national minorities may have diverging or even conflicting wishes. Furthermore, within a national minority wishes may differ.

Paragraph 48:

Last sentence: in stead of referring back to the commentary on the preamble, it is preferable to reiterate here that the reason for including this undertaking in the present framework Convention is the fact that this Convention is open for non-Council of Europe member States.

Paragraphs 62 and 63:

It is proposed to amend para. 62 by adding the criterion of areas inhabited traditionally or in substantial numbers to the criteria already mentioned in para. 62.

Paragraph 62 might subsequently read as follows:

"62. The use of a minority language in relations with the administrative authorities must as far as possible be ensured, if the following three conditions are met: it must relate to areas which are inhabited by persons belonging to national minorities traditionally or in substantial numbers, the persons belonging to the national minority must request the use of the minority language and the request must correspond to a real need on the part of the population concerned. The flexible form of the way in which these criteria are formulated, and the wording "as far as possible" allows each Party to take into account particular circumstances and factors, including the financial resources of the Party

concerned."

Paragraph 63 can subsequently be limited to the first sentence. The second and third sentence can be deleted.

Paragraph 66:

It is proposed to add to this paragraph a sentence, stating that this principle is related to the freedom of expression. This element might be included between the second and third sentence and might read as follows: "This right is closely related to the freedom of expression, as already laid down in article 7 of this Convention."

Paragraph 71 and 72:

Idem as paras 62 and 63: the reference to "areas" in para. 72 is one of the three criteria, which have to be fulfilled in order to apply article 14 para. 2. In the present wording, the relationship between this criterion and the two criteria in para. 71 is not clear enough. This relationship might be given more emphasis by changing para. 72 as follows:

"72. Furthermore, the obligation to ensure instruction of and in minority languages is dependent on the criterion, whether an area is "inhabited by persons belonging to national minorities traditionally or in substantial numbers". The text deliberately refrains from defining this phrase, thereby providing a flexible form of wording which allows Parties"

NORWAY / NORWEGE

NORWEGIAN SUGGESTIONS FOR AMENDMENTS TO THE DRAFT EXPLANATORY
REPORT ON THE FRAMEWORK CONVENTION ON THE PROTECTION OF
NATIONAL MINORITIES (CAHMIN(94)21)

* Para. 5 second sentence: "...the national minorities
established in Europe by the upheavals of ... history..."
(cf. Vienna Decl. para. 1)

* Para. 5 third sentence: "...decided to enter into legal
commitments..."

(as they stand, the third and final sentences in combination
seem to suggest that the framework convention contains
political (not legal) commitments)

* Para. 9 first sentence: "first legally binding multilateral
instrument devoted to the protection of national minorities in
general."

(ICCPR (cf. art 27), ECHR (art 14), CRC (art 30) are also
concerned with, inter alia, the protection of national
minorities; this is not, to our knowledge, "the first legally
binding multilateral instrument", but presumably the
first which does not deal exclusively with one or more
particular minority groups and/or particular states)

* Para 10 first sentence: "...framework Convention which
concentrates in particular on programme-type provisions..."
(quite a few of the provisions, in particular those which
refer to ECHR rights, are not programme-type)

-to be continued-

* Para 11 final sentence(s): "...refugees, should also be included in the concept. Moreover, opinions were divided as to whether citizenship should ___ be a criterion ..."

(there is no necessary link between the two opinions, and it appears that no such link is made in CDDH final report)

* Para 12: "In the framework Convention, emphasis is placed on the protection of persons belonging to national minorities rather than the granting of collective rights to minorities as such. ... This will not, however, affect these persons' ability ... to exercise the rights and freedoms flowing from the principles set out in the framework Convention in community with other members of their group (see Article 3, para 2)."

((1) not convinced that the conceptual problems become significantly less significant; (2) CSCE Cph-doc contains several references to national minorities as such; (3) "individually" is in this context superfluous)

* Para 23: "... Council of Europe, and also for didactic reasons, it was not considered..."

* Para 27 first sentence: "... the protection of national minorities, because it forms an integral part of the protection of human rights, ..."

(cf. text of art 1 : "as such")

-to be continued-

* Para 29 second sentence: "..."

* Para 34 final sentence: "... and shall certainly include persons belonging to the same national minority"

* Para 36 first sentence: "Paragraph 1, which is inspired by Article 26 in the International Covenant on Civil and Political Rights, takes the classic approach..."

* Para 46: "... barriers between ethnic, cultural, linguistic and religious groups by encouraging multi-cultural organizations and movements"

(cf. CERD art 2(e), the purpose of this provision is not primarily to integrate them into society, but to create mutual understanding and respect between persons belonging to different groups, based on equality)

* Para 48 first sentence: "...is to guarantee ... respect for the right of every person..."

(the Parties shall respect the right)

* Para 49 final sentence: "...Article 9, paragraph 1 (second sentence) and paragraph 3 (second sentence)"

(?)

* Para 53 second sentence: "..."

(was it?)

-to be continued-

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(* Article 9 para 1 in fine: "... national minority are not discriminated against...")

"Paragraph 4"

* Para 59 additional sentence to follow final sentence: "The term "media" should be construed in the widest possible sense, and certainly includes printed as well as broadcasted media."

* Para 60 final sentence: ""In public" does not include relations with public authorities, the subject of paragraph 2 of this article."

* Para 61 third sentence: "...for example, ombudsmen and public services."

* Para 65 second sentence: "...write the ...name of a person..."

* Para 66 second sentence: "..."

* Para 66 third sentence: "Article... 20 ..., particularly..."

* Para 66 additional sentence to follow final sentence: "The expression "private nature" should be construed in its widest possible sense, so as to include all information which is not of an official nature (cp. paragraph 3)."

* Para 67 first sentence: "...in a multicultural perspective (see article 6 paragraph 1)."

Draft explanatory report on the framework Convention on the protection of national minorities
Proposals of Slovak delegation

- p.26(page 5), the 2nd sentence to begin as follows : " It also stresses that the effective protection should be ensured within the rule of law, respecting the territorial integrity and national sovereignty of States."
- p.28(Art.I) the last sentence redraft as follows: " The Parties do however recognize ..."
- p. the 2nd sentence, 5th line to read as follows : " ,but they may be particularly important for the protection ..."
- p.61 to add a new sentence : "The word "relations" is not understood as the obligation of the authorities to answer in minority language".
- p.62 at the beginning of the last sentence to replace the word "must" by "should",
- after p.73(Art.14) a new para to be inserted:
 "The right to learn minority language and to be taught in it should not be to the detriment of the official languages and the need to learn them (see also preamble of the European Charter for Regional or Minority Languages). Stressing the role of the official language is fully in line with the social cohesion (see also Art. 5 para 2) that is so important for the integration of multiethnic society".
- p.78 last sentence to redraft as follows: " Examples might bea dam or introduction of administrative territorial subdivisions in a new State".

SLOVENIA

PROPOSALS CONCERNING DRAFT EXPLANATORY REPORT OF CAHMIN (94)21

Page 8 - Article 6 - Paragraph 1-46

To add at the end:

... to integrate them into society and preserving their identity at the same time.

Page 11 - Article 11 - Paragraph 1-65

To insert in the third sentence:

Persons who have been forced to give up their original name or whose names have been changed by force, should be entitled to revert...

Page 14 - Article 19-81

To insert in the first sentence:

This article encourages the Parties to respect and implement existing international agreements (instruments) and to conclude bilateral and multilateral agreements for the.....

**CAHMIN: DRAFT FRAMEWORK CONVENTION FOR THE PROTECTION OF
NATIONAL MINORITIES: EXPLANATORY REPORT**

1. In the Convention itself there is an error in article 9. It should read 'should not discriminate'.
2. Variant iii has been chosen for article 11.3. This seems to beg a number of questions, such as what is meant by an 'area' and whether, say, in Wales you are talking about the Welsh, because they are a national minority if by 'national' one is referring to Great Britain or the United Kingdom, or the English if by 'national' one is referring to Wales (but perhaps in that case the English cannot be said to have 'traditionally' inhabited Wales in substantial numbers). One assumes that the former is the correct interpretation. But these appear to be questions that could be raised on all three variants and doubtless have already been considered, if only in the context of querying what is meant by 'national minority'.
3. It is noted that only 3 months is now allowed prior to implementation once 12 states have 'signed up' (Article F). Is this sufficient?
4. Article G refers to the majority provided for in Article 20.d. Where is the provision?
5. On the draft explanatory report, what is meant by 'entail in paragraph 27? Does it mean 'involve' or 'affect'?
6. The second sentence of paragraph 31 is confusing. Does it mean that the 'framework Convention' and 'the national rules.....' are mutually exclusive? How does one go about choosing one or the other, and signify this to the appropriate enforcement body?
7. In the last sentence of paragraph 34 the reference to 'the majority' seems odd. How can you exercise minority rights with the majority?
8. In paragraph 35, should not the words 'before or by the law' be inserted after 'non-discrimination'?
9. The first sentence of paragraph 62 is grammatically incorrect.